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January 24, 2013

Delta Stewardship Council
Phil Isenburg, Chairman
c/o Cindy Messer
980 Ninth St., Suite 1500
Sacramento, CA 95814
(916) 445-0258
cindy.messer@deltacouncil.ca.gov

Dear Chair Isenburg, Council and Staff,

The enclosed comments are with respect to today's oral hearing on Notice of Proposed Rulemaking for the Delta Plan, California Code of Regulations Title 23, Waters. Division 6. Delta Stewardship Council. Chapter 2. Consistency with Regulatory Policies Contained in the The Delta Plan, and other sections in the Notice.

As an overview of issues we are concerned that adoption of the proposed Final Delta Plan will disproportionately impact certain agricultural properties, and would like them exempted from the Plan, based on both science and economics. In particular, Appendix 5, Recommended Areas for Prioritization and Implementation of Habitat Restoration. Figure 5-1 designates a large zone North of the Cosumnes-Mokelumne Confluence which covers the entire farming operation of John McCormack Company at Glannvale (erroneously labeled Glanville on maps) including hundred-year old pear orchards, as well as other property owners' vineyards within our block and across Twin Cities Road to the North.

We have enclosed an expanded zoom view map transcribed by hand from your very high altitude Figure 5-1, down into greater detail to show relevant reference features.

Also, expansion of Delta Meadows Park along Snodgrass Slough to the West, related levee use conversions could adversely impact our operations. Our packinghouse and roads for access between our fully mature orchards could be impacted.

Sec. 5002. Proposed action and Covered action would authorize further evaluations according to criteria that would prioritize areas based on historic marshes. Restoration to tidal influence might require breaching of levees that we built to keep tidal brackish and salty waters out, to let tidal waters in and potentially flood vineyards and orchards. It is all planted now, or already in progress of planting.

Projected saltwater intrusion up the Sacramento River near its present extent around Sherman Island, would put increasingly salty water onto agricultural lands and interfere with plant growth. Brackish water extended during the 1937 drought all the way up to Courtland, several miles upriver from there before flushing actions from storm pushed the boundary downriver again.

Walnut Grove is at zero elevation, tidal influence is seen here, and tidal intrusion would have to come through a purposeful break in the levee.

Past breaks in the levee between 2 storms flooded this whole region, closing I-5 for weeks, disrupting traffic from Canada to Mexico, necessitating re-routing of truck traffic around the US. These kinds of impacts are not discussed in this plan. We enclose here photos from those 1986 floods, which also inundated much of the Central Valley.

Flooding where feasible for enhancement, discussed in definitions for encroachment, enhancement, including removal of barriers, for flooding, will affect our ability to get flood insurance from FEMA, unless there are setback levees to protect existing homes and ag-related structures.

Further, the elevation map and upland delineation on which the Habitat Prioritization Map is based does not appear to take into effect the projected inland extent or depth of waters expected to occur as the result of sealevel rise. 4.5 feet will make the daily rise and fall of tidal influence needed for goslings and salmon fry and smolts to feed on algae, bugs and plankton in protection of tule reed shallows temporary and short-term.

4-1/2 feet with sea level rise will make the depths far less useful, and will by then border on open water, which is less needed by those organisms at those life stages. Other chapters of the Recirculated Environmental Impact Report (REIR) say that more research is needed on the usefulness of open water to pelagic organisms at various life stages.

Sec. 5013(a). Restoring Habitats

This provision is to avoid conflicts with existing or planned uses when feasible, considering comments from agencies and the Delta Protection Plans, so that the proposer must consider sites on existing public lands when feasible and consistent with a project's purpose, before privately owned sites are purchased. We agree with this policy and support it.

We also support the last sentence of that paragraph, "Measures to mitigate conflicts with adjacent uses may include, but are not limited to, buffers to prevent adverse impacts on adjacent farmland." We would add to that the need for new levees to protect existing structures where marsh and tidelands are created for wildlife, to prevent flood impacts when floodwaters are released into restored natural floodplains and waterways. 200-year flood protection should be provided to existing rural farms as well.

