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February 1, 2012

VIA: U. S. Mail and e-mail "Draft EIR" eircomments@deltacouncil.ca.gov

EIR Comments
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

RE: Comments on Draft Delta Plan Program EIR

Dear Delta Stewardship Council:

Reclamation District 830 is pleased submit the following comments on the Draft Delta Plan Program EIR ("DDPPEIR").

Comment #1.

This DDPPEIR at page ES-2 and elsewhere in the document states:

> The Delta Plan is a suite of twelve regulatory policies (that would have the force of law once adopted as State regulations) and sixty-one nonbinding recommendations, which collectively constitute the Proposed Project. The policies and recommendations do not contain a list of physical projects to achieve the coequal goals [of ecosystem protection and water supply reliability]. Rather, they are statements of policy direction to other agencies which, if the direction is followed, could lead to types of specific physical actions. [Footnotes omitted.].

At such time when the Delta Plan proposes physical projects to achieve the coequal goals, RD 830 will have comments on these projects and their environmental impacts. RD 830 therefore reserves its comments until such time as these projects are presented for public review and comments.

Comment #2.

This comment regards both a deficiency in the Delta Plan and by extension a deficiency in the DDPPEIR. RD 830 first presents the comment, followed by background justification for this comment.

The Delta Plan in Chapter 9 "Finance Plan Framework to Support Coequal Goals" contains various Immediate Funding Recommendations, including Flood Management and Prevention FP R1 which provides:

> Public and private agencies with infrastructure crossing the Delta should protect their assets from flooding and other natural disasters.[1]

RD 830 has direct experience of with regard to the Western Area Power Administration (WAPA) http://en.wikipedia.org/wiki/Path_66 which maintains high tower power transmission lines that traverse the Delta and cross Jersey Island over right of way easements across twelve (12) parcels located on the Island. Policy FP R1 acknowledges that public and private agencies with infrastructure crossing the Delta should protect their assets from flooding and other natural disasters, but it fails to provide a realistic method for accomplishing this objective. Given that the Delta Plan by its own admission is a policy plan, it is indeed unfortunate it fails to offer a policy which provides a practical means of addressing the significant problem whereby public and private agencies must protect from flooding their infrastructure which crosses the Delta.

The Delta Plan should contain and the DDPPEIR should analyze the impacts of a regulatory policy with the force of law directing the Delta Stewardship Council to advocate for and seek congressional legislation under which reclamation districts in the Delta are permitted to assess federal infrastructure projects for the collection of funds for their maintenance. For example, the Western Area Power Administration (WAPA) operates transmission towers and lines which traverse Delta islands. But under current law, these federal projects are exempt from paying for the benefits they enjoy from the maintenance of the reclamation works, i.e. levees which protect access to their transmission towers and lines. This exemption is based on the doctrine of sovereign immunity as embodied in case law, such as *United States v. County of Allegheny* (1944) 322 U. S. 174. Such legislation is necessary to overrule relevant case law so that federal projects are no longer able to claim

[1] Fifth Staff Draft Delta Plan, August 2, 2011 at page 210.

sovereign immunity from assessments imposed by local reclamation districts, such as RD 830, in order to fund the cost of maintaining the reclamation works for which they are responsible.

Background and Justification for Comment #2.

Jersey Island is one of eight western Delta islands considered by the California Department of Water Resources to be critical to California's drinking water supply and quality.[2] The Delta is the hub of the State's water distribution system. About two-thirds of all Californians and millions of acres of irrigated farmland rely on the Delta for water from the State Water Project and federal Central Valley Project. Delta water is vital to California's economy, fifth largest in the world, and its growing population which is expected to reach 53 million by 2030.[3] RD 830 is responsible for maintenance and operation of the 15.5 miles of levees around the perimeter of Jersey Island.

