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October 24, 2012

Phil Isenberg, Chairman
Council Members
P. Joseph Grindstaff, Executive Officer
Delta Stewardship Council
650 Capitol Mall, Fifth Floor
Sacramento, CA 95814

By E-mail

Comments to Delta Stewardship Council – Seventh Draft Delta Plan

Dear Chairman Isenberg, Council Members, and Mr. Knopp:

On behalf of the residents of San Joaquin County and the San Joaquin County Board of Supervisors, we would like to thank you for the opportunity to submit comments on the Delta Stewardship Council's (DSC) Seventh Draft Delta Plan. With nearly two-thirds of the Delta located within San Joaquin County, we remain very concerned about the protection of water quantity and quality available within the Delta. We are equally concerned about the potential negative effects that additional planning processes may have on the County's communities, land use, flood protection, infrastructure, agriculture, economy, recreation, wildlife, and our way of life.

San Joaquin County strongly urges the DSC to take seriously the comments provide herewith including those previously submitted. It is imperative that the re-release of any supplemental or revised Draft EIR meaningfully address these comments in a manner that does not harm or impede the County.

The County's comments to the Seventh Draft Delta Plan are as follows:

- 1) All previous comments submitted by San Joaquin County are reasserted herein by reference to those previous submittals in lieu of again being fully set out herein.
- 2) In order to fully meet the Co-equal Goals, the Delta Plan must recognize that sufficient water be made available to the Sacramento-San Joaquin Delta before the State and Federal Water projects are allowed to divert water through and/or around the Delta.
- 3) The Delta Plan must require completion of peer-reviewed standards of Delta flows necessary to meet in-Delta environmental and agricultural uses before any permits are issued for new points of diversion in the Delta for the State or Federal Water Projects, or for the planning or construction of any isolated conveyance in the Delta.
- 4) The Delta Plan must require that the minimum standard for non-USACE project and non-urban Delta levees be the PL 84-99 standard.

- 5) The Delta Plan must specifically state that actions to achieve PL 84-99 Delta levee standards are not covered actions.
- 6) The Delta Plan must require that salinity and other water quality objectives be set or maintained to protect agriculture in the South Delta, fish and wildlife throughout the Delta and the Estuary, and other in-Delta beneficial uses. The Delta Plan must also uphold that the effects of the State and Federal Water Projects to the detriment of in-Delta beneficial uses must be mitigated for by State and Federal Water Projects as opposed to the general tax payer.
- 7) The Delta Plan must require the development of an additional five million acre feet of water storage (surface or underground) before any permits are issued for new points of diversion in the Delta for the State or Federal Water Projects or for the planning or construction of any isolated conveyance in the Delta.

8) Administrative Exemptions

In accordance with Water Code Section 85306, the Council must consult with the Central Valley Flood Protection Board (CVFPB) in recommending priorities in the Plan for state investment of levee operation, maintenance, and improvements in the Delta (refer to Chapter 7). Since future levee improvement projects in the Delta must be consistent with the Central Valley Flood Protection Plan prepared by the CVFPB, subjecting such projects to the findings and certification process for Covered Actions would serve no public purpose, add cost to projects, and would potentially place needed safety projects at risk of being delayed or stopped altogether if appealed.

9) A More Reliable Water Supply for California

The Eastern San Joaquin County Groundwater Basin has been designated as critically over-drafted in DWR Bulletin 118-80. Since that designation in 1980, local stakeholders have employed a consensus-based approach to develop groundwater management plans, integrated regional water management plans, and other groundwater policies to sustainable management of the underlying basin. The Eastern San Joaquin Region's adopted IRWMP seeks to divert water from Delta tributaries in years and months when water is available in order to conjunctively manage groundwater and surface water sources as part of an effort to achieve greater regional self-sufficiency. Current rules allow local jurisdictions and local landowners to manage groundwater supplies. Stakeholder-based, consensus driven solutions as developed in San Joaquin County under the Eastern San Joaquin Integrated Regional Water Management planning process provide incentives for better groundwater stewardship and offer a more sustainable approach to groundwater management.

The DSC's Seventh Draft Delta Plan recommendation to find that groundwater overdraft is an unreasonable use of water and potentially adjudicate groundwater basins is extreme and unnecessary. Adjudication should only be a measure of last resort and reserved for the most difficult circumstances. The cause of groundwater overdraft is not necessarily due solely to over-pumping; it can also be the result of not having a reliable supply of surface water. In 1958, promises of less expensive American River supplies via the Folsom South Canal were cited in SWRCB Decision 858 as being the reason why a competing water right application for Mokelumne River supplies should be approved over San

Joaquin County. If the Folsom South Canal and the Auburn Dam Project had been built or if San Joaquin County received its requested Mokelumne River water, then arguably eastern San Joaquin County would not be in a state of critical groundwater overdraft.

Today, San Joaquin County again looks to both the Mokelumne and American Rivers as the surface water supplies for large scale conjunctive use projects. These projects are very expensive and must navigate through the maze of opposition to divert from the Sacramento-Joaquin Delta watershed. Adjudication would likely take decades to resolve and would undermine the process by which stakeholders in Eastern San Joaquin County are searching intently for projects to better manage the underlying basin. The Delta Plan should instead look for opportunities to refill groundwater basins and make robust conjunctive use programs a priority in the San Joaquin Valley, especially in areas where groundwater basins have abundant storage capacity such as in San Joaquin County.

Page 214 - Figure 5-3 has omitted the City of Lathrop.

10) Reduce Risk to People, Property and State Interest in the Delta RR R2, Finance Local Flood Management Activities:

San Joaquin County supports the concept of providing increased funding for levee maintenance, improvement and emergency response preparedness. However, when developing an expenditure plan for such funding, there should be assurance that the distribution of funds will be done on an equitable basis, perhaps based on area population or flood risk severity.

11) RR P2, Require Flood Protection for Residential Development in Rural Areas:

This policy proposes to establish a minimum 200-year level of protection for new development in rural areas. While San Joaquin County supports the concept of achieving a higher level of flood protection for its residents, this level of protection is inconsistent with the goals expressed by the State legislature when it enacted SB 5 in 2007. This statute requires a minimum 100-year level of protection for rural areas.

RR P3 and RR P4 describe Delta Plan policies that should be consistent with existing statutes and regulations concerning floodway and floodplain encroachments. Furthermore Delta Plan policies RR P3 and RR P4 should not conflict with existing authorities of the Central Valley Flood Protection Board and local jurisdictions.

12) RR R8, Require Flood Insurance:

Flood insurance is already required through participation in the National Flood Insurance Program by cities and counties. The administering agency for this program, the Federal Emergency Management Agency, already establishes levels of insurance coverage for properties that have federally-insured mortgages. What purpose would it serve to have the State establish additional insurance requirements? Flood insurance obtained outside of the NFIP is often prohibitively expensive.

Agriculture:

The co-equal goals of water reliability and ecosystem restoration must be done in a manner that protects and enhances the agricultural values of the Delta as an evolving place. Unfortunately, the Seventh Draft Delta Plan fails to protect or enhance agriculture in the Delta.

Agriculture is the dominant land use of the Delta, comprising three-quarters of the region's landscape. A preponderance of agricultural land in the Delta-- 75 percent -- is classified as Prime Farmland, land with the best physical and chemical characteristics and reliable irrigation water. By comparison, only 18 percent of the State's agricultural land is classified as Prime Farmland. Because of the fertile peat soils and the moderating marine influence, Delta agriculture's per acre yields are almost 50 percent higher than the State's average.

San Joaquin County makes up the largest portion of the total Delta's agricultural land base, at 43 percent. The Delta comprises approximately 1/3 of San Joaquin County's total land. Approximately 87% of the existing land in the Primary Zone of the Delta is devoted to agriculture. There are 215,000 acres of crop land in San Joaquin County's Delta producing a total farm gate value of \$558,000,000 (2011 figures). Using the DWR economic multiplier of 3, San Joaquin County's Delta agriculture contributes \$3.4 billion to the regional and State economy on an annual basis.

To protect and enhance agriculture in the Delta and to allow it to remain viable into the future, the Plan must address the issues that presently threaten agriculture in the Delta. These include water quality, levee maintenance, channel capacity, incompatible non-agricultural uses, critical mass (infrastructure and support industries), certainty, and regulatory costs.

Delta Plan's Scope of Authority:

The scope of the Plan is far too broad. Claiming jurisdiction in all watersheds stretching from the Upper Trinity to the San Joaquin River at Fresno and in all the areas where Delta water is exported takes in most of California. Additionally, most of California's agriculture is within this jurisdictional boundary. In the future will farming practices throughout the state need to show consistency with the Delta Plan? Also, in addition to complying with regional water board requirements, will growers also need to comply with an extra layer of discharge regulation in the form of the Delta Plan? What if they conflict? Additionally, requiring urban and agricultural water suppliers to comply with DSC mandates for water conservation, reporting, metering, and pricing is too intrusive and will add substantially to the cost of water. As a result many of the Plan's provisions regarding water quality, conveyance, and reliability exceeds the authority of the DSC. These statewide policies are best served by those statewide agencies that have appropriate authority. The Delta Plan should narrow its scope of authority.

Thank you for your attention and consideration on this critical matter. If you have any questions regarding this topic, please contact Tom Gau, Public Works Director at (209) 468-3101.

Sincerely,



Steve J. Bestolarides
Chairman, Board of Supervisors
San Joaquin County

Attachments (eight)

c: San Joaquin County State Delegation

Paul Yoder, State Advocate

Karen Lange, State Advocate

Mark Limbaugh, Federal Advocate

Roger Gwinn, Federal Advocate

Delta Counties Coalition

Manuel Lopez, SJC County Administrator

David Wooten, SJC County Counsel

Tom Gau, SJC Public Works Department

Kerry Sullivan, SJC Community Development Department

Scott Hudson, SJC Agricultural Commissioner

Gabe Karam, SJC Office of Emergency Services

BOS10-04



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July 30, 2010

Delta Stewardship Council Members
P. Joseph Grindstaff, Interim Executive Officer
650 Capitol Mall, Fifth Floor
Sacramento, CA 95814

By E-mail

Comments to Delta Stewardship Council – Second Draft Interim Plan

Dear Council Members and Mr. Grindstaff:

On behalf of the residents of San Joaquin County and the San Joaquin County Board of Supervisors we would like to thank you for the opportunity to submit comments on the Delta Stewardship Council's Second Draft Interim Plan. With nearly two-thirds of the Delta located within San Joaquin County, we are very concerned about the protection of water quantity and quality available within the Delta. We are equally concerned about the potential negative effects that additional planning processes may have, as evidenced by the Delta Vision and the continuing Bay Delta Conservation Plan (BDCP) process on the County's communities, land use, flood protection, infrastructure, agriculture, economy, recreation, wildlife, and our way of life. A summary of the County's comments are as follows:

A. Best Available Science (*Second Draft, page 22, lines 12-31*)

The Delta Risk Management Strategy (DRMS) does not fit the Draft Interim Plan definition of "best available science", yet DRMS is referenced repeatedly in the document and is the basis for much of the conclusions contained in the Draft, with respect to levee failure and repair (or non-repair, depending on the location of the levee).

Recommendation:

It is recommended that the reference to DRMS as "best available science" be deleted.

B. Statutory Adoption of Objectives Inherent in Coequal Goals:

1. Policy Objective "b"; "Protect and enhance the unique cultural, recreational, and agricultural values of the California Delta as an evolving place." (*Second Draft, page 11, lines 8-9*)

With nearly two-thirds of the Delta in San Joaquin County, any far-reaching changes to the Delta may seriously impact the way of life for area communities. In San Joaquin County alone, the gross value of agricultural production is projected to exceed \$2 billion in 2009. The Delta's fertile soil in combination

with a temperate climate has made the County one of the richest agricultural and dairy regions in California.

Furthermore, the County's location within the Delta enables the County to serve as a major shipping point for many of the agricultural and manufactured products of Northern California and is home to the State's first inland seaport located in the City of Stockton. Since the mid-nineteenth century, Stockton has been the region's transportation hub.