Our farm has been there for almost one hundred years, and our orchards are mature, productive, well-established economically within the global food distribution network, employ many people, and touch five generations of owners' families. Adjacent farms are the same. They deserve the protection afforded people in towns.

Section 5017. Flood Protection. (a) No encroachment permitted in floodplains without finding of no significant impact on floodplain values and functions, specifies in Subsection (2) the Cosumnes-Mokelumne River Confluence, (McCormack-Willimson Tract), "or as modified in the future by DWR or the US Army Corps of Engineers. This plan appears by its proposed Habitat Restoration Evaluation Zone, to be headed in that direction. Our Glannvale ranches are directly North of that Tract, and could be affected by potentially imminent studies and proposals for restoration.

Section 5018. Just Compensation.

If the habitat studies find our lands to be high land suitability, and other federal lands are not sufficient, and after better projection of inland extent of sealevel rise up the Cosumnes toward Elk Grove and the Mokelumne toward Galt, and some agency insists on breaking the levee, and flooding lands for swamp, just compensation should be determined according to a methodology that recognizes our longstanding productivity and the removal of profitable lands contributing to the 7th largest economy in the world.

The Income Method or another should be specified to be applicable, to reflect productivity and potential, in determining market value. Lands that have been started into production, with infrastructure investment, whether or not already planted, should be recognized as projected income. That data can be developed based on adjacent parcels and historical and projected market prices for pears, grapes and wines. It therefore should be required under these rules to be used in any potential condemnation proceedings by any agency involved in this process.

At a larger scale the proposed Final Delta Plan REIR is missing some important information about economic impacts. Known economic impacts, such as the loss of 1,700 jobs projected by the input-output study reported at the Delta Science Conference in October, is a known impact that we did not see in the Executive Summary. It might be in a back chapter, but we did not have time in between taking care of our own businesses and incomes. We do not have paid staff to read these documents, and any time away for that purpose potentially threatens key stages in crop life cycles that will affect health and growth in the following season.

The back-up documents were not sent to us, and no Notice was sent to us as "interested land owners." "Interested landowners" should be defined as not only those who contact you to express interest in receiving more documents or mere website postings. Any landowner in the region has an economic interest in the outcome of this Plan and its Rules. They should all receive paper notices in the mail, and reminders that these documents, so hard to read in downloaded files from the internet, are available for mailing out. Broadband internet is not available far off the main roads.

CONCLUSION:

We do not understand how the Rule-making authorizing this to be a "Final Plan" can be legitimate when there is so much that is still unknown within the "Best Available Science," including economic science. It seems to have been accelerated on the fast track, with the minimal number of public hearings and shortest legally allowable review times after the proposed Final Plan was announced this fall.

We still do not know how much water is needed for in-stream beneficial uses, such as endangered species like salmon, nor how much is likely to be available, nor its timing. That is crucial for determining how much might be available for agriculture.

Final adoption and rulemaking should be delayed, and the lands North of the Cosumnes-Mokelumne Confluence should be removed from consideration as habitat restoration areas. They are already in use for the protected agricultural priority for creating jobs and contributing to the State economy, core to the strategy of economic impact mitigation.

Sincerely,

Matt Conover.

From: Matt Conover [<mailto:conovermatt@yahoo.com>]
Sent: Thursday, January 24, 2013 5:02 PM
To: Messer, Cindy@DeltaCouncil
Subject: Map of Glannvale, north of Cosumnes

Cindy,

Here's a closer zoom view map transcribed by hand from your Fig. 5-1.