On December 17, 1996 the Board of Supervisors of Contra Costa County appointed three commissioners to prepare an assessment report and an O&M assessment roll in accordance with Water Code Section 51324. In June 1998 the RD 830 Assessment Valuation Commissioners prepared an assessment report and operation and maintenance valuation assessment roll for RD 830. The June 1998 report presents the assessment roll and assessment valuations for each parcel subject to the O&M assessment. In May 2006, the RD 830 Trustees updated the valuation assessment roll and calculated a new assessment amount.

On Jersey Island WAPA occupies easements which are 200 feet in width and calculated to contain 86.81 acres which are protected by District works. The District Trustees determined that the continuous maintenance and operation of the District works does provide a benefit to the maintenance and operation of the WAPA high tower transmission lines within the District. This benefit accrues from the access over the levees and land for continuous maintenance and operation of the high tower transmission lines.

The District Trustees annual assessment for WAPA was determined to be $49,853, or 14% of the total annual maintenance and operation costs of $860,430. WAPA has refused to pay this assessment, claiming that as an

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[2] Actions and Priorities: Delta Protection Act, March 1990, Department of Water Resources, page 2.
[3] http://www.water.ca.gov/swp/delta.cfm, viewed December 14, 2011.

agency of the federal government, it "is tax exempt and not assessable for the purpose of providing funds for the construction, maintenance, repair or operation of Reclamation District No. 830 works."[4] This refusal by WAPA to pay its fair share RD 830 O & M assessment, while likely legally correct, places an unreasonable burden on RD 830 and the other property owners on Jersey Island who must shoulder the financial burden shirked by WAPA. This refusal by WAPA to pay its fair share of the RD 830 O & M assessment is totally inconsistent with the critical role of Jersey Island in states water supply and by extension the nation's economy. For these reasons, the Delta Plan should contain and the DDPPEIR should analyze the impacts of a regulatory policy with the force of law directing the Delta Stewardship Council to advocate for and seek congressional legislation under which reclamation districts in the Delta are permitted to assess federal infrastructure projects to collect funds for their maintenance.

Comment #3. The DDPPEIR fails to meaningfully analyze at the programmatic level the potential for levee failure in the eight western Delta Islands due to climate change and sea level rise.

In Section 5 of the DDPPEIR it is stated:

> Concurrently with climate change, it is anticipated that the sea level will rise (see Section 21, Climate Change and Greenhouse Gas Emissions). The extent and timing of sea level rise is not clear at this time. Most of the federal and State agency analytical models indicate that there could be a sea level rise of at least 6 inches by 2030 at the Golden Gate Bridge. The increased surface water elevation would require existing levees to be raised to accommodate sea level rise. When considering future levee improvements for climate change and sea level rise, the improvements would need to consider both issues. This would be especially true for levees in the western Delta because these levees also must protect the islands from high waves that are driven by winds that blow in from the Golden Gate. If future storms are more powerful and extend for a longer period than historical storms, the combination of the high westerly winds, high tides with sea level rise conditions, and high flood flows could increase the potential of levee overtopping in the western Delta.[5]

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[4] H. R. Miller, Realty Specialist, Department of Energy, Western Area Power Administration, letter of August 11, 2011 to RD 830.

[5] Draft Delta Plan Program EIR, Section 5, page 5-23.

The above statement outlines the impact, but fails to meaningfully analyze at the programmatic level the potential for levee failure in the eight western Delta Islands due to climate change and sea level rise. Consequently, the DDPPEIR fails its duty under CEQA to propose mitigation measures related to this impact. The potential catastrophic causal chain of impacts on the state's drinking water supply, California's economy and ultimately the national economy demands a more thorough, thoughtful analysis in DDPPEIR. But most importantly, the analysis must identify mitigation measures to reduce these impacts in order to fulfill its obligation under CEQA.

In closing, thank you for the opportunity to comment on the DDPPEIR.

Sincerely,

Tom Williams

Tom Williams, President
Board of Trustees