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To: Joe Grindstaff  
Executive Officer  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, California 95814From: Dale Hoffman-Floerke  
Deputy Director  
Department of Water Resources

Subject: Comments on Second Staff Draft Delta Plan dated March 18, 2011

This memorandum transmits the Department of Water Resources (Department) staff comments on the Second Staff Draft of the Delta Plan released by the Delta Stewardship Council (DSC) on March 18, 2011.

This second draft is significantly different from the first draft and contains new policies and recommendations. Also, many of the findings and problem statements provided in the first draft were not included in this second draft. As the Plan matures, the DSC should consider restricting the geographical extent of its application to the Delta and Suisun Marsh, restricting the definition of a covered action, and limiting the extent of the requirement for a consistency determination. The very broad nature and current content of this plan may inadvertently delay various water supply and public safety projects that are outside of the Delta.

The Department's comments are provided in the attached document and are organized by chapter, section, page number, and line to facilitate your understanding of our concerns. Staff has also provided proposed language changes where appropriate. The length and depth of these comments illustrate the complexity of these issues and the importance of some of the proposed DSC policies to the Department. Since the DSC will develop a total of seven versions of the Delta Plan, the Department will continue to provide comments on subsequent draft versions of this plan.

If you or your staff have any questions regarding the Department's comments, please contact me at (916) 653-8045 or Robert Yeadon, Delta Regional Coordinator at (916) 651-7012.

  
Dale Hoffman-Floerke  
Deputy Director  
916- 654-7180

Attachment  
cc: (See attached list)



cc: Kamyar Guivetchi  
Jim Rich  
Bob Yeadon  
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**Staff Comments on Second Staff Draft Delta Plan  
Dated 18 March 2011  
Department of Water Resources**

The following review is provided by staff of the Department of Water Resources (Department) on the Second Staff Draft Delta Plan released to the public on 18 March 2011 by the Delta Stewardship Council (DSC.) This second staff draft of the Delta Plan is significantly different from the first staff draft and contains a number of policies and recommendations that were not included in the first draft. Moreover, the findings provided in the first draft were not provided in the second draft. The Department understands that the third staff draft will contain the findings and policies in the same document. The Department plans to provide additional comments on the third staff draft when it becomes available.

## **Chapter 1 The Delta Plan**

### General Comment

The Delta Plan is required to be consistent with several acts and consider strategies and actions of the Delta Vision Strategic Plan. It is not apparent that it met all of these requirements.

- Consistent with Water Code (WC) 85300(a) and 85067, the Delta Plan should consider each of the strategies and actions identified in the Delta Vision Strategic Plan and the Delta Vision Implementation Report.
- The Delta Plan should mention that it is consistent with the federal Coastal Zone Management Act of 1972, as required by WC 85082. In ensuring consistency, the DSC should review recommendations in reports developed by the Interagency Task Force, established by this Act, on harmful algal blooms and hypoxia and consider measures to control or reduce hypoxia in the Delta.
- Consistent with WC 85082, the Delta Plan should be consistent with Section 8 of the Reclamation Act of 1902 and discuss how the concept of beneficial use shall be the basis, the measure, and the limit of the right of the use of the water acquired under the Reclamation Act of 1902, with a reference to the federal agency contacted to ensure compliance with this Act.
- Consistent with WC 85082, the DSC should ensure that the Delta Plan consistent with the Clean Water Act and reference the federal Environmental Protection Agency.
- Consistent with WC 85301 b(2), the DSC should ensure that the Delta Plan includes a regional economic plan to support increased investment in agriculture,

recreation, and tourism, and other resilient land uses in the Delta, with detailed recommendations for the administration of the Delta Investment Fund.

### Current Conditions

Page 2, Line 20

While many of the Delta levees did not have the advantage of modern engineering, there are many engineered channels and levees in the Delta, such as the project levees along the Sacramento River and its distributaries.

Page 2, Line 26

The State Water Project (SWP) furnishes a large percentage of the Delta water used by Alameda County, Zone 7, as well as serving Santa Clara County. The Central Valley Project (CVP) also supplies Delta water to Santa Clara.

Page 3, Line 1

The California Water Plan contains generally good estimates on the amounts of water used for various purposes within California.

Page 3, Lines 6 & 7

Please note that groundwater is regulated in California only under special circumstances and is not regulated in the Delta. Please provide a foundation in the document or citations to supporting material for the statement that groundwater monitoring is inadequate.

The