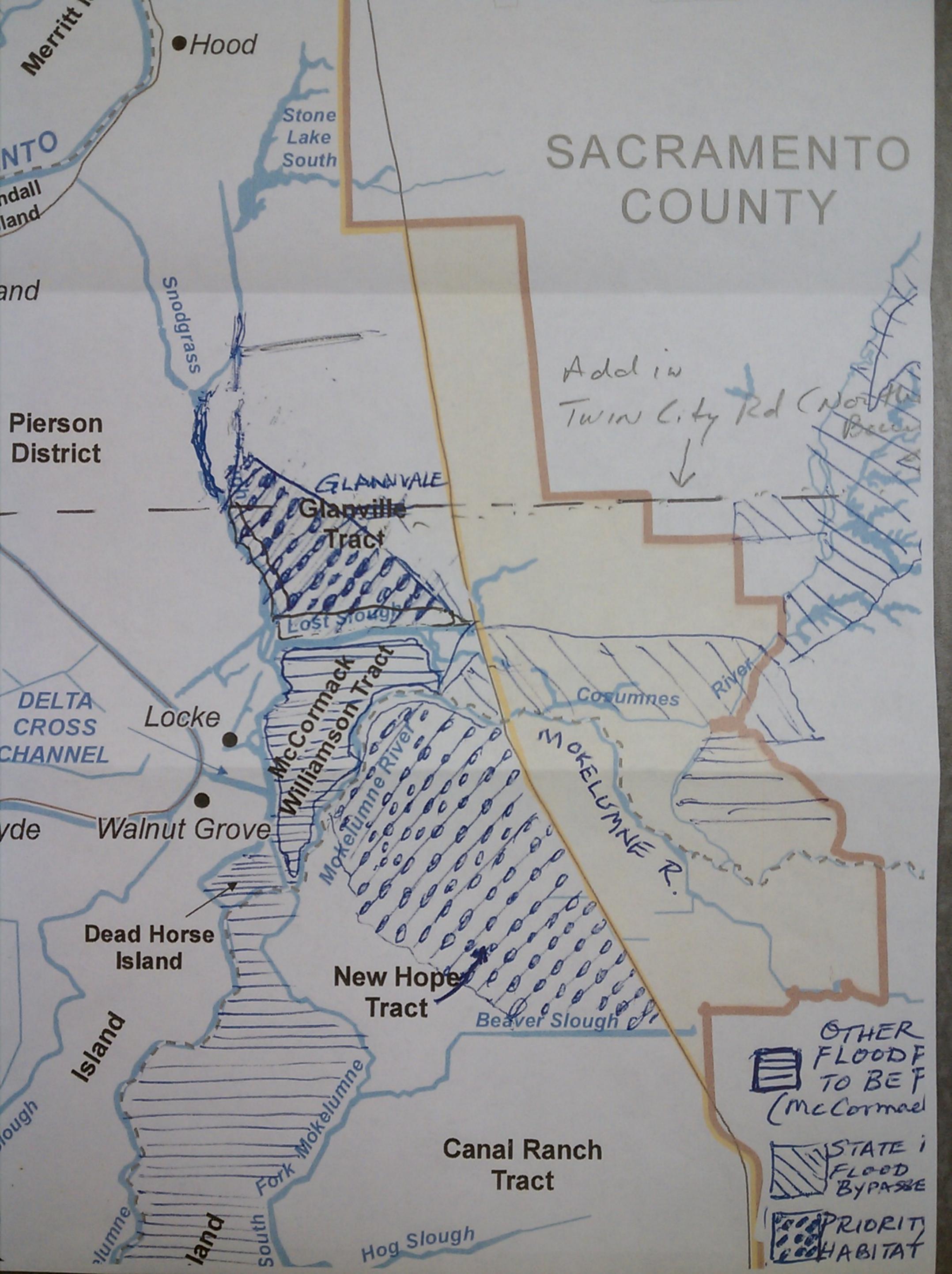
It belongs with my comment letter of today.

Sent to you, but not dedicated website yet.

Thanks,

Matr

SACRAMENTO COUNTY



-  OTHER FLOODS TO BE F (McCormack)
-  STATE FLOOD BYPASS
-  PRIORITY HABITAT

From: Matt Conover [<mailto:conovermatt@yahoo.com>]

Sent: Thursday, January 24, 2013 5:05 PM

To: Messer, Cindy@DeltaCouncil

Subject: Flood photos, 1986

North of Cosumnes-Mokelumne Cobfluence, Lost Slough, showing mature orchards and vineyard lands not suited for frequent flooding or habitat restoration by levee breaching. 1986.

Additional notes on photos:

1. "Burchell" label on flood photo is Staten Isl.
2. Flood photos from 1986 include MWT as Bean Ranch.
3. Snodgrass Slough label might not be Lost Slough, but farther South on Snodgrass from confluence with Lost Slough