However, the quality of life for the San Joaquin County's residents, local businesses, industries, and the Delta on which we rely is in jeopardy.

Proposals developed under the Delta Vision and BDCP would change the Delta's physical structure, ecology, and water quantity and quality for the worse with the development of a peripheral canal or other isolated conveyance that will transport water from the Sacramento River directly to export facilities for use south of the Delta.

Despite the realization that the Delta ecosystem and its species are currently in decline, exports from the Delta have risen dramatically since the State Water Project (SWP) began deliveries in 1971. It would seem that the promise made to protect the Delta has been overlooked in favor of increased exports to the south. An isolated conveyance facility or peripheral canal will do nothing to fix the supply-demand imbalance in the Delta; it merely transfers the shortage of water from one area to another. Historically, water engineers knew that in dry years there was not going to be enough water to support export levels and keep the promise to protect the Delta. An isolated facility will also lead inexorably to the abandonment and destruction of the Delta and its vast array of infrastructure, its urban areas, its agriculture, and its ecosystem.

Recommendation:

It is recommended that the Interim Plan provide more guidance and meaning to Policy Objective "b".

2. Policy Objective "c"; "Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem." (Second Draft, page 11, lines 10-11)

Recommendation:

It is recommended that the Draft Interim Plan include goals and objectives regarding how the Plan will address wetlands coequally existing with agriculture.

C. Interpretation of the Coequal Goals under the 2009 Delta Reform Act (Second Draft, pages 11-12)

A central issue to the proper management of the Delta is that the Delta Plan must address how the interpretation of the coequal goals under the Delta Reform Act will coincide with meeting existing water rights and area of origin protections. To reiterate from comments provided on the First Draft Interim Plan (attachment), a vast number of water users within the Delta beneficially use water pursuant to legally-established riparian and/or overlying rights, which are among the most senior of

water rights in the State, and are supposed to be legally protected from diminishment by the Projects' export operations, which exports are based on *junior* appropriative or contractual water rights.

The Watershed Protection and the Delta Protection Acts impose fundamental limitations on the State Water Project and federal Central Valley Project's (CVP) ability to transfer surplus water from the Delta watershed to water-deficient areas to the south and west of the Delta. These protections are in place regardless of the coequal goals of water supply reliability, and environmental protection strategy as put forth by the Delta Vision, and now the Council's planning efforts. These acts contain the historic protections and assurances, including the Delta "common pool doctrine". When the State and federal Projects were initially authorized, the Legislature promised these legislatively protected water users ***"that the Projects will indeed be limited to the transfer of water that is truly surplus to their needs."***

Situated within the Delta watershed, and with a substantial portion of lands within the boundaries of the "legal Delta", San Joaquin County relies on the proper interpretation of these Acts and other protections as of paramount importance to all in-Delta water users, both human and environmental, that depend on water from the Delta watershed.

Additionally, the conflict in the coequality of goals hinges on the fact that this reality of equality does not exist. In fact, reference is given to a letter dated 18 August 2009 in which Antonio Rossman, Lecturer of Water Resources Law, (Boalt Hall), University of California, Berkeley who wrote in regard to then SB1, ***"the bill seeks to maintain the Blue Ribbon Task Force policy of pursuing environmental protection and supply reliability as co-equal goals. Conforming that aspiration to both legal and ecological mandates requires refinement of the Blue Ribbon policy. The California Supreme Court's latest definition of the State's Bay-Delta responsibilities clearly provides that water exports from the Bay-Delta ultimately must be subordinated to environmental considerations (In re Bay-Delta Programmatic EIR Coordinated Proceedings (2008) 43 Cal.4th 1143, 1168 (emphasis added))."*** Mr. Rossman continued, ***"Stated differently, the goal of securing a reliable supply must in the end be realized by meeting the paramount needs of the environment."***

Recommendation:

It is recommended that in the development of plans centered on the coequal goals, the Council provide additional guidance on how the Interim Plan will address this yet unresolved conflict of coequal goals, and also how the plan will abide by established water rights and other area of origin protection laws designed to protect the Delta.

D. Water Code Section 85021(Second Draft, page 11)

Water Code (WC) Section 85021, setting forth the State policy on reducing reliance on water exports from the Delta, is not given the same importance as other goals, objectives, and policies noted in the Draft Interim Plan. WC 85021 states that ***"The policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. Each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water***

technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts.”

Recommendation:

It is recommended that WC Section 85021 state policy on reducing reliance on water exports from the Delta be specifically listed as a goal and objective in the Draft Plan.

E. Discharge of Existing Law should be a Required Action under the Interim Delta Plan (*Second Draft*)

The enforcement of existing laws and quality standards is a short-term action that can be implemented immediately under the Interim Delta Plan. Through the Fish and Game Code, California WC and other laws and decisions, both the California Department of Fish and Game and the State Board have existing enforcement authorities to address various code and standard violations. For example, under Decision D-1641, the responsibility to meet the Delta salinity objectives is summarized as follows:

“Salinity problems in the southern Delta result from low flows in the San Joaquin River and discharges of saline drainage water to the river. The actions of the CVP are the principal causes of the salinity concentrations exceeding the objectives at Vernalis.” D-1641 p. 89

D-1641 states that the circulation problems in the Delta are caused by “...*export pumping by the SWP and CVP and in-Delta diversions in the southern Delta [which] cause null zones, areas with little or no circulation.*” Although the State Water Resources Control Board (SWRCB) found that in-Delta users contribute in part to the southern Delta salinity, based on substantial evidence it was reasonable to place the entire burden and obligation to meet the southern Delta salinity objectives on California Department of Water Resources (DWR) and US Bureau of Reclamation (USBR).

Thus, since 2000, it was made quite clear by the SWRCB that more needs to be done by DWR and USBR to address the salinity problems in the southern Delta as D-1641 imposes.

Recommendation:

It is recommended that the Interim Delta Plan and future planning activities of the DSC should contain measures that require compliance with existing state and Federal laws that protect the Delta.

F. Secondary Zone of the Delta

Recommendation:

It is recommended that Projects in the secondary zone should not be subject to the same scrutiny as projects in the primary zone. Projects in the secondary zone should be referred to the DSC for review and comment but should not require findings of consistency.

G. Decision Processes (*Draft Plan, page 22, lines 9-11*)

The principles and procedures for decision making include #2 - *“robust procedures to ensure transparency and adequate opportunities for interested parties and the public to participate in decision making, including availability of information related to a decision well before the meeting at which it is considered.”* The Plan does not include “robust procedures” for public involvement.

Recommendation:

It is recommended that the Interim Plan provide principles and procedures for public involvement in the decision making process. Several pages in the Draft Plan are dedicated to process for “engaging and establishing working relationships with agencies”. However, the Plan is virtually silent on engaging the public. The Draft Plan provides the impression that the future of the Delta will be developed without regard for local input and involvement, which is exactly what local agriculture, government, and Delta citizens want to avoid. It is critical that there be strong public participation in the Plan’s development.

H. Processing Procedure (*Draft Plan, Appendix I, 3. Delta Stewardship Council Administrative Procedures Governing Appeals-Review of Certifications of Consistency with Delta Plan, Page 5 lines 10-46*)

The Second Interim Draft contains some onerous and circular processing procedures.

Recommendation

While this may be difficult to fix because the legislation that exempts a project unless it has a significant impact on one or both of the coequal goals is already adopted as WC Section 85057.5, the following process is recommended for projects in the primary zone of the Delta:

If an application is a project under California Environmental Quality Act (CEQA) the Agency would refer the Project to the DSC. Within 30 days, the DSC would notify the Agency if the project is a covered action. If it is, the Agency posts a draft certification of consistency with the Plan. Thirty days later, the Agency would send to the DSC a “written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan” (WC Section 85225). The detailed findings are based on a list provided by the DSC (similar to an initial study). Thirty days later, the DSC makes its determination. If the DSC determines that the action is inconsistent with the Plan then the applicant may appeal to the DSC. If upon appeal the DSC changes its determination to consistency, then the Agency waits 30 days for a second appeal period to end. If the certification is not appealed, then the Agency can approve the project. Any additional postings, other than the NOD would be done by the DSC, not the Agency. Under this scenario, no time is wasted if the DSC determines that the project is not covered. If the project is covered by the Plan, it will still take about five months to process, if the determination is appealed.

I. Analytical Tool for Council Action under the Sacramento-San Joaquin Delta Reform Act of 2009, (Draft Plan, page 27, lines 10-16)

Recommendations:

1. Add “water quality” as a tool. The purpose for “fixing” the Delta is to improve water quality, as stated in Policy Objective “e” (Draft Plan, page 11, lines 14-15) “improve water quality to protect human health and the environment consistent with achieving water quality objective in the Delta.”

2. Include an “Economic Development Plan” as a tool. This is consistent with the Policy Objective “b” (Draft Plan, Page 11, lines 8-9) of “Protect and enhance the unique cultural, recreational, and agricultural values of the California Delta as an evolving place.” The Plan deals with improving the ecosystem greatly. What about the people living and working in the Delta? Shouldn’t the plan also deal with their well-being?

3. (Draft Plan, Page 29, lines 1-12) Change the tool “Delta ecosystem restoration plan” to “Delta ecosystem restoration and management plan”. If estuaries, wildlife habitat, and wetlands are going to be artificially developed, then they need to be managed for the life of the project (perpetuity?). The plan should not only identify the process and cost for ecosystem development but should also identify the process and cost of the ecosystem’s management into perpetuity. Management is important to ensure that the ecosystem projects serve their intended purposes and do not adversely impact neighboring lands.

J. Sources (Draft Plan, page 38)

Agriculture is the primary land use and economic force in the Delta. Delta agriculture is of chief importance locally, statewide, and nationally.

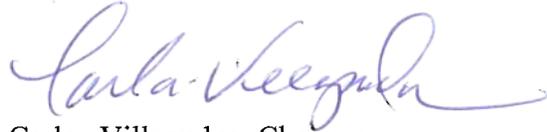
Recommendation:

It is recommended that the “Department of Conservation’s Farmland Mapping and Monitoring Program” be included and referenced in the Plan.

The San Joaquin County Board of Supervisors urges the DSC to take these comments, and the San Joaquin County Flood Control and Water Conservation District’s comments to the first draft, (attached) into consideration as the Delta planning process moves forward. It is further recommended that the Council works collaboratively with local government and land owners as the Interim Plan is developed.

Thank you for your attention to this critical matter for San Joaquin County. We look forward to working with you, and submitting more specific comments to the DSC in the future. If you have any questions regarding this matter, please contact Tom Flinn, Public Works Director at (209) 468-3100.

Sincerely,



Carlos Villapudua, Chairman
Board of Supervisors
San Joaquin County

Attachment

CV.ER

- c: San Joaquin County State Delegation
 - Paul Yoder, State Advocate
 - Karen Lange, State Advocate
 - Delta Counties Coalition
 - Manuel Lopez, SJC County Administrator
 - David Wooten, SJC County Counsel
 - Tom Flinn, SJC Public Works Department
 - Kerry Sullivan, SJC Community Development Department
 - Scott Hudson, SJC Agricultural Commissioner
 - Ron Baldwin, SJC Office of Emergency Services

BOS07-02



SAN JOAQUIN COUNTY

FLOOD CONTROL & WATER CONSERVATION DISTRICT

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(ATTACHMENT- FIRST DRAFT)

THOMAS R. FLINN
DIRECTOR OF PUBLIC WORKS
FLOOD CONTROL ENGINEER

Sent via Internet Electronic Mail

July 2, 2010

Mr. Joe Grindstaff, Executive Officer
Delta Stewardship Council
650 Capitol Avenue, 5th Floor
Sacramento, California 95814

SUBJECT: COMMENTS ON THE DELTA STEWARDSHIP COUNCIL INTERIM DELTA PLAN

Dear Mr. Grindstaff and Honorable Council Members:

With nearly two-thirds of the Delta located within San Joaquin County (County), we are very concerned about the protection of water quantity and quality available within the Delta, and with the potentially significant negative effects that additional planning processes may have, as evidenced by the Delta Visioning and continuing Bay Delta Conservation Plan (BDCP) process, on the County's communities, land use, flood protection, infrastructure, agriculture and business economy, industry, recreation, wildlife and our way of life.

