



CALIFORNIA CENTRAL VALLEY  
**FLOOD CONTROL**  
ASSOCIATION

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January 24, 2013

VIA EMAIL: [RulemakingProcessComment@deltacouncil.ca.gov](mailto:RulemakingProcessComment@deltacouncil.ca.gov)

Ms. Cindy Messer,  
Delta Program Manager  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814

RE: SUPPLEMENTAL COMMENTS on the “Cost Analysis for Proposed Delta Plan Regulations in Support of Economic and Fiscal Impact Statement” for the Proposed Regulatory Rulemaking Text of Proposed Regulation Cal. Code of Regulations, Title 23, waters, Division 6, Delta Stewardship Council, Chapter 2.

Dear Ms. Messer and Members of the Council:

The California Central Valley Flood Control Association (CCVFCA) respectfully submits these additional comments on the “Cost Analysis for Proposed Delta Plan Regulations in Support of Economic and Fiscal Impact Statement” proposed as part of your Rulemaking Package for the Delta Plan.

We are very concerned about the impact the additional costs estimated for implementing these regulations will have on the ability of Delta Reclamation Districts to pursue levee construction projects to reduce the risk of flood and consequent loss of life and property, but we have limited these comments to Sections 5010 and 5015.

Our first major concern is that the Cost Analysis fails to mention what the annual budgets for Reclamation Districts in the Delta are, or even provide a typical annual budget in order to evaluate the ability of districts to comply with Sections 5010 and 5015, or other sections.

We have not polled our members but a rough estimate of the average annual budget RDs have for levees is probably about \$50,000/year out of a total of annual district budget of \$120,000

which covers other costs such as cleaning ditches as part of maintenance and paying electricity bills for keeping the lands drained/reclaimed (pumping water off of the island/lands) so that they can be put to productive use which in most cases is farming. The average subventions claim by a district is about \$200,000, which is roughly a cost of \$50,000 to the district (their 25% cost-share with the state). A 20% increase in the project planning costs would be an increase of \$40,000 to evaluate the feasibility of alternatives to provide expanded floodplains and riparian habitats, which would be split 25/75 with the state. Additional costs of \$1.5 million per mile to improve an existing levee to a setback identified on page A-1 of Appendix A and the total cost estimate of \$31 to \$68 million per mile to build a setback levee clearly exceeds the capacity of the annual budgets of RDs in the Delta and in some cases the total value of the land. Concerns regarding the capacity of Delta RDs to bear the additional costs for complying with Sections 5015 are similar and should also be considered by the Council before adopting these costly regulations.

**We strongly urge the Council to collect and review the annual budgets for the Reclamation Districts of the Delta to determine:** 1) the level of impact these additional costs would have on their limited funds; 2) whether these additional costs will result in levee improvement projects (substantial rehabilitation or reconstruction) being delayed; 3) whether the delay in levee improvements would increase the risk of flooding and loss of life and property; and 4) re-evaluate the feasibility of this regulation based on this new fiscal information.

#### Section 5010

**Cost Clarification** - Table 3 on page 25 states that this section will cost state and local agencies from \$3 million to \$7.5 million, however, it does not indicate whether these are annual or total costs for complying with this section. **We request that the Cost Analysis:** 1) clarify whether these additional costs to state and local agencies is annual or total; and 2) analyze the capacity of reclamation districts to bear the burden of these additional costs based on their annual budgets as we mentioned previously.

**General Public Benefit** - Page 15 of the Cost Analysis says the additional planning costs are for the evaluation of the feasibility of alternatives to provide expanded floodplains and riparian habitats through setback levees. We would argue that the “incorporation of alternatives, including the use of setback levees” to expand floodplains and riparian habitats “where feasible” are broad benefits to the public and therefore the costs associated with providing them should not be borne by property owners who pay assessments for the maintenance and improvements of these levees. If a RD had to increase its assessment to pay for building such setbacks they would be required to receive voter approval pursuant to Prop. 218 which only allows the assessment to be based on the special benefit each parcel receives. The public benefits that accrue to others outside the assessment area such as the expanded floodplains and riparian habitats called for in this section are beyond the scope of Prop. 218. It is also inappropriate for property owners to be assessed to increase riparian habitat that other entities such as the State Water Project, Central Valley Project, or water contractors that export water from the Delta could claim as credits to be applied towards the habitat acres they are required to produce to maintain their ESA/CESA take permits for the South Delta Pumps or as habitat credits under the HCP they are pursuing (BDCP). **Therefore, we would request the Council to:** 1) evaluate who bears responsibility for expanding floodplain and riparian habitat; and 2) amend this regulatory provision to apply

the cost burden more broadly instead of only on the property owners assessed for levees that require substantial rehabilitation or reconstruction.

**Cost Capacity** – We would point out that in most cases the total cost estimate to build the setback levee of \$31 to \$68 million (page A-1) exceeds the total value of land on many Delta islands/reclamation districts. So, we question why the Council would impose a 20% increase in levee project costs to evaluate feasibility in RDs where the cost to build the setback levee exceeds the total value of the land? Multiplying the cost per levee mile identified for this regulation would also result in amounts greater than the total value of land in the RD. **We request:** the Cost Analysis to compare the cost of implementing this regulation with the total assessable value of the area that will bear the burden of paying to comply with this regulation.

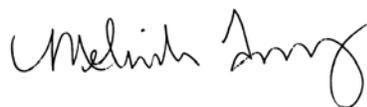
#### Section 5015

**Cost Clarification** – Table 3 on page 26 says there are minor state and local costs. However page A-3 indicates costs of levee improvements to provide 200-year flood protection above what is required under current law for non-urban areas to range from \$5.4 to \$25 million per levee mile, the cost of a new floodwall to be approximately \$9.4 million per levee mile, with the incremental cost incurred by a local or state agency required to provide 200-year levee protection rather than 100-year to be about \$6 million per levee mile. Table 3 should be amended to reflect the significant costs identified on page A-3.

**Cost Capacity** - A five mile long floodwall (\$9.4 million x 5 = \$47 million) could exceed the total value of land in a non-urban reclamation district's jurisdiction and be beyond the funding capacity of the RD based on their annual budget for levees. The Cost Analysis should identify the land value for lands within all non-urban reclamation districts in the Delta and evaluate the costs to provide 200-year flood protection against the total land value and against the RDs annual budget for levees.

In closing, we strongly encourage the Council to investigate the annual budgets of Delta Reclamation Districts, evaluate the financial impact to Delta RDs/landowners to comply with additional costs of this regulatory package, compare the costs identified in the Cost Analysis with the total value of each Delta island, and to consider amending the regulations to address the cost concerns we have raised. We also reaffirm our commitment to work with the Council to revise the regulations to ensure they are clear, concise, legally enforceable and financially feasible by the entities/persons upon which they are imposed.

Sincerely,



Melinda Terry,  
Executive Director