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Conservation &
Development**

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**Contra
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Catherine O. Kutsuris
Director

April 14, 2011

Delta Stewardship Council

Via e-mail to:

deltaplancment@deltacouncil.ca.gov

RE: Second Staff Draft Delta Plan dated March 18, 2011

To the Delta Stewardship Council:

Contra Costa County staff has reviewed the Second Staff Draft Delta Plan (March 18, 2011) and offers the following comments. General comments are listed first, followed by comments on specific sections or pages of the plan.

General comments

1. Generally, the policy framework of this Second Staff Draft Delta Plan is uneven, in that it is highly detailed in some areas (like the onerous certification process for covered actions) but provides little or no detail on other topics. The plan needs to provide adequate direction in all relevant areas before we can fully understand its impacts.
2. There should be discussion of immediate short-term actions that can be taken to help the Delta today in regard to water supply, ecosystem restoration, emergency response and levee restoration.
3. There also should be a focus on water conservation and recycling, multipurpose storage, conjunctive use and desalination as priorities in the Plan. Storage will be particularly important in the event that an isolated conveyance facility is built, because there will be a need to store the conveyed water.
4. Direction should be provided for the Bay-Delta Conservation Plan (BDGP) process in terms of biological objectives, purpose and need, and the need for a transparent and publicly-vetted process.

Comments on Chapter 1

5. On page 2, lines 38-41 state that court-imposed and regulatory constraints on Delta system operations are threatening the economic vitality of the state. Research by the University of the Pacific in conjunction with UC Davis indicates this is not the case. Economic impacts from pumping restrictions have been minimal and are overstated in political and policy documents. The economic problems of the Central Valley are due to the nation's overall economic problems, particularly the housing crisis, not to

pumping restrictions. This was documented in *A Retrospective Estimate of the Economic Impacts of Reduced Water Supplies to the San Joaquin Valley in 2009* (Business Forecasting Center, UOP, September 2010) and *Unemployment in the San Joaquin Valley in 2009: Fish or Foreclosure?* (Business Forecasting Center, UOP, August 2009).

6. On page 4, the final bullet point on water conveyance facilities should include levee improvements, which are critical to the Delta water system. There is an enormous need for major state and federal investment in levee improvements. Levees are critical for reasons beyond just flood protection. They facilitate conveyance of surplus water from the north to the export pumps in the south and provide protection against excessive salinity levels in the Delta, for example.
7. On page 5, the map provided in Figure 1-1 is inadequate to determine the covered areas with any specificity. We note that graphics are still under development and not included in this draft, so we ask that the graphics now being developed include a map of the coverage area that is detailed enough to be useful to local agencies in determining if actions are covered by (i.e. within) the planning area. Local agencies typically work on projects that are limited to a parcel.
8. On page 6, line 4, there is an incorrect reference to a section of the Public Resources Code. The section should be identified as 21065, not 20165.
9. On page 6, lines 20-25 are both confusing and troubling. We are unclear what is meant by a covered action [in the Delta] having “a connection to an out-of-Delta action”. Some examples might be helpful for us to understand this concept. And regardless of the concept, it is troubling that the Delta Stewardship Council would attempt to bring its regulatory coverage to out-of-Delta actions. Perhaps we are misunderstanding the concept; that is why some examples and further explanation would help.

Comments on Chapter 2

10. On page 10 and thereafter, the discussion of adaptive management is vague and theoretical and difficult for us to apply to individual actions, particularly smaller projects. Additional structure is needed on this section, and response timeframes should be added in terms of implementation, evaluation, adaptation and reevaluation.

Comments on Chapter 3

11. The section on pages 22 and 23, “Submissions of Certification for Proposed Covered Actions” describes a complex process that state and local agencies must carry out if they propose to perform, approve, or fund any covered actions in the Delta. We have several concerns with this process, described below.
 - a. Some of the actions that would be required of a local agency to comply with the Submissions process are likely beyond Contra Costa County’s ability and/or resources. For example, assessing “allocation of costs and risks in relationship to the benefits received” may be unknowable with certain actions such as applications for land use permits; we are unclear as to how the development of adaptive management techniques [adapting to what?] would apply to local actions such as applications for development or land use permits; the requirement that local agencies must “guarantee sufficient funds to support the full adaptive management process” in regard to covered actions is spurious, since counties cannot guarantee sufficient funds even to maintain their current services and staffing levels beyond this fiscal year, let alone long-range

actions or long-range impacts of actions; and the requirements to document all the information required in the 19 bullet points would likely exceed our staff resources. To call these requirements onerous would be an understatement and we do not see much value in generating all of the required analysis and reports.

- b. The complex process described by the 19 bullet points on pages 22-23 seems unnecessary given the very few actions that local governments would take within the Delta, at least within the Primary Delta Zone. In our view, the proposed solution far outweighs the problem.
- c. If there is going to be this type of certification process, there should be different processes for small projects and large projects. Sponsors of large projects may have the resources to fund the multitude of requirements for certification, but small projects, such as a small flood control or creek restoration project by a non-profit group, would not be able to develop the necessary information. The process should be modified to accommodate small projects that have relatively minor or no impact on achieving the co-equal goals of reliable supply and ecosystem health. These small projects should either be exempt from the certification process or allowed a greatly streamlined certification process.
- d. The chapter does not differentiate between, or even mention, the Primary Zone and Secondary Zone of the Delta. Therefore, we assume the 19-bullet-point process applies to covered actions in both zones. It would help if the document stated this explicitly, or stated otherwise if this is not the case.
- e. Contra Costa County believes the Delta Plan should accommodate, or provide consistency findings for, the Delta-related items in the Open Space Element of our General Plan, as well as the Master Plan of the East Bay Regional Park District which includes projects such as the planned Great California Delta Trail. The Open Space Element of the Contra Costa County General Plan includes proposed pedestrian trails and equestrian trails within the Delta. Regarding the Great California Delta Trail, the Delta Protection Commission is the lead agency for this five-county trail project. Both Contra Costa County and the East Bay Regional Park District are involved in planning the Contra Costa segments of this project.

Comments on Chapter 4

- 12. On page 31, in the discussion of water transfers, Policy WR P5 should include a method of incorporating all water transfers into the overall supply/demand equation for the state, in order to obtain a better understanding of how much water is being used at any given time. At the least, a more detailed database process at the State Water Resources Control Board would be in order.
- 13. Also on page 31, Policy WR P6 appears to be treading into regulatory taking of property and should be deleted from the document. To date there are not enough specific conveyance or ecosystem projects with defined boundaries that would merit this action.

Comments on Chapter 5

- 14. On page 34, regarding Policy ER R2, the BDCP process should be fully incorporated into the Delta Plan process and should use the broader scientific expertise that is being used in the Delta Plan process.

Comments on Chapter 7

15. On page 40, in the “Reduce Delta Flood Risk” section, Policy RRP2 requires any covered action to include documentation of an adequate level of flood insurance for individuals, business and industries in flood prone areas. This is not a reasonable requirement for a Flood Control District proposing a project that will improve flood protection. The Flood Control District does not know which properties in the adjacent areas have flood insurance and which do not. The same is true of a creek restoration project by a non-profit organization or Flood Control District that is improving habitat. A more reasonable approach may be to require that the local government agency participates in the National Flood Insurance Program and has a Floodplain Management Ordinance that is enforced locally. However, Flood Control Districts and non-profit groups proposing flood protection and creek restoration projects do not have land use authority and so cannot guarantee flood insurance or floodplain management requirements.
16. Policy RRP2 on page 40 also requires a hold harmless provision to the State for covered actions, if applicable. It is assumed that requiring a hold harmless provision would be applicable if the surrounding value of land is increased. If a local Flood Control District proposes a locally funded flood protection project, it will increase the value of surrounding property. It does not seem reasonable, however, to require a locally funded flood protection project to hold the State harmless. The Delta Plan should be more specific about when this provision is applicable.
17. Policy RRP4 on page 40 requires State investment strategies to be consistent with a list of requirements. These investment strategies require a lot of studies, data and analysis on a regional, Delta-wide basis that should not be required of a local agency proposing a project. Determination whether a project meets the investment strategies should be the responsibility of the State, not local government.
18. On page 42, the Levee Classification Table identifies eight classes of levees and was developed from the perspective of levees deep in the Delta, which are often high and wet all year round. There are other levees on the periphery of the Delta that are neither wet all year nor very high. In eastern Contra Costa County, the Flood Control District has some levees that are very short and are only wet for brief periods during very high storm flows. Some of these levees are freeboard levees to meet FEMA standards. The failure mode for a two-foot-tall freeboard levee is not the same as the failure mode for a 20-foot-high levee that is wet all year round. Our Flood Control District recently completed engineering analysis of levees in another part of our County for FEMA’s Levee Certification Program. That effort cost \$250,000 per levee mile. If a Flood Control District must submit a finding of consistency with the Delta Plan to the Delta Stewardship Council, it appears a similar levee certification would be needed. The Delta Plan levee classification criteria should include provisions for a streamlined certification for low, dry levees.
19. Also on page 42, we use floodwalls on occasion to provide adequate flood protection. If a floodwall is added along a flood control channel to enhance flood protection services, would it then become a levee? FEMA considers a floodwall to be a levee. If that is the case here, then the Levee Classification Table should be modified to include floodwalls as a separate category. In eastern Contra Costa County the Flood Control District is looking at an option of adding one- to two-foot-high floodwalls to provide flood protection for future General Plan buildout. It is unclear in the Delta Plan how a project with short floodwalls would be handled when it is submitted to the Delta Stewardship Council for certification as a covered action.

20. On pages 43-44, in regard to Policies RR R1, R2, and R6, if the state is able to extract itself from liability related to levees, there would be no reason for policy RR R6, which attempts to offload a program clearly in the state's interest to a regional levee management and funding program. The Delta as a state priority should remain a state program with a continuing proportion of state funding. At the least, if a regional authority is put in place, the authority to assess fees statewide should be specified as part of this policy in the Delta plan.
21. On page 44, in regard to Policy RR R5, a state emergency response plan for the Delta is currently being developed that includes priority actions that take into account interruptions in water supply in the event of a catastrophe. In addition, stockpiles of rock and other supplies are in place to help repel salinity intrusion during such an event. Some recognition of people and property affected by such an event as well as protections for Delta water users should be considered here.

Comments on Chapter 8

22. On page 45 the document states no covered local action will be consistent with the Delta Plan until the Delta Protection Commission has completed its Economic Sustainability Plan and that plan is approved by the Delta Stewardship Council. This could hold any local actions in limbo for an indefinite period of time, since no timeframe is given for when the Economic Sustainability Plan will be completed and approved by the Delta Stewardship Council. We suggest that a deadline be included for completion and approval of the Economic Sustainability Plan, so local actions are not held up indefinitely by the absence of such a plan. This existing policy implies that the Economic Sustainability Plan will function as the Delta Plan, which does not appear consistent with the Delta Reform Act.

Comments on Chapter 9

23. The rehabilitation and improvement of existing levees should be among the highest priorities in any future funding efforts. We agree with the discussion on page 53 indicating the difficult challenge that lies ahead in funding the Delta Plan recommendations. State law requires the Delta Plan include priorities for strategic levee investments. We look forward to reviewing the Delta Plan's recommendations in that regard.
24. Since the document indicates this chapter will be substantially refined and expanded in the next version, we will refrain from more detailed comments on funding until the next version is available.

Thank you for the opportunity to review the Second Staff Draft Delta Plan.

Sincerely,



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Deputy Director, Conservation & Transportation Planning Programs

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