Please find the following general comments submitted by the San Joaquin County Flood Control and Water Conservation District regarding the Delta Stewardship Council's (Council) development of its Interim Plan and future planning activities.

Consider Regional Self-Sufficiency, Enhanced Through-Delta and other Near-term Actions

The County supports the "Better Way" concepts of regional self-sufficiency, enhanced Through-Delta and other near-term actions to develop a truly sustainable Delta that provides water quantity and quality for all beneficial needs, strengthened levees and flood control structures, improved fisheries and wildlife habitat and the protection of transportation corridors and other vital infrastructure in the Delta.

The County recommends that the Council should evaluate the potential effectiveness of other short-term and interim alternatives that may benefit both the Delta and those throughout the State that are now dependent on the Delta as a water source including:

Regional Self-Sufficiency Concept - Reactivates historical floodplains and basins to lessen flood peaks and enhance wildlife habitat; reoperates upstream reservoirs to increase flood control and water storage operations; replenishes depleted groundwater basins as proposed by San Joaquin County's MORE WATER Project.

Delta Corridors Proposal - An enhanced Through-Delta conveyance concept that would reconnect the San Joaquin River to the Delta by installing 12 flood gates, barriers, fish screens and/or pumping facilities in the Delta to help avoid the mix of saline waters and endangered fish species from the San Joaquin River with freshwater sources in the Delta.

Mr. Joe Grindstaff
DELTA STEWARDSHIP COUNCIL
INTERIM DELTA PLAN

South Delta Recirculation - South Delta recirculation concepts to enhance water quality, protect fisheries, and allow water exports. Under consideration, South Delta Water Agency proposes releasing freshwater sources from the Delta Mendota Canal to the San Joaquin River to combat salinity and reduce reliance on New Melones Reservoir flows.

South Delta Bypass - A South Delta flood bypass and habitat restoration area in the vicinity of Paradise Cut could ease flood pressures in the lower San Joaquin River that threaten the residential areas of Lathrop, Manteca, and Stockton.

Abide By Existing Water Rights Law

A vast number of water users within the Delta beneficially use water pursuant to riparian and/or overlying rights, which are among the most senior of water rights in the State, and are duly protected from the State Water Project and federal Central Valley Projects' (Projects) export operations which are based on *junior* appropriative water rights. In the development of a Delta Plan centered on the concept of coequal goals, the Council must also abide by established laws designed to protect the Delta and area of origin protections.

The Watershed Protection and the Delta Protection Acts impose fundamental limitations on the Project's ability to transfer surplus water from the Delta watershed to water-deficient areas to the south and west of the Delta. These protections are in place regardless of the coequal goals of water supply reliability and environmental protection strategy as put forth by the Delta Vision and now the Council's planning efforts. These acts contain the historic protections and assurances including the Delta "common pool doctrine", which the Legislature afforded such water users when the State and Federal Projects were initially authorized, "that the Projects will indeed be limited to the transfer of water that is truly surplus to their needs."

Situated within the Delta watershed, and with a substantial portion of lands within the boundaries of the "legal Delta", San Joaquin County relies on the proper interpretation of these acts and other protections as of paramount importance to all in-Delta water users, both human and environmental, that depend on water from the Delta watershed.

Additionally, planning to meet these coequal goals of the Delta Plan should not consist of burdening the local economies in the Delta by:

- Converting prime agricultural farmland in the Delta into habitat mitigation for terrestrial and aquatic species caused by Central Valley Projects (CVP) and State Water Project (SWP) operations.
- Flooding of prime agricultural farmland in the Delta due to seepage impacts to adjacent islands.
- Publically acquire private property in the Delta.
- Create access points to the Delta without adequate funding for additional law enforcement and protections for local landowners.

Recognize Water Quality Standards

The San Joaquin County Board of Supervisors has taken strong positions regarding water quality in the Delta because the United States Bureau of Reclamation, and the California Department of Water Resources (DWR), are obligated by State Law under their water right permit terms to

Mr. Joe Grindstaff
DELTA STEWARDSHIP COUNCIL
INTERIM DELTA PLAN

- 3 -

operate the CVP and SWP in a manner to meet the salinity standards at Vernalis, on the Lower San Joaquin River, and in all locations within the Delta.

Unfortunately, the CVP and SWP have been operated in violation of their permit terms. The Council in its formation of the Delta Plan must obligate the United States Bureau of Reclamation and DWR to take corrective actions to meet the salinity standards in the Delta. Water quality objectives exist to protect all beneficial uses of water. In the Sacramento-San Joaquin River Delta, water quality objectives have been set to protect drinking water supplies, agriculture, fish and wildlife. Recreation in the Delta is also a major attraction to County taxpayers and visitors. As discussed, over the past two years, the salinity objectives set forth by the State Water Resources Control Board have been regularly exceeded in the South Delta.

Embrace Flood Protection and Levee Maintenance Needs

The Council should not stand in the way of local Reclamation Districts as they put Proposition 1E funds towards the use taxpayers intended they be used. The fortifying of Delta levees should be expedited without further complication. The notion of incorporating habitat improvements to levee projects is noble, but a moot point if levees cannot attain and maintain the PL84-99 Levee standard. Without the PL84-99 designation, the loss of Federal assistance should a levee failure occur would have effects not only locally, but also for those who rely on Delta exports and those who rely on levees to protect key infrastructure such as aqueducts, highways, railroads, natural gas storage and lines, and power lines.

Rely on Sound Scientific Peer-Reviewed Process

The development of additional plans for the Delta are moving ahead at a remarkable pace given the magnitude of the issues involved and the scale of the changes under consideration. Yet rather than ensuring the planning effort proceeds in a cautionary manner that emphasizes sound science, the recent legislation simply cedes all control over the process to interests that—aside from not sufficiently representing the Delta Counties and our constituents—have no direct responsibility for ensuring that sound science is integral to the end result. Accordingly, Council must ensure that it takes all steps possible to foster the application of sound science for the benefit of the Sacramento-San Joaquin River Delta and estuary.

While some scientific work and findings have resulted through CALFED and other processes, fundamental questions remain unanswered. This level of uncertainty makes it difficult to develop solid policy and viable implementation measures necessary to address the problems we face in restoring the Delta. For example, we do not yet know how much water a healthy Delta needs in any given season of any given water year. This is a fundamental question that must be answered before drafting or adopting additional plans.

The State Water Resources Control Board flow criteria hearing will result in the State Water Resources Control Board giving "only guidance" to the Bay Delta Conservation Plan process and not Delta out-flow standards. Further, the opinions and experience of the local geotechnical engineers who manage the Delta levees have been ignored when forecasting the needs of the Delta levee system. Fundamental scientific questions need to be answered while remaining out of the political debate. The use of the Delta Risk Management Strategy findings and recommendations for any decision making process is suspect because the County believes that

Mr. Joe Grindstaff
DELTA STEWARDSHIP COUNCIL
INTERIM DELTA PLAN

the Delta Risk Management Strategy contains significant technical flaws and is based upon errant assumptions.

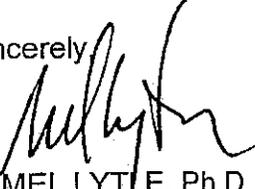
Include a Fair, Balanced and Transparent Stakeholder Process

The Council is commended on its request for comments and suggestions on current and upcoming planning activities. As these activities move forward, the Council must take every action to include a fair and transparent stakeholder process that includes individual property owners and local agencies that are affected most by the Council's recommendations. A collaborative timely approach that allows sufficient time for local agencies to interact with the Council, meets mutual goals and addresses specific concerns of property owners in the Delta as well as local governments that potentially have the most to lose in this process will be most effective. The County suggests that the Council work directly with all Counties, Cities, Reclamation Districts and other local agencies that are located in the Delta by encouraging an open on-going dialogue.

The San Joaquin County Flood Control and Water Conservation District urges the Council to take these comments into consideration as the Delta planning process moves forward and recommends that the Council works collaboratively with local land owners and government agencies as the Interim Plan is developed.

We look forward to working with and submitting additional more specific comments to the Stewardship Council in the future on this important effort. Should you have further questions or comments, please feel free to contact me at (209) 468-3089.

Sincerely



C. MEL LYTLE, Ph.D.
Water Resources Coordinator

CML:LC:mk
WR-10G004-M1

c: T.R. Flinn, Director of Public Works
Thomas M. Gau, Chief Deputy Director



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January 28, 2011

Delta Stewardship Council Members
P. Joseph Grindstaff, Executive Officer
650 Capitol Mall, Fifth Floor
Sacramento, CA 95814

VIA E-MAIL

Comments to Delta Stewardship Council – Notice of Preparation Draft Environmental Impact Report for the Delta Plan

Dear Council Members and Mr. Grindstaff:

The San Joaquin County Board of Supervisors, and the San Joaquin County Flood Control and Water Conservation District (collectively hereinafter “County of San Joaquin” or “County”) would like to thank you for the opportunity to submit comments on the Delta Stewardship Council’s Notice of Preparation Draft Environmental Impact Report for the Delta Plan dated December 10, 2010 (NOP).

Nearly half of the legal Delta is located within the County of San Joaquin, and the County is an interested stakeholder in the future viability of the Delta. We are very concerned about the Delta Plan which is being developed and its potential future impacts on the County. Based on the limited information available as set forth in the NOP, the County submits the following comments:

Project Description within NOP is Inadequate

The NOP for the Delta Plan in and of itself is inadequate. The California Environmental Quality Act (CEQA) requires that the NOP provide “sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response.” *CEQA Guidelines* § 15802. This section requires that at a minimum the NOP include a project description, the location of the project, and the probable environmental affects of the project. The NOP identifies various statutes that will drive the formulation of the Delta Plan as the project; however, the content, parameters and description of the Plan is unknown. There is no Delta Plan to review. There is currently only an interim plan and white papers describing various aspects of interest in the Delta. A central focus of the Delta Plan will be the Bay Delta Conservation Plan (BDCP) which is not yet completed as well as many other state-sponsored planning activities. These plans will provide vital input to the Delta Plan. The BDCP is still in its planning stages and the parameters of the BDCP have not yet been identified. Therefore, the project may not be adequately described in the NOP as required by California Environmental Quality Act.

Inadequate and Inconsistent Project Objectives

The County is concerned that the objectives of the Delta Plan as stated in the NOP are inadequate and inconsistent. A central issue to the proper management of the Delta, the Delta Plan must address how the interpretation of the coequal goals under the Delta Reform Act will coincide with meeting existing water right, watershed and area of origin protections. To reiterate from comments provided on the 1st Draft Interim Plan, a vast number of water users within the Delta beneficially use water pursuant to legally established riparian and/or overlying rights, and pre-1914 rights, which are among the most senior of water rights in the State, and are duly protected from the State and Federal Project export operations which are based on junior appropriative and subordinate contract water rights.

Delta Plan Must Rely on Best Available Science

The NOP has included references to the flawed Delta Risk Management Study (DRMS) which failed to pass a peer-review process and should not be relied upon as part of the Delta Plan. For example, in the review of the DRMS Phase I Technical Memoranda (TM) by the US Army Corp of Engineers (May 2007) Reviewer Goettel referred to the Section on Climate Change on page 19 as follows: c. On page 13, the TM summarizes four possible mean sea level rises for 2100, ranging from 20 cm to 140 cm (8 to 56 inch.), and note: The state of the science does not allow quantitative estimates of the probabilities of these different projections. Even subjective, semi-quantitative probabilities cannot be reliably assigned. The underlined statement above is the most important reference to the state-of-climate change science and any confidence in the magnitude of sea level rise and the resulting impacts on the Delta.

To preclude the Delta Plan from the potential of incorporating flawed and unsustainable policy principles concerning climate change, the Council must rely on a fair, unbiased best-available science approach in its evaluation of predictions of global warming impacts and sea level rise on the future Delta.

