

**DELTA STEWARDSHIP COUNCIL
RISK REDUCTION AND COEQUAL GOALS WORKGROUP
Thursday, March 24, 2011**

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Central and South Delta Water Agencies

We have reviewed the second Staff Draft Delta Plan dated March 18, 2011 and submit the following comments:

While we are pleased to see that the Staff Draft is beginning to reveal content and not just organizational structure, we have some reservations about the indicated approach.

In Chapter 1, after making the case for the need for quick, decisive action to rescue both the ecosystem and flood control in the Delta, the Draft Plan announces (at page 8, line 6-17) that it will defer initiatives in favor of halting new or additional practices and activities that might aggravate current conditions.

Is the current situation not so serious that we can wait several years before beginning to attack the problems?

Is the Delta Stewardship Council going to adopt the attitude that it can only proscribe initiatives rather than prescribe solutions?

With these concerns in mind, we now turn to Chapter 7 and these general comments followed by more specific comments.

General Comments:

Its attempt to generally restrict any activities in areas described as floodplains (covered actions) would have the effect of creating a "floating easement" over most of the Delta and much of its tributaries which would effectively prevent any changes for an indefinite period, perhaps even regular levee maintenance and improvement. Since the affected areas are broadly defined (see, for instance, the descriptions of the Cosumnes/Mokelumne and San Joaquin/South Delta "flood plains" at page 41) and

undoubtedly include a lot of fast land, unnecessary economic consequences will occur. Quite frankly, we don't understand how the disclaimer about "not intended to affect the rights of any owner of property" doesn't negate the whole provision.

We currently have and enforce laws restricting activities in floodplains. What we need are better descriptions of floodplains as a part of a Central Valley Flood Management Plan. Until it appears we will be better off looking at land uses on a case by case basis.

The suggestion that the State should be absolved from tort liability and inverse condemnation is particularly galling since both the State and the USACOE have aggravated flooding problems in the Delta by surcharging flood peaks in the Delta by upstream storm drainage and river channelization, negligent and uncoordinated reservoir storage and release operations, and failure to maintain Delta channel capacities in the face of burdensome sedimentation, often caused by water supply operations. Sharing responsibility, where appropriate, is a much sounder policy. The State can reduce its share by conducting an aggressive flood management program.

Flood Risk Comments

P1 This appears to be a confused interpretation of the referenced sections. The cited sections speak in terms of flood risk. Suggested: "No covered action may increase the flood risk or impair the ability to reduce the flood risks in the Delta." PRC 29702 speaks generally as to protecting, maintaining and where possible, enhancing and restoring the overall quality of the Delta environment, including but not limited to, agriculture, wildlife habitat, and recreational activities; assuring orderly, balanced conservation and development of Delta land resources, and improving flood protection by structural and nonstructural means to ensure an increased level of public health and safety.

WC 85020(g) provides : "Reduce risk to people, property and state interests in the Delta by effective emergency preparedness, appropriate land uses, and investments in flood protection." WC 85057.5(4) provides: "Will have a significant impact on achievement

of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property and state interests in the Delta.”

P2 This section appears to ignore the distinction as to “portions of its uplands” referenced in the WC 29704 findings and the intended focus on the primary zone evidenced in WC 29703. The burden and the cost of imposing another layer of review on already developed areas in the uplands and particularly those in the secondary zone is huge and complex. A more narrow focus is suggested.

P4 The goal should be to provide as a minimum the PL84-99 levee standard for all Delta levees. A 22-ft crown width in lieu of the 16-ft is recommended as a means to accommodate raising levees to meet sea level rises greatly in excess of the rates experienced in the last 150 years and to allow two way passage of trucks in the vent of a flood fight. Funding allocations similar to those suggested in the attached recommended five year plan should be used to put emphasis on what has been referred to as strategic levee investments. Due to the interrelationship of all the levee systems in terms of vulnerability to under seepage from and wave action across flooded areas all levee systems should be improved to the PL84-99 standard while at the same time investing in higher standards for those levees considered to be particularly strategic.

