

**Department of  
Conservation &  
Development**

**Water Agency**

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**Contra  
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**Catherine O. Kutsuris**  
Director

January 14, 2013

Delta Stewardship Council  
(Via email to [deltaplancomment@deltacouncil.ca.gov](mailto:deltaplancomment@deltacouncil.ca.gov))

Thank you for the opportunity to review the Final Draft Delta Plan. Contra Costa County staff has reviewed the portions of the plan that are of interest to us.

We offer the following comments on the document.

1) Chapter 2, page 58, lines 20-23 – This section states that if an agency determines a project is not a covered action, the finding is not subject to Council review “...*but is subject to judicial review as to whether it was reasonable, made in good faith, and is consistent with the Delta Reform Act and relevant provisions of this plan.*” I have two comments: (a) it is the courts, not the Council, that determine what is subject to judicial review and what isn’t, so I suggest this wording be deleted, unless the Council can provide a basis for it; please provide a statutory basis for the statement. (b) I am unclear as to why the Delta Plan includes this statement, which seems to be a warning about potential litigation. If I am misinterpreting the statement entirely, clarification would be welcome.

2) Comment # 1 also applies to Appendix B, page 1, item 2, which states similarly that the determination on whether a project is a covered action shall be made by the agency “*subject to judicial review.*” None of the California Water Code sections cited in Appendix B say anything about judicial review. Please indicate what statute supports this contention.

3) Chapter 2, page 59, lines 32-33 – This sentence states that if the Council decides on appeal that a covered action is not consistent with the Delta Plan, “*the project may not proceed until it is revised so that it is consistent with the Delta Plan.*” We disagree with this statement. We do not believe it is supported by state law. The Water Code does not require that the project be revised, as shown below in Section 85525.25 of the Water Code, with emphasis added by me:

*“85525.25. After a hearing on an appealed action, the council shall make specific written findings either denying the appeal or remanding the matter to the state or local public agency for reconsideration of the covered action based on the finding that the certification of consistency is not supported by substantial evidence in the record before the state or local public agency that filed the certification. **Upon remand, the state or local agency may determine whether to proceed with the covered action. If the agency decides to proceed with the action or with the action as modified** to respond to the findings of the council, the agency shall, prior to proceeding with the action, file a revised certification of consistency that addresses each of the findings made by the council and file that revised certification with the council.” (Delta Reform Act, SB7-XI; California Water Code)*

This is reconfirmed in the Delta Plan's own Appendix B, page 5, which quotes the same section of the Water Code, indicating that the project does not necessarily need to be revised. We believe these provisions of the Delta Plan should be revised to be consistent with the Water Code statutes.

4) Chapter 5, lines 40-46 – This section, entitled “The Delta’s Communities”, lists the “region’s urban communities.” The list includes all of the cities in the Delta and all of the unincorporated communities in the Delta except for Bethel Island. Either Bethel Island should be listed in this section, or an explanation should be provided as to why Bethel Island is omitted, when less urban communities such as Knightsen are included.

5) Comment # 3 above also applies to Appendix K, which provides maps of all of the Delta’s communities except Bethel Island.

6) Chapter 7, page 286, Recommendation RR – R2 -- This recommendation discusses the formation of a new Delta Flood Risk Management Assessment District. The recommendation lists several powers the district should have. An additional power should be added to the list: "Identify Delta infrastructure assets".

7) Chapter 7, page 287, Recommendation RR - R3 -- The first bullet of RR-R3 recommends the Public Utilities Commission impose a fee for flood and disaster prevention on utilities with facilities in the Delta. It is suggested in the last sentence of the last bullet that if a new regional flood management agency is established a portion of the "local share" would be allocated to that agency. It is unclear what "local share" means in this context of an utilities fee to help fund emergency response and flood protection in the Delta. The term "local share" should be changed to a term consistent with the intent of a fee collected from utilities and divided among the entities responsible for emergency response and flood protection in the Delta. Also, since the role and responsibility of a new regional flood management agency is unknown, the allocation to the agency could be clarified by adding the following to the last sentence "..... in proportion to its responsibilities in meeting the goals of flood and disaster prevention." With these suggested changes, the last sentence would read as follows: "If a new regional flood management agency is established by law, a portion of the fee revenue would be allocated to that agency in proportion to its responsibilities in meeting the goals of flood and disaster prevention."

8) Chapter 7, page 287-288, Policy RR - P1 -- This policy suggests several actions to be conducted by the Department of Water Resources that will be used to identify guiding principles, constraints, recommended cost share allocations, and strategic considerations for Delta investments. The first task (first bullet) is an assessment of existing Delta levee conditions, which lists two types of levee assessments and analysis. An additional, third, type of assessment should be included as a sub-bullet as follows: "Geotechnical/Structural levee assessment." This would include analysis of such items as levee materials, foundation, and permeability.

9) Chapter 7, page 288, Policy RR - P1, second bullet point – This describes an island-by-island economics-based risk analysis. This island-by-island economics-based risk analysis is defined by a list of nine values that should be considered for protection. An additional sub bullet should be included to this list as follows: "Delta outflow".

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10) Chapter 8, page 308, line 16 – This line states: “*The Delta Plan recommends many projects...*” It would be helpful to have all of the recommended projects in one chapter or table, so the reader could more easily understand exactly what the Plan calls for. As is, it is difficult for the reader to do so.

Thank you in advance for your consideration of these comments. Please let me know if you have questions.

Sincerely,



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Contra Costa County Water Agency

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