Delta Plan Must Resolve Conflict between Coequality of Goals

The conflict in the coequality of goals hinges on the fact that the reality of equality does not exist as written into current statute. In fact, reference is given to a letter dated 18 August 2009 in which Antonio Rossman, Lecturer of Water Resources Law, (Boalt Hall), University of California, Berkeley wrote in regard to then SB1, "the bill seeks to maintain the Blue Ribbon Task Force policy of pursuing environmental protection and supply reliability as "co-equal goals." Conforming that aspiration to both legal and ecological mandates requires refinement of the Blue Ribbon policy. The California Supreme Court's latest definition of the State's Bay-Delta responsibilities clearly provides that "water exports from the Bay-Delta ultimately must be subordinated to environmental considerations." (*In re Bay-Delta Programmatic EIR Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1168). He continued, "Stated differently, the goal of securing a reliable supply must in the end be realized by meeting the paramount needs of the environment." In the development of plans centered on the coequal goals, the Council should provide additional guidance on how the Delta Plan will address this yet unresolved conflict of coequal goals and also how the Plan will abide by established laws designed to protect the Delta.

Delta Plan Must Abide by Historic Delta Water Rights Law

A vast number of water users within the Delta beneficially use water pursuant to riparian and/or overlying rights, and pre-1914 rights, which are among the most senior of water rights in the State, and are duly protected from the Projects' export operations which are based on *junior* appropriative water rights. California water law is based on the priority system of state water rights. Shortages are addressed by implementation of the water right priority system. The most senior water rights are protected while junior water rights suffer. Competing demands for water in and from the Bay-Delta are properly resolved by applying the priority system, not by "balancing." If there is insufficient water in a stream system to support all appropriators, then diversions diminish starting with the most junior appropriators. (*Pleasant Valley Canal Company v. Borrer* (1998) 61 Cal.App.4th 742, 770.) The Delta Plan must recognize that shortages of water within the Bay-Delta are resolved by applying the priority system of water rights and other California water laws, such as the Delta Protection Statute (*Wat. Code* §§ 12200 et seq.), the Watershed Protection Statute (*Wat. Code* §§ 11460 et seq.) and the Area of Origin Statute (*Wat. Code* §§ 10500 et seq.).

In addition, the Watershed Protection Act (*Wat. Code*, § 11460, et seq.) and the Delta Protection Act (*Wat. Code*, § 12200, et seq.) impose fundamental limitations on the State Water Project (SWP) and federal Central Valley Project's ("Projects") ability to transfer "surplus" water from the Delta watershed to water-deficient areas to the south and west of the Delta. These acts contain the core protections and assurances including the Delta "common pool doctrine", which the Legislature afforded such water users when the Projects were initially authorized, that the Projects will indeed be limited to the transfer of water that is truly surplus to their needs. Situated within the Delta watershed, and with a substantial portion of its lands within the boundaries of the "legal Delta" (see *Wat. Code*, § 12220), the proper interpretation of these acts is of paramount importance to the County of San Joaquin and its many water users, both human and environmental, that depend on water from that watershed.

Discharge of Water Quality Standards should be a Required Action under the Delta Plan

The enforcement of existing laws and water quality standards is a short term action that can be implemented immediately under the Delta Plan. Through the Fish and Game Code, California Water Code and other laws and decisions, both the California Department of Fish and Game and the State Board have existing enforcement authorities to address various code and standard violations in the Delta. For example, under Decision D-1641, the responsibility to meet the Delta salinity objectives is summarized as follows: "Salinity problems in the southern Delta result from low flows in the San Joaquin River and discharges of saline drainage water to the river. The actions of the Central Valley Project (CVP) are the principal causes of the salinity concentrations exceeding the objectives at Vernalis." (D-1641 p. 89)

D-1641 continues stating that the circulation problems in the Delta are caused by "...export pumping by the SWP and CVP and in-Delta diversions in the southern Delta [which] cause null zones, areas with little or no circulation." Although the State Water Resources Control Board (SWRCB) found that in-Delta users contribute in part to the southern Delta salinity, based on substantial evidence it was reasonable to place the entire burden and obligation to meet the southern Delta salinity objectives on Department of Water Resources (DWR) and US Bureau of Reclamation (USBR). Thus, since 2000, it was made quite clear by the SWRCB that more needs

to be done by DWR and USBR to address the salinity problems in the southern Delta as D 1641 imposes. The Delta Plan should contain measures that require the discharge and compliance with existing standards that protect Delta water quality.

Delta Plan must define "...protects and enhances... the Delta as an evolving place"

With 2/3rds of the Delta in San Joaquin County any far-reaching changes to the Delta may seriously impact the way of life for area communities. In the County of San Joaquin alone, agricultural production reached an all-time high of over \$2 billion in 2007. Furthermore, the County's location within the Delta enables the County to serve as a major shipping point for many of the agricultural and manufactured products of Northern California and is home to the State's first inland seaport located in the City of Stockton. Since the mid-nineteenth century, Stockton is the region's transportation hub.

Despite the realization that the Delta ecosystem and its species are currently in decline, exports from the Delta have risen dramatically since the SWP began deliveries in 1971. It would seem that the promise made to protect the Delta has been over looked in favor of increased exports to the south. An isolated conveyance facility or peripheral canal/tunnel will do nothing to fix the supply-demand imbalance in the Delta, it merely transfers the shortage from one area to another. Historically, water engineers knew that in dry years, there was not going to be enough water to support export levels and keep the promise to the Delta. An isolated facility will also lead inexorably to the abandonment and destruction of the Delta and its vast array of infrastructure, its urban areas, its agriculture, and its ecosystem. It is recommended that the Delta Plan should provide more guidance and meaning of the following statement, "that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

Inadequate Water Supply for Delta Needs to be Resolved in Plan

The force behind the current water conflict is demand greater than supply. When arid lands are developed or put under irrigation a totally new demand for water is created. The amount of arid land remaining in California that can potentially be developed if water is available far outstrips even the most optimistic possibility of potential supply.

The current water supply crises is primarily due to the failure of the SWP to develop various projects on North Coast Rivers to annually supplement the water supply in the Delta with 5 million acre feet of water (DWR Bulletin No. 76 Preliminary Edition Report to the California Legislature on the Delta Water Facilities dated December 1960). In this plan, water sources and uses were developed to meet demands by the year 2000 wherein the entire 5 million acre feet of water from North Coast Projects was to be required. Wild and Scenic River legislation, increased environmental concerns, and cost of water development appear to be factors which discouraged construction of the North Coast Projects. It is important to recognize that for the year 2000 when due to the lack of North Coast water development it was expected that there would be no water for delivery by the SWP, the Water Education Foundation Layperson's Guide to the SWP (updated 2008) reports: "SWP delivers 3.5 million acre-feet of water, highest total since project began operations." The continuing shortage of SWP water supply and the cost to SWP contractors of replacing the North Coast supply create a tremendous incentive for exporters to simply take water otherwise needed within the San Francisco Bay-Delta Estuary for

environmental protection and consumptive use. It is reasonable to assume that the present efforts of directly attacking Northern California water diversions, increasing restrictions on discharges and reducing environmental protections and water quality standards will intensify due to the lack of overall water supplies to meet the necessary demands. The Delta Plan must include the analysis of what water is truly surplus to the Delta's needs and what is available for export.

Salinity Control Must be Key Component of Delta Plan

The Delta is an essential part of the San Francisco Bay-Delta Estuary. To avoid the detrimental impacts of salinity in the Delta, the CVP and SWP were planned to release stored water for salinity control. California Water Code Section 11207 added by Statutes of 1943 specified "Salinity control in the Sacramento-San Joaquin Delta" as one of the primary purposes of Shasta Dam. Salinity control is currently achieved by allowing unregulated river flow supplemented by releases of water from upstream reservoirs to flow into and out of the Delta in sufficient quantities to constitute a hydraulic barrier to Bay salinity. Upstream diversions to areas outside the watershed and the lack of a drainage solution for the hundreds of thousands of acres of irrigated land and wetlands along the west side of the San Joaquin Valley are the principal causes of the poor San Joaquin River water quality. The need for a solution to drain saline water emanating from water applied to the west side of the San Joaquin Valley has long been recognized. Salinity control is a key element in protecting Delta water quality. Salinity intrusion from the Bay is a major contributor to water quality degradation adversely affecting all beneficial uses of Delta water. The Delta Plan must address this issue and incorporate protections for adequate outflow and use.

Delta Plan Must Include the Consideration of All Project Alternatives that Reduce Demand on the Delta and Improve Regional Self Sufficiency

The County is aware that the current water conveyance alternatives do not include a comprehensive analysis of all project alternatives that may reduce demands on the Delta and improve regional self-sufficiency. This can be achieved through a host of water resources strategies developed throughout the State and not solely within the Delta or with reliance on increased diversions from Northern California. One such example is the Delta Corridors plan which has been presented by the South Delta Water Agency and the Central Delta Water Agency based in part on work performed by Dr. Russ T. Brown, Jones & Stokes. This proposal was presented to the Delta Vision process. It seeks to reconnect the San Joaquin River with the Bay. This proposal should have significant effects to fisheries while maintaining water quality supply and quality within the Delta. The environmental document for the Delta Plan must include meaningful analyses of all alternatives that will reduce demands for increased diversions from the Delta.

Additional Comments:

Page 18, lines 16 – 18 states: *"Agricultural water conservation requirements that expand upon objectives under SBX7 7, such as strategies to include all technically feasible efficient management practices."*

Agricultural water conservation requirements under SBX7 7 are already aggressive, and do not need to be expanded upon. However, if this statement is kept, it is recommended that the

statement be changed to: "...strategies to include all technically and economically feasible efficient management practices."

Page 18, lines 32 – 33 states: *"Prompt implementation of the BDCP program if the program complies with Water Code section 85320."*

This statement (or a similar statement), is included in most of the six implementation strategies described in the NOP. We need to know what the BDCP program is before including it as an implementation strategy. Therefore, it is recommended that the statement be deleted from the NOP.

Page 23, lines 24 – 27 states: *"A rigorous data collection system that is available for all agencies to use that will identify surface water and groundwater characteristics; diversion patterns; volume and patterns of water use by all urban, agricultural, business, and industrial users; discharge patterns; and compliance with regulations and environmental commitments of a range of projects."*

A "rigorous data collection system" will likely be extremely intrusive on Delta's agriculture, negatively impacting their water and property rights. Will Delta farmers be required to obtain individual National Pollutant Discharge Elimination System permits to provide water quality data to the Delta Stewardship Council? The County is seriously concerned that agriculture will ultimately shoulder the burden for funding this very costly "rigorous data collection system."

Page 23, lines 33 – 34 states: *"Consider expanding in practice and/or legislation the ability to use eminent domain procedures to further policy objectives of the Act."*

Eminent domain for ecosystem restoration should not be considered. Such a practice/legislation would have dire consequences that could go far beyond the boundaries of the Delta.

Page 24, lines 1 – 4 states: *"Consider a financing plan that could be based upon fees and charges to fund implementation of the Delta Plan recommendations and Delta Stewardship Council activities, in accordance with Proposition 26 adopted in November 2010 by the California voters."*

A finance plan for implementing the Delta Plan must recognize that public and private interests should contribute in proportion to the benefits received or negative impacts caused by the Plan, the need to mitigate the adverse impacts to local governments, and must provide funding for this mitigation. Any fee mechanism provided for in the Delta Plan must be based on engineering studies and other relevant and validated studies showing cost, benefit, impacts, etc. The process for developing a financing plan within the Delta Plan should be an open, and transparent public process.

Pages 23 – 24, Establish Governance and Financing Plans

Recommend an open and transparent governance which seeks and values input from the public and stakeholders before developing, implementing, and evaluating the elements of the plan.

Page 24, lines 35 – 36 states: *"Agricultural: The EIR will evaluate potential effects on agricultural land"*

Recommend this statement be changed to "The EIR will evaluate potential effects on agricultural land, practice, and economy"

Page 26, lines 17 – 23 states: "*Economics: The EIR will evaluate potential changes in land use, infrastructure, environmental resources, and risk potential to determine the economic or social effects that may cause environmental changes, such as changes based on a wide variety of factors, and consistent with CEQA, including availability of affordable water supplies, viable communities with projected land use and employment changes that can provide affordable public services, and utility and transportation corridors that facilitate reliable and affordable commerce.*"

This statement is unclear. The economic impacts to agriculture, local government, and the entire Delta region need to be evaluated. It is not clear that this section provides for such an evaluation.

The San Joaquin County Board of Supervisors urges the Delta Stewardship Council (DSC) to take these comments into consideration as the Delta planning process moves forward. It is further recommended that the Council works collaboratively with local government and landowners as the Plan is being developed.

Thank you for your attention to this critical matter for San Joaquin County. We look forward to working with you, and submitting additional comments to the DSC in the future. If you have any questions regarding this matter, please contact Tom Gau, Interim Public Works Director at (209) 468-3101.

Sincerely,



Frank L. Ruhstaller, Chairman
San Joaquin County Board of Supervisors

c: San Joaquin County State Delegation
Paul Yoder, State Advocate
Karen Lange, State Advocate
Delta Counties Coalition
Manuel Lopez, SJC County Administrator
David Wooten, SJC County Counsel
Tom Gau, SJC Interim Public Works Department
Kerry Sullivan, SJC Community Development Department
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May 6, 2011

Phil Isenberg, Chairman

Council Members

P. Joseph Grindstaff, Executive Officer

By E-mail

Delta Stewardship Council

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Comments to Delta Stewardship Council – Third Draft Delta Plan

Dear Chairman Isenberg, Council Members, and Mr. Grindstaff:

On behalf of the residents of San Joaquin County and the San Joaquin County Board of Supervisors, we would like to thank you for the opportunity to submit comments on the Delta Stewardship Council's (DSC) Third Draft Delta Plan. With nearly two-thirds of the Delta located within San Joaquin County, we remain very concerned about the protection of water quantity and quality available within the Delta. We are equally concerned about the potential negative effects that additional planning processes may have, as evidenced by the Delta Vision and the continuing Bay Delta Conservation Plan (BDCP) process on the County's communities, land use, flood protection, infrastructure, agriculture, economy, recreation, wildlife, and our way of life.

The County's comments are as follows:

1. Delta Plan vs. Delta Edict

The County, and as it appears other agencies, that rely on the Delta and its tributaries is greatly concerned with the overall planning approach of the Third Draft Delta Plan as being developed by the DSC's contract consultants. The final product of this effort should be a new comprehensive plan that has developed adequate project and program alternatives to set a new future for a sustainable Delta as described in the Delta Reform Act of 2009, and not a regulatory edict full of proposed policies, acts, and recommendations of which the DSC may have little of no true regulatory authority.

The Delta Plan should have goals, not specific processes, at least not until the other Plans and processes (such as the Delta Protection Commission's Economic Sustainability Plan, the Delta Conservancy's Strategic Plan, the Bay Delta Conservation Plan, etc), have been completed. A Delta Plan with goals can later be amended, even before the required 5-year review, to include processes which are consistent with the Delta Plan's goals and the goals and processes set forth in the other Plans and processes. Furthermore, any language in the Delta Plan dealing with "beneficiary pays" and/or "stressor pays" concepts should await completion of the legislative process on such bills as SB 34 (Simitian) and AB 576 (Dickenson).

In addition, the Delta Plan should provide more specific language regarding the Plan's goals regarding reduced reliance on the Delta for future water needs. There is presently some confusion regarding the meaning and reach of the language in Water Code Section 85201. Delta Plan articulation of the understanding of the DSC on this point would be helpful.

2. Coequality of Goals in Conflict

The Third Draft Delta Plan has not addressed a fundamental conflict concerning the co-equality of goals. This conflict hinges on the fact that the reality of coequality does not exist as written into the Delta Reform Act of 2009. In fact, the state of this policy is as affirmed by letter dated 18 August 2009 in which Antonio Rossman, Lecturer of Water Resources Law, Boalt Hall wrote in regard to then SB1, "the bill seeks to maintain the Blue Ribbon Task Force policy of pursuing environmental protection and supply reliability as "co-equal goals." Conforming that aspiration to both legal and ecological mandates requires refinement of the Blue Ribbon policy. The California Supreme Court's latest definition of the State's Bay-Delta responsibilities clearly provides that "water exports from the Bay-Delta ultimately must be subordinated to environmental considerations." (*In re Bay-Delta Programmatic EIR Coordinated Proceedings (2008) 43 Cal.4th 1143, 1168*). He continued, "Stated differently, the goal of securing a reliable supply must in the end be realized by meeting the paramount needs of the environment." In the continued development of the Delta Plan centered on the co-equal goals, the Council must resolve how the Delta Plan will address this conflict of co-equal goals and also how the plan will abide by other laws established to protect the Delta such as the Delta Protection Statute (*Wat. Code* §§ 12200 et seq.), the Watershed Protection Statute (*Wat. Code* §§ 11460 et seq.) and the Area of Origin Statute (*Wat. Code* §§ 10500 et seq.).

3. Water Rights, Area of Origin, and Regional Self-Reliance

The Third Draft Delta Plan, Chapter 4, focuses on the ideas of improving regional self-reliance, which is a topic the County has supported in our "Better Way Approach" to improving regional water supplies. This fundamental approach has great promise as it is currently being developed under the Integrated Regional Water Management planning process supported by the Department of Water Resources (DWR) and a host of regional entities throughout the State. Unfortunately, as considered under the Draft Delta Plan no mention has been made regarding the protection and observance of the State water right priority system. A vast number of water users within the Delta and its tributaries beneficially use water pursuant to riparian, appropriative and/or overlying rights, which are among the most senior of water rights in the State, and are duly protected from export operations and more *junior* appropriative water rights. California water law is based on the priority system of State water rights. Shortages are addressed by implementation of the water right priority system. The most senior water rights are protected while junior water rights suffer. Competing demands for water in and from the Bay-Delta are properly resolved by applying the priority system, not by "balancing." If there is insufficient water in a stream system to support all appropriators, then diversions diminish starting with the most junior appropriators. (*Pleasant Valley Canal Company v. Borrer* (1998) 61 Cal.App.4th 742, 770.) The Delta Plan must recognize that shortages of water within the Bay-Delta are resolved by applying the law and not by the use of a regulatory process where in covered actions form the basis of water rights priority.

In addition, the Watershed Protection Act (*Wat. Code*, § 11460, et seq.) and the Delta Protection Act (*Wat. Code*, § 12200, et seq.) impose fundamental limitations on the State Water Project and federal Central Valley Project's ("Projects") ability to transfer "surplus" water from the Delta watershed to water-deficient areas to the south and west of the Delta. These acts contain the core protections and assurances including the Delta "common pool doctrine", which the Legislature afforded such water users when the Projects

were initially authorized that the Projects will indeed be limited to the transfer of water that is truly surplus to their needs. Situated within the Delta watershed, and with a substantial portion of its lands within the boundaries of the "legal Delta" (see Wat. Code, § 12220), the proper interpretation of these acts is of paramount importance to San Joaquin County and its many water users, both human and environmental, that depend on water from that watershed and must be integrated into any discussion or plan regarding reliable water supplies.

Furthermore, in the Draft Delta Plan, Chapter 4, the relationship by which the DSC would interact with State Water Resources Control Board (SWRCB) under Water Resources Policy (page 4) is unclear. The concept of covered actions for projects that seek to divert water either from the Delta or from its tributaries and the water rights process as administered by the SWRCB is not well defined. Does the legislation empower the DSC to make any determination with regards to water rights? Will the DSC have the authority to make a water right determination based solely on stipulations regarding a "covered action?" Will the current water rights system still be relevant when the Delta Plan is implemented? These are questions that could reflect the concerns of the most senior riparian and pre-1914 water rights holders in the County.

Future projects contemplated in the Eastern San Joaquin Region and defined by our Community's adopted Integrated Regional Water Management Plan (IRWMP) will seek to divert water from Delta tributaries in years and months when water is available in order to conjunctively manage groundwater and surface water sources as part of our effort to achieve greater regional self-sufficiency. The Delta Plan should state explicitly that tributaries outside the Delta are not considered covered actions. Diversion and beneficial use of water within the Delta and its tributaries must be a priority over exports as established in existing law defining area of origin protections that place Northern California community's needs ahead of Delta exporters in terms of water rights. The Draft Delta Plan makes no mention of honoring existing water rights or area of origin protections as part of greater regional self-reliance.

4. Water Quality Standards and Salinity Control

The enforcement of existing water quality standards in the Delta is missing from the Third Draft Delta Plan, Chapter 6. Through the Fish and Game Code, California Water Code and other laws and decisions, it would seem that both the California Department of Fish and Game and the State Board have more than adequate enforcement authority to address violations of water quality standards in the Delta and its tributaries, especially in the San Joaquin River. Water quality standards are established to protect beneficial uses including agriculture, fish and wildlife, recreation, as well as assimilative capacity for discharges. Perhaps if existing water quality standards and other codified restrictions on Central Valley Project (CVP) and State Water Project (SWP) operations were truly enforced as intended, then maybe the Delta would not be in such a crisis necessitating the reforms proposed in the Delta Plan. This issue of inconsistent enforcement continues to concern the County and should be addressed in the Delta Plan before new policies, restrictions, or alternative conveyance can be implemented.

To avoid the detrimental impacts of salinity in the Delta, the CVP and SWP were originally planned to release stored water for salinity control. California Water Code section 11207 added by Statutes of 1943 specified "Salinity control in the Sacramento-San Joaquin Delta" as one of the primary purposes of Shasta Dam. Salinity control is currently achieved by allowing unregulated river flow supplemented by releases of water from upstream reservoirs to flow into and out of the Delta in sufficient quantities to constitute a hydraulic barrier to Bay salinity. Upstream diversions to areas outside the watershed and the lack of a

drainage solution for the hundreds of thousands of acres of irrigated land and wetlands along the west side of the San Joaquin Valley are the principal causes of the poor San Joaquin River water quality. The need for a solution to drain saline water emanating from water applied to the west side of the San Joaquin Valley has long been recognized and should be incorporated into the overall Delta solution. Salinity control is a key element in protecting Delta water quality. Salinity intrusion from the Bay is a major contributor to water quality degradation adversely affecting all beneficial uses of Delta water, including fisheries. The Delta Plan, Chapter 6, must address this issue and incorporate protections for adequate Delta outflow and use.

5. State Water Project (SWP) and Central Valley Project (CVP) Operations and Impacts

The Third Draft Delta Plan, Chapter 3, states that operation of the SWP and CVP is listed as an action not covered by the Delta Plan. Regulating export operations and changes in export operations are paramount to protecting threatened and endangered species, maintaining water quality and adequate flow in the Delta. Therefore the Delta Plan must include the CVP and SWP as covered actions. In the spirit of a healthy Delta ecosystem as one of the co-equal goals, reductions in exports from current levels to sustainable levels must also be evaluated as part of the Delta Plan.

6. Covered Actions and Land-Use

The Third Draft Delta Plan, Chapter 3, describes a lengthy, complicated, and potentially expensive certification and appeal process. It will be difficult for applicants to understand and follow, and may result in the need for expensive consultants to guide applicants and their projects, both large and small, through the process. It also places a significant burden on local agencies to make "Findings" and certify covered actions.

Ultimate land-use authority in the Delta is being taken from local agencies and placed in the hands of the DSC. Appendix A, No. 15 a) and b) states that a covered action that has been the subject of an appeal shall not be implemented unless the DSC has either denied the appeal, or the local agency has decided to proceed with the action as proposed or modified, has revised the certification, addressing each of the findings made by the DSC, and no one has appealed the revised certification. Potentially an applicant could get into a never ending loop of appeals, and at some point just give up. The result could be a general discouragement for anyone to seek permits for a covered action in the Delta, which may be an actual but unstated goal of the DSC.

A more suitable approach than that discussed in Chapter 3 would be to require that General Plans of the Delta Counties and Cities include language that speaks to limit certain types of activities in the Primary Zone and the Delta. This approach has been used successfully by the Delta Protection Zone; there has not been inappropriate development within the Primary Zone in San Joaquin County.

Furthermore, the Third Draft Delta Plan (page 35, line 17), states that, "only certain activities qualify as covered actions, and the Act establishes both criteria and exclusion." Whether an activity meets the definition of "covered action" is important as it determines whether or not the activity is subject to the Delta Plan and the subsequent certification by the local agency that the activity is consistent with the Delta Plan, and whether or not the certification can ultimately be appealed to the DSC. After reviewing the discussion in Chapter 3 regarding covered actions, it appears that all discretionary and potentially all ministerial permit applications within the Secondary and Primary Zones of the Delta may be considered to be covered actions. On page 36, lines 36-38, the Delta Plan states that although CEQA exempts ministerial

projects (Public Resources Code Section 21080(b)(10) ministerial projects are in fact included in the definition of covered action. According to Policy No. 1, p. 39, lines 34-35, some type of CEQA-like environmental review will be required of ministerial projects subject to the Plan, as all potentially significant adverse environmental impacts and mitigation measures must be disclosed in order to certify consistency with the Plan. The Community Development Department will be required to certify that the covered action is consistent with the Plan prior to the applicant "initiating implementation." In order to certify the covered action, the County will be required to make detailed findings. These findings will be based on information that the applicants will be required to submit, and are specified in Policy No. 3, page 39, lines 38-41. The applicant will be required to demonstrate management and financial capacity to implement the covered action over the long term. This includes ownership, water rights, budgeting, capital improvement planning, and a financing plan.

The certification will occur at the end of the typical local permitting process. The certification is then subject to appeal by anyone, including the DSC. The appeal process may take 150 days from start to finish. Additionally, appeals that are granted by the DSC may go back to the local agency and be appealed again, taking more time.

Furthermore, the supposed limitation of the reach of the provisions regarding "covered actions" to those which have a "significant" impact on the Delta (as described in the Third Draft Delta Plan), is of little use in educating local permitting agencies and potential permit applicants regarding the coverage of the action proposed by the potential permit applicant. Without a clearer description of what is "significant," we are left to guess what the final administrative decision-maker's understanding is regarding this term. At one end of the spectrum, those governed by the Delta Plan are left to guess whether a large action or project may be deemed by the DSC to be not "significant" because the project is favored by DSC (or staff), even though by any independent, objective, rational view that action or project is indeed "significant". On the other end of the spectrum, those governed by the Delta Plan are left to guess whether a small action or project is deemed "significant" because the action or project is disfavored by the DSC (or staff), even though by any independent, objective, rational view that action or project is indeed not "significant". Dealing with this issue, caused by ambiguous, ill-defined language by saying "Trust us" does not meet reasonable standards of governance.

What is the significance of this? All discretionary and most ministerial projects, including Building Permits that are within the legally defined Delta may be classified as covered actions. This begins the process of review, documentation, certification and appeal to the DSC; an expensive, complicated and lengthy process. It subjects applicants to a second or third "bite of the apple," as not just the CEQA determination and project approval may be appealed, but the certification may be appealed just when an applicant may be ready to perfect the application approval. Certification appeals may be filed as a means to delay and ultimately stop projects.

Appendix A, paragraph 2 and page 37, lines 24-28 state that local agencies may elect to refer covered actions to the DSC early in the process for an "early consultation." The Community Development Department may decide to send all ministerial and discretionary applications within the legally defined Delta for early consultation with the DSC. By allowing the DSC to pre-screen, it will help to ensure that expensive and complicated application materials are only required of applicants whose projects, according to the DSC, are what they consider to be covered actions, and therefore subject to the Plan.

Recommendation: The Delta Plan should have some “bright line” indicators of what is, and what is not, a “covered action” (beyond pointing out what the “covered action” statutory exemptions are). Local permit applicants are numerous and they, and the County, should not have to guess at the meaning of “covered action”. It is recommended that the DSC staff be the first step in the process for certification. A potential permit seeker would submit material regarding action which could be a “covered action” to DSC staff for a preliminary conclusion as to whether the action is a “covered action”.

The potential permit seeker would then proceed to the local permitting agency and submit the same material for consideration by the local permitting agency. The local permitting agency could then make its determination regarding the permit and certification regarding “covered action”. If the potential permit seeker submits additional or other materials in support of the sought permit, the local permitting agency could send the potential permit seeker back to the DSC staff for reconsideration of its preliminary conclusion.

Failing articulation of this sort of preliminary conclusion process in the Delta Plan, the local permitting agencies, and the potential permit seekers are left to the subjective determination of DSC staff AFTER all of the local agency process has taken place, a potential waste of private and public time, effort and money.

The County sees this process imposed by the Draft Delta Plan as unfunded mandates. There should be language in the Delta Plan, which specifically recognizes that the imposition of this process is an unfunded mandate.

7. *Reducing Flood Risk*

The Third Draft Delta Plan, Chapter 7, offers policies and recommendations for reducing the risk from flooding within the Delta. Unfortunately much of Chapter 7 is duplicative of existing regulatory requirements and standards, and in some cases in direct contradiction to existing regulatory requirements and standards. Much work has been done since the passage of SB 5 (2007) to develop new standards for levees and floodplain management in order to reduce flood risk. This work has involved extensive collaboration between the DWR, the Central Valley Flood Protection Board (CVFPB), the U.S. Army Corps of Engineers (USACE), local flood control agencies, and engineering and geotechnical experts and professionals. This exhaustive collaborative effort will be incorporated into the Central Valley Flood Protection Plan (CVFPP) and Title 23 of California Code of Regulations. The Delta Plan should not attempt to “reinvent the wheel” regarding levee standards and floodplain management, but should instead incorporate by reference the standards and requirements of the CVFPP and Title 23.

Chapter 7 also proposes formation of a regional flood control agency for the Delta. It's important to remember that local reclamation districts and local flood control agencies know Delta levees the best. Any regional organization must be locally based. There are already many state and federal agencies with roles and responsibilities for flood control within the Delta. These layers of State and federal government overlap and are not always well defined. This can cause confusion and delay when trying to implement flood control improvements. Therefore, it is critical that the formation of any new regional flood control organization does not add another layer of oversight/review/bureaucracy. If a new regional flood control agency is to be created, State and federal agencies should delegate some of their roles and responsibilities to the new agency. Also any new flood control agency must have a sustainable and long term funding source so it can be effective in planning and implementing long term flood control and flood management solutions.

Following are more specific comments and questions on the Third Draft Delta Plan regarding flood risk and emergency response.

1. Page 37, Lines 17 through 23 - This provides examples of covered actions that are "statutorily excluded" from the Plan. Line 23 states: "routine maintenance of levees by a reclamation district (Water Code section 85057(b))." Does this include other local levee maintaining agencies as well? If not, the statute should be amended to include other Local Maintaining Agencies (LMA) or the Plan should acknowledge this.
2. Page 38, Figure 3.1 - How is significance criteria established? Can it be done by the agency making the decision/finding for the covered action similar to CEQA? Also, if an agency is unable to certify consistency with the Plan, then the agency must revise the plan, program or project to achieve consistency. If this isn't feasible, can the agency make a statement of overriding considerations, similar to that allowed by CEQA?
3. Page 39, Lines 13 and 14 - This states that a covered action must not only be found consistent with the Plan at the time of certification, but must also be found consistent when implemented. Does this mean that a finding of consistency must also be made when an action is implemented? (Are two findings required?)
4. Page 39, Lines 38 through 41 - There appears to be an attempt to parallel CEQA, for example in the definition of Covered Action (same as "project" in CEQA), yet P3 far exceeds that required by CEQA by requiring that financial capacity to implement a covered action be included in the certification. Is this appropriate?
5. Page 87, Line 25: Reservoir re-operations should be added to the list of items to reduce risk.
6. Page 87, Line 32: Delete the statement "Failure of significant parts of the Delta's flood management system will be unavoidable" as no science is provided to substantiate the statement, and Water Code section 85308(a) requires the DSC to base the Delta Plan on the best available science and the independent scientific advice of the Independent Science Board (ISB).
7. Page 88, Line 8: The USACE's Lower San Joaquin River Feasibility Study needs to be noted here along with the other important projects that are collaborations between federal, State, and local agencies to study flood management.
8. Page 88, Line 36: Title 23 and FEMA regulations already provide standards and regulations for floodplain encroachment. The Delta Plan should not attempt to duplicate these standards.
9. Page 89, Line 6: "RR P3," this policy overrides local planning authority of at least four jurisdictions within San Joaquin County. It appears that much more coordination is needed to better define these floodplains' purposes, especially since urban or urbanizing areas are included and would need accommodation.
10. Page 89, Line 14: This description of the San Joaquin River/South Delta Floodplain is internally inconsistent, and not capable of being clearly plotted on a map. It also includes parts of

three incorporated cities. It is inappropriate for the Delta Plan to attempt to define a potential floodplain or floodway without conducting the necessary hydrologic, hydraulic, geomorphic, and engineering studies. P3 should be replaced with "DWR, USACE, CVFPB, and San Joaquin County local flood control agencies should complete the Lower San Joaquin River Feasibility Study and determine the feasibility of a San Joaquin River/South Delta Floodplain that would be used as floodway to convey flood flows."

11. Page 90, Line 1: Delete the statement "...the historical performance of many levees in the Delta is poor." as no science is provided to substantiate the statement, and Water Code Section 85308(a) requires the DSC to base the Delta Plan on the best available science and the independent scientific advice of the ISB.
12. Page 90, Line 27: the phrase "...and is often used with established USACE criteria to meet certain ...requirements" should be deleted. The Code of Federal Regulations that defines FEMA 100-year Flood Protection is a comprehensive, stand-alone regulation and not dependent upon USACE certification rules.
13. Page 90, Lines 30-31: "Very few levees in the central Delta meet this standard." Define "central Delta." This appears to be another overly-broad sweeping statement. This should be substantiated with scientific statistics.
14. Page 90, Line 32: It would be more accurate if this sentence read as follows: "DWR 200-year Urban Levee Protection: This [is a] standard [that is still being developed, and] is similar to the FEMA standard..." It is incorrect to treat this standard as complete and in effect as designed when this is not the case.
15. Page 90, Line 40: This is an opinion, not a fact. This whole paragraph omits considerations of future improvements to a levee's design, and states the opinion that it is better to fit the land-use to the existing levee, leaving no option for future alterations to levee design criteria.
16. Page 90, Lines 36 through 39 - This states that levees in Stockton do not meet 200-year protection standard. What is your source for this statement? Most levees protecting Stockton are FEMA accredited. That is, they have been determined to provide at least 100-year protection with the freeboard requirements of FEMA. Not until the completion of the CVFPP will there be a document that identifies whether Central Valley levees provide 200-year protection. This document has not yet been released. Recommend that this statement be corrected.
17. Page 91, Table 7-1 is problematical because of its assumptions. The class rankings imply that there is a hierarchical relationship between all of these classifications and that is not the case (for example, a levee may provide 100-year protection while at the same time not being eligible for PL84-99 support). The Delta Plan should defer to the CVFPP and Title 23 standards.
18. Page 92, Lines 1 through 4 - This policy proposes that a covered action involving a project adjacent to the land side of the levee include adequate area (i.e. dedication of land) to allow for the possible future construction of a setback levee until such time DWR adopts criteria to define location for future setback levees. This is potentially a very onerous condition, and one that may not be necessary in many cases where existing levees are structurally adequate. Recommend that this policy be amended to include that, in the absence of a DWR adopted criteria, that a licensed

Civil Engineer can certify that additional setback is not required. In addition, the CVFPP will contain requirements for providing adequate areas adjacent to levees to allow for future modifications.

19. Page 92, Line 31 - This Policy states that State investments for levee improvements shall "Not result in an increase in the number of people at risk." This is an extremely vague statement. This needs to be better defined. As currently written, it could be interpreted that this would prevent funding for levee improvements that would allow one home or business to be built. Also this is in direct contradiction with SB5 which called for State investment to improve levees to a 200-year standard for urban areas. Improvement of levees to a 200-Year standard will reduce risk, but not eliminate it.
20. Page 92, Line 36 - "RR P6" bullet #3 - add to this list of things that need to be considered "consequences to private real property improvements."
21. Page 94 - The limitation of liability discussion needs to include local agencies' concerns, equally.
22. Page 94, Financing Problems - An in-depth analysis and audit is required to understand why DWR has not provided this function successfully. The DSC should be cautious about how it intends to add another layer of administration onto the funding process.
23. Page 95, Lines 1 through 19 - This is a recommendation for the creation of a Delta Flood Management Assessment District for the purposes of providing financing for Delta levee improvements. This is discussed elsewhere in the Plan, and is referred elsewhere as a "Regional" Flood Management Agency (See page 112, lines 10 through 13). The Plan does not discuss structure or the authority of this agency, or whether it would replace or augment current flood management agencies (i.e. reclamation districts, other local maintaining agencies, etc.). The Plan should address these issues. Also, many of these current agencies already have assessment authority. What purpose then would this agency serve?
24. Page 96 - There needs to be a more comprehensive discussion of reservoir re-operations and the obstacles to remove in order to achieve better federal, State, and local collaboration on this issue.
25. Page 111, Lines 24 through 29 (and lines 1 and 2 of subsequent page) - This recommends that the CPUC establish fees on regulated private utilities that cross the Delta, and that these fees be allocated to the State and local LMA's. Inadequate funding exists for LMA's, and additional funding such as this would provide much needed resources.
26. Page 112, Lines 10 through 13 - This again recommends the creation of a "regional flood management agency." As previously indicated, more detail should be provided on the structure and authority of this proposed agency. Also, this recommendation indicates that a total of \$110 million would be provided to this agency, \$100 million of which would be designated for "implementation." The recommendation does not describe what is to be implemented with these funds (can funding be used for flood protection improvements as outlined in the Delta Plan, or for levee maintenance functions, etc?).

27. The Delta Plan does not include data of areas that do not meet 200-year protection and what improvements would be required to achieve this level of protection for those areas. If the Delta Plan presumes that the source for this information will be the CVFPP, that document will not be adopted until July 2012, and it is currently uncertain whether sufficient information will be available in this regard until the first update of the CVFPP in 2017. Clarification of this issue should be included in the Plan.
28. Pages 93, third paragraph, revise as follows: Despite the vital importance of adequate preparation, no comprehensive, integrated, Delta-wide emergency response system exists. The California Emergency Management Agency, DWR, and several local agencies are preparing, or have prepared, individual emergency response plans for the Delta, but the development of these should be coordinated, tested, and practiced. Regional coordination systems involving all Delta response agencies should be put in place in accordance with the SB27 Task Force recommendations. Strategies being prepared as directed by SB27 will address these issues. SB27 Task Force recommendations will be the basis for the creation of this enhanced regional flood response system.
29. Page 93, first bullet under "Recommendations", revise as follows: The Department of Water Resources and local flood management agencies should implement the SB27 Task Force recommendations and participate in emergency response exercises, mass evacuation exercises, and emergency preparedness public training, notification, and outreach programs.
30. Page 93, second bullet under "Recommendations", revise as follows: As part of implementation of the SB27 Task Force recommendations, all emergency stockpiles should be made regional in nature and usable by a larger number of agencies as part of an integrated Delta stockpile system. The potential of creating stored material sites by "over-reinforcing" western delta levees should be explored.
31. Pages 93, third bullet under "Recommendations", revise as follows: State and local agencies and regulated utilities that own and/or operate infrastructure within the Delta should prepare emergency response plans to protect the infrastructure from long-term outages resulting from failures of the Delta levees. The emergency procedures should consider methods that would also protect Delta land use and ecosystem. This planning should be performed in conjunction with regional implementation of the SB27 Task Force recommendations. Presence of critical infrastructure and reference to vulnerabilities and plans to maintain the infrastructure will be referenced on flood contingency maps called for in the SB27 report.
32. Page 95, fifth bullet under "Recommendations" revise as follows: Fund staff within the Delta Protection Commission who would assist jurisdictions with emergency response authority and responsibilities under Standardized Emergency Management Systems to implement and maintain the regional response system and emergency response enhancements called for in the SB27 Task Force report and recommendations.
33. Page 95, new bullet under "Recommendations": Provide funds to maintain a separate levee emergency response fund maintained by regional flood preparedness staff that can be accessed by unified flood fight commands established in accordance with the SB 27 Task Force recommendations. Also provide funds for the maintenance of the components of the regional response system established in accordance with the SB27 Task Force report.

Thank you for your attention and consideration on this critical matter. San Joaquin County looks forward to working with you and submitting additional comments to the DSC in the future.

If you have any questions regarding this matter, please contact Tom Gau, Interim Public Works Director at (209) 468-3101.

Sincerely,



Frank L. Ruhstaller, Chairman
Board of Supervisors
San Joaquin County

Attachment

FLR:ER

- c: San Joaquin County State Delegation
 - Paul Yoder, State Advocate
 - Karen Lange, State Advocate
 - Mark Limbaugh, Federal Advocate
 - Roger Gwinn, Federal Advocate
 - Delta Counties Coalition
 - Manuel Lopez, SJC County Administrator
 - David Wooten, SJC County Counsel
 - Tom Gau, SJC Public Works Department
 - Kerry Sullivan, SJC Community Development Department
 - Scott Hudson, SJC Agricultural Commissioner
 - Ron Baldwin, SJC Office of Emergency Services

BOS05-01



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June 24, 2011

Phil Isenberg, Chairman
Council Members
P. Joseph Grindstaff, Executive Officer
Delta Stewardship Council
650 Capitol Mall, Fifth Floor
Sacramento, CA 95814

By E-mail

Comments to Delta Stewardship Council – Fourth Draft Delta Plan

Dear Chairman Isenberg, Council Members, and Mr. Grindstaff:

On behalf of the residents of San Joaquin County and the San Joaquin County Board of Supervisors, we would like to thank you for the opportunity to submit comments on the Delta Stewardship Council's (DSC) Fourth Draft Delta Plan. With nearly two-thirds of the Delta located within San Joaquin County, we remain very concerned about the protection of water quantity and quality available within the Delta. We are equally concerned about the potential negative effects that additional planning processes may have, as evidenced by the Delta Vision and the continuing Bay Delta Conservation Plan (BDCP) process on the County's communities, land use, flood protection, infrastructure, agriculture, economy, recreation, wildlife, and our way of life.

The County's comments to the Fourth Draft Delta Plan are as follows:

1) Reduced Reliance on the Delta

The Delta Plan's policy of coequal goals and specifically Water Code Section 85021, wherein it states the policy of the State is to reduce reliance on the Delta in meeting California's future water supply needs, should be supported. However, an inherent conflict seems to appear because of Water Code Sections 85031 and 85032. Water suppliers within the area of origin or county of origin to the Delta or its watershed in future years may be required to reduce reliance on the very water supply they currently must rely on for an increased supply for beneficial use. This apparent conflict should be discussed and resolved if the Delta Plan will contain policies and recommendations that may affect area of origin or county-of-origin water suppliers.

An example of this is found with the "covered actions" framework remaining in the Fourth Draft Plan. That will only complicate, and further politicize, the needs of San Joaquin County in its future reliance on the local watershed to recharge and ensure a sustainable groundwater supply. The County restates its concerns regarding the Third Draft that future diversions contemplated in the Delta and its tributaries for use in the Delta watershed must be given a priority over exports as established in existing laws defining area of origin protections that place Northern California community's needs ahead of

Delta exporters in terms of water rights. The Fourth Draft Delta Plan needs to explicitly recognize and promise to honor area-of-origin protections which ensure that when the water is needed in the area of origin, that the junior water right holders, namely the Department of Water Resources (DWR) and the Bureau of Reclamation, must relinquish that water. A more reliable water supply from the Bay-Delta through the application of the coequal goals doesn't mean more water supply. Increasing the area of origin's reliance on the Delta and its tributaries in the future is exactly how San Joaquin County intends to locally mitigate the critically over-drafted underlying groundwater basin. It would seem that certain recommendations in the Fourth Draft Delta Plan would hinder that objective.

2) Sustainable Groundwater Management

In a more thorough review of the Delta Plan, the issue of groundwater management has become a major concern for San Joaquin County. The Eastern San Joaquin County Groundwater Basin has been designated as critically over-drafted in DWR Bulletin 118-80. Since that designation in 1980, local stakeholders have employed a consensus-based approach to develop groundwater management plans, integrated regional water management plans, and other groundwater policies to sustainable management of the underlying basin. The Eastern San Joaquin Region's adopted Integrated Regional Water Management Plan (IRWMP) seeks to divert water from Delta tributaries in the years and months when water is available in order to conjunctively manage groundwater and surface water sources as part of an effort to achieve greater regional self-sufficiency. The Council's Fourth Draft Delta Plan, under WR R8 (pg. 72), recommends an adjudication by the State Water Resources Control Board if such plans were not adequate or implemented. Current rules allow local jurisdictions and local landowners to manage groundwater supplies. Such an adjudication should only be an action of last resort and reserved for the most difficult circumstances. Consensus-based solutions as developed in the County that provide incentives for better groundwater stewardship are the preferred approach to sustainability.

3) Chapter 1, The Delta Plan

The following statement is misleading (Page 10, Lines 41-43): "The cost of maintaining, improving, or repairing these levees in some cases may be more than the assessed value of the use of the land they protect (Sumner et al. 2011). "This creates an uncertain future for Delta agriculture and for the associated Delta economy and those residents who depend upon it (lines 43-44). While this uncertainty may be true, assessed value may not be the best indicator of the value of the lands that levees protect, especially when referring to agricultural lands. Over the life of a levee, the agricultural lands that are protected by that levee will likely have produced tens of millions of dollars in crop value. Crop production values over time should be considered when assessing the value of lands that levees protect.

4) Chapter 3, Governance: Implementation of the Delta Plan

- a. Page 47, Line 13 Add : "GP2 When the Council, or a local agency acting under its local land use authority, makes a finding regarding a covered action or a determination of consistency, the same standards of review of the Council's and the local agency's findings or determinations shall apply when an appeal is taken therefrom."

- b. Page 47, Line 13 Add: "GP3 The Council, or a local agency acting under its local land use authority, may determine that a covered action is consistent with the co-equal goals if the covered action does not impede attainment of the co-equal goals and furthers the public good. Any such determination shall be made in writing and shall be based upon substantial evidence in the record before the Council or the local agency."
- c. It is not clear what land use activities fall under the definition of "covered action". According to the Fourth Draft Delta Plan, both ministerial (such as a building permit) and discretionary (such as a Use Permit) permits may be "covered actions."

If an activity is determined to be a "covered action", the proposed project will be subject to the Delta Plan. The process contained in the Delta Plan for review, certification and appeal is confusing, expensive, and unnecessarily burdensome to both the local permitting agency and the applicant.

Recommendations:

- 1. Provide clarity of what is, and what is not, a "covered action".
 - 2. Exempt ministerial actions from being subject to the Delta Plan.
 - 3. Application process should start at the DSC, where applications can be pre-screened to determine whether the proposed application is a "covered action." The applicant would then initiate an application process with the local land use agency after the preliminary determination by the DSC.
- d. Determination of "significant" impact (Page 44, Line 1): For a proposed land use activity to be a "covered action," it must have a "significant" impact on the Delta. The Fourth Draft Delta Plan, however, does not contain a clear description of what "significant" means in this context. Without clear guidelines, the determination of "significance" could become arbitrary and capricious by those who make the final determination of "significance" on behalf of the DSC.

Recommendation:

- 1. Establish clear, defined, and measureable thresholds of "significance" for local agencies and applicants.
- e. The Delta Protection Act has been successfully implemented at the local level by requiring consistency between the County and City General Plans and the Delta Protection Commission's Land Use and Resource Management Plan. The Act also focuses protection on the Primary Zone of the Delta.

Recommendation:

- 1. Implement the land use component of the Delta Plan by requiring policies consistent with the Delta Plan to be included in the General Plans of all of the Delta Counties and Cities. An appeal process, like that of the Delta Protection Commission, could be used to ensure Delta Plan compliance.
- f. Page 41, Lines 6-7 states: "The Council does not exercise direct review and approval authority over proposed actions for consistency with the Delta Plan." While this is true, the DSC may appeal

the local Agency's certification of consistency for any covered action, which could be any ministerial or discretionary application that has a "significant impact" under Water Code Section 85057.5 (a) (4). Therefore, while the local Agency will still have direct review and approval authority, the Council will have the final say, based on the appeal process for covered actions.

- g. Page 41, Lines 17 and 19 states: "This Delta Plan further clarifies what is and is not a covered action... an addition to a house in the Delta would likely not be a covered action because it would not appear to meet the criteria." Stating that a building permit for a residential addition would not "likely" be a covered action because it would not "appear" to meet the criteria is ambiguous and vague.
- h. Pages 43-46: With reference to the definition of what is a "covered action" the United States Department of Agriculture's Environmental Quality Incentives Program (EQUIP) appears to be a "covered action" as defined by the Fourth Draft Delta Plan. This program provides grower incentives to put into operation projects that will benefit the environment. When the Delta Plan is implemented, growers may need to show that their proposed EQUIP projects are consistent with the Delta Plan. Adding another bureaucratic layer for Delta farmers to go through before receiving EQUIP approval will certainly be a disincentive to participating in these and maybe other environmentally friendly programs. Consideration should be given to exempting such programs from DSC/Delta Plan review and approval.
- i. Page 44, Footnote 7, states that although CEQA exempts ministerial projects, the Delta Plan does not.

At the top of Page 45, in a discussion of covered actions exemptions, there is a statement that the Council has determined that ministerial projects are not covered actions, only if a certification of consistency has already been filed with the Council for that ordinance or other legal or regulatory provision. As a point of information, no ordinance contained in the San Joaquin County Development Title has had a certificate of consistency filed. This provision of the Fourth Draft Delta Plan usurps local land use authority and is inconsistent with prevailing law.

San Joaquin County Community Development is in the process of preparing a comprehensive update of the General Plan, which is tentatively scheduled to be considered for adoption in spring 2012. The Community Development Department will then follow with an update of the Development Title. Both updates and their adoption by the Board of Supervisors may be considered covered actions under the Fourth Draft Delta Plan and will be subject to appeal by the DSC through the process described in the Plan for appealing consistency certification. This would usurp local land use authority and is inconsistent with prevailing law.

5) Chapter 4. A More Reliable Water Supply for California

- a. WR P2, Page 63, Line 27: "A plan for possible interruption of Delta water supply. . ." as proposed with 6, 18, and 36 month scenarios, is based on erroneous information contained in the Delta Risk Management Study, which failed adequate peer-review with specific regard to the assessment of seismic risk in the Delta. It would be more appropriate for water suppliers to plan for supply interruptions based on historic droughts. Of late, drought contingency planning has incorporated two to three year scenarios that may be short-sighted based on the

traditional drought planning scenario of six years. With the recent drought in the Colorado River watershed, a 10-year drought planning scenario may be a more opportune planning tool especially with the possibility of various climate change influences.

- b. WR P2, Page 64, Line 15: "Evaluation of regional water balance . . ." It is not clear who will be responsible to develop an assessment of the long-term regional water balance. It is inappropriate for a local supplier to be responsible for the assessment of a hydrologic region's water balance. This assessment should be a requirement of the DWR under the California Water Plan Update with the assessment information provided to regional agencies and local suppliers.
- c. WR R2, Page 65, Line 3: Any proposed revision or establishment of an additional arbitrary deadline (December 31, 2012) to State grant and loan criteria, in particular to the IRWMP program, should only be implemented following the successful passage of the Water Bond presently scheduled for the ballot in 2012. No additional criteria should be applied or deadline set on the current Proposition 84 planning or implementation grant application process as developed by the DWR. It would be an unfair and onerous burden placed on regional and local suppliers to meet such a requirement.

6) Chapter 5, Restore the Delta Ecosystem

- a. ER R3, Page 92, Line 26: "As part of its Strategic Plan, the Delta Conservancy should: . . ." Recommend adding the following statement: "Mitigate potential ecosystem restoration impacts to existing land uses."

7) Chapter 7, Reduce Risk to People, Property, and State Interests in the Delta

- a. RR P1, Page 136, Line 18: The term "encroached" is referenced in Footnote 33 regarding DWR's Interim Levee Design Criteria (ILDC) document. The ILDC document is still in the developmental stage by DWR. The Delta Plan should recognize that any risk assessments associated with encroachments is subject to change until this document is finalized.
- b. RR P2, Page 137, Line 1: This specifically lists the Lower San Joaquin River Flood Bypass as an area not to be encroached upon. Although San Joaquin County recognizes the potential flood management benefits associated with this improvement, the Bypass is still conceptual. The Plan should acknowledge this Bypass as a concept and not impose encroachment restrictions until such time that this or a similar project is approved and incorporated in an official flood control plan such as the Central Valley Flood Protection Plan (CVFPP).
- c. RR R1, Page 137, Line 12: Recommends that DWR and the Central Valley Flood Protection Board (CVFPB) complete their investigations of the Bypass. It should be noted that the CVFPB is scheduled for an informational briefing on this project on June 24, 2011, but no action by the Board is proposed.
- d. Page 137, Line 35: This paragraph discusses the inherent dangers of permitting development within the Delta, and implies that the levees that protect the area are substandard. It should be specifically stated in the Delta Plan that many of the levees protecting the urban areas of San

Joaquin County, particularly those in the vicinity of the City of Stockton, are certified by the U.S. Army Corps of Engineers and accredited by Federal Emergency Management Agency (FEMA).

- e. Page 138, Line 32: This language states that essentially no levees within the Central Delta meet a 200-year protection standard established by DWR. The levees standards associated with meeting 200-year protection are still in the developmental stage by DWR, and will not be officially adopted until approval of the CVFPP in 2012. Therefore, this statement is unfounded.
- f. Page 141, Table 7-1, Levee Classifications for Protection of Land Uses: This table is inconsistent with the requirements of SB5 (2007-Machado), and the requirements currently proposed to be incorporated in the CVFPP. For example, under Levee Classification 4, development of four or fewer parcels would be permitted corresponding to a 100-year FEMA protection. This would not be permitted under SB5 for urban and urbanizing areas. SB5 requires, under these circumstances, that 200-year protection be provided.
- g. Page 142, Figure 7-3, Levee Classifications and Land Uses: This makes reference to the DWR ILDC. It should be noted that these standards are still being developed. Also, the standards now are being referred to as Urban Levee Design Criteria.
- h. RR P4, Page 143, Line 2: Recommends that DWR develop a "Framework" document to guide investments for levee improvements. It should be noted that this document should be developed in close association with local maintaining agencies.
- i. RR R4, Pages 144-145: The following amendments should be made to language relating to promoting emergency preparedness in the Delta:
 - 1. Line 23: "Responsible ~~Emergency Management Authorities~~ **local, state, and federal agencies with emergency response authority** should implement the recommendations of the Delta Multi-Hazard Coordination Task Force (Water Code section 12994.5). Such actions should support the development of a regional response system for the Delta."
 - 2. Line 27: "The Department of Water Resources, the California Emergency Management Agency, and local flood management agencies should prepare and regularly update Delta-wide emergency response plan and the ~~Inland Region Mass Evacuation Plan~~ **and evacuation procedures and systems comprising the regional response system established in accordance with the Delta Multi-Hazard Coordination Task Force recommendations.** These agencies should participate in emergency response exercises for both periodic and catastrophic flood events, inland mass evacuation exercises, and emergency preparedness public training, notification, and flood risk education and outreach programs. The U.S. Army Corps of Engineers should be a part of all emergency preparedness activities."
 - 3. Line 38: "In consultation ~~together with local agencies,~~ the Department of Water Resources **and all other public agencies maintaining local emergency stockpiles** should expand its **their** emergency stockpiles to make them regional in nature and usable by a larger number of agencies in accordance with ~~Department of Water Resources plans and procedures~~ a **Delta**

multi-agency logistics system within the new Delta regional response system. The Department of Water Resources, as a part of this plan **emergency logistics planning**, should evaluate the potential of creating stored material sites by “over-reinforcing” west Delta levees.”

- j. Page 146, Lines 8-12: Amend this language as follows: No regional authority currently exists to facilitate the assessment and disbursement of funds for Delta levee operations, maintenance, and improvements, or to collect and provide timely data and reporting on levee conditions. Such an authority could act to consolidate activities relating to levees conditions assessment, data collection efforts, ~~emergency preparedness~~ **maintenance of regional emergency response systems and procedures on behalf of, and coordination with, implementing SEMS jurisdictions**, public notification, and fee authority. This could provide for a more centralized and responsive entity managed on a local basis for Delta interests.
- k. RR R7, Page 146, Line 34 states: “A Delta Risk Management Assessment District should be created with fee assessment authority . . . to provide funding for levee maintenance and improvement, and emergency response.” Although San Joaquin County supports the concept of providing increased funding for these efforts, the proposed District should not replace or conflict with the current government structure dedicated to flood control.
 1. Page 147, Lines 17-18: Amend this language as follows: Notify residents and landowners of flood risk and ~~emergency preparedness~~ **personal safety information, and available systems for obtaining emergency information before and during a disaster** on an annual basis; and
 2. Page 147, Lines 19-20: Amend this language as follows: Potentially implement the recommendations of the Delta Multi-Hazard Coordination Task Force (Water Code section 12994.5) **in conjunction with local, State, and federal agencies and maintain the resulting regional response system components and procedures on behalf of SEMS jurisdictions (reclamation district, city, county, and State) that would jointly implement the regional system in response to a disaster event.**
 3. Page 147, Lines 19-20: Amend this language as follows: Potentially implement the recommendations of the Delta Multi-Hazard Coordination Task Force (Water Code section 12994.5, **by providing training and briefings to local, state, and federal response personnel who would implement the new regional response system in order to ensure familiarity with regional multi-agency procedures and systems.**

San Joaquin County is the seventh largest agricultural County in the State, and the seventh largest in the nation. In San Joaquin County, the Delta comprises approximately one-third of the County's total land. San Joaquin County makes up the largest portion of the total Delta's agricultural land base at 55%. There are 234,775 acres of crop land in the County's Delta, and more than 70 different plant and animal products are produced in County. Using the DWR economic multiplier of 3 to estimate the total economic value of Delta agriculture, San Joaquin County contributes \$1.36 billion to the regional and state economy. Therefore, how the Delta Plan would potentially impact the County's agricultural industry is of vital importance to the County. On May 26, 2011, the San Joaquin County Board of Supervisors submitted comments specific to agriculture to the Third Draft Delta Plan, in addition to the County's comment letter dated May 26, 2011 to the Third Draft Delta Plan. Nearly all of the comments are applicable to the

Fourth Draft Delta Plan; therefore, the County's comment letters regarding the Third Draft Delta Plan are being submitted as an attachment to this letter.

Thank you for your attention and consideration on this critical matter. San Joaquin County looks forward to working with you and submitting additional comments to the DSC in the future.

If you have any questions regarding this matter, please contact Tom Gau, Public Works Director at (209) 468-3101.

Sincerely,



Frank L. Ruhstaller, Chairman
Board of Supervisors
San Joaquin County

Attachment

FLR:ER

- c: San Joaquin County State Delegation
 - Paul Yoder, State Advocate
 - Karen Lange, State Advocate
 - Mark Limbaugh, Federal Advocate
 - Roger Gwinn, Federal Advocate
 - Delta Counties Coalition
 - Manuel Lopez, SJC County Administrator
 - David Wooten, SJC County Counsel
 - Tom Gau, SJC Public Works Department
 - Kerry Sullivan, SJC Community Development Department
 - Scott Hudson, SJC Agricultural Commissioner
 - Ron Baldwin, SJC Office of Emergency Services

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