Table 7-1 Class 3 with a 22-ft. crown should be the minimum standard. HMP was never intended to be a standard but rather was simply a mechanism to measure good faith progress of the state and locals when FEMA felt that the state was not doing its fair share. Classes 4 through 7 should have a minimum crown width of 22 ft. The comments as to seismic capability for Classes is likely in error and is not necessary to the characteristic.

R1 Flood insurance requirements should be a matter of statewide application but require a more studied consideration. The greatest portion of dollar exposure is outside of the legal Delta. The federal Flood Insurance Program is limited to \$250,000 to a single family dwelling and \$500,000 for a commercial building. Personal property limits

are respectively \$250,000 and \$500,000. The coverage has other limitations including a deduction for the value of physical depreciation. The FEMA website explains the program. The premiums are significant (\$400 to upwards of \$2,000 per year). Ability to pay is a real challenge particularly in low to moderate income areas. High foreclosure rates and high unemployment add to the difficulty. The funds used to pay premiums are not available to pay for the desired upgrades to the levees. Federal assistance is typically not available and requires years of costly feasibility studies just to be in line for limited funding. State assistance supported by previously approved bonds is somewhat available but requires years of costly feasibility studies just to be in line for limited funding. State assistance supported by previously approved bonds is somewhat available but requires cost sharing, a time consuming and expensive application process, cash flow uncertainty and layers of engineering inspection and inspection. Urban project levee funding starts with a 40% local share. Environmental and recreational features can be added with a lower cost share. Environmental review requires a 50% local share and is made more costly due to requirements for federal cost share eligibility and consideration of levee setbacks. A USACE section 408 permit is triggered by these requirements. The section 408 permitting also requires compliance with the USACE ETL for removal of all vegetation except approved grasses within the levee area extending 15 feet waterward of the waterside toe and 15 feet landward of the landside levee toe or berm, whichever is greater. The new plan of flood control for the central valley which is due in 2012 will require 200 year flood protection for Urban levees by 2025.

Modification of existing dams and new dam construction may be required to achieve such protection. The \$1 billion for Folsom Dam modifications which are hoped to allow levee improvements to satisfy such requirements for some of the Sacramento area is an indication of the challenge. A careful analysis of the funding challenges and a real plan for funding the desired flood control improvements needs to be developed as a part of consideration of the mandatory flood insurance recommendation. The flood insurance requirement is related to the issue of immunity from flood related damages. Failure to achieve improved flood protection for a State system already in place is likely to negate efforts to achieve immunity. There is a takings clause in the United States Constitution.

R2 & R3 Immunity should extend to both State and local entities and should be accompanied with a property funded plan of levee improvement. The project levees which are the backbone of urban protection are in general recognized to suffer from deficiencies in design and construction. Locals are simply maintaining entities and clearly lack the ability to pay. The state and feds are the controlling entities. They control the system and were responsible for the design and construction of the projects including the project levees and flood bypasses, etc. They are also in control of the regulatory process which in significant part obstructs the locals from performing even those actions which are within their capability. What is really needed is good faith team effort by the feds, state and locals to efficiently and timely improve flood protection for the already developed areas. Designation of floodplains with acquisition of flowage easements can address new floodplain development.

R4 The buffer is needed and can provide open space even if limited by USACE to grasses and walking paths. Incorporation of a single loaded street to separate development from the levee area to avoid encroachment creep should be considered. Encroachment enforcement is costly and especially difficult. Setback levees in already developed and developing area is particularly expensive and difficult and should not be a required consideration.

R5 The focus should not be directed to conveyance, but rather to preservation of the levee systems in the Delta which protect the lands, infrastructure and habitat, as well as water conveyance. The conflict within the state and federal agencies caused by their loyalty to the export water interests in preference over protection of the public trust and other interests is a major part of the problem. What is needed is a plan for immediate closing of levee breaks, dewatering of flooded islands and installation of temporary barriers to help restore water quality for local and export water needs. The plan should have funding in place and be administered by local agencies in coordination with state and federal flood control and emergency response agencies.

R 6 Further comment is reserved pending review of the Draft Plan. It should, however, be recognized that local landowners are already assessed by the local levee agencies and assessments are limited by the agricultural land's ability to pay and constitutional requirements.

R7 This would appear to be overly specific for the Delta Plan. This should be stated as a policy to encourage the use of State owned land for purposes which do not promote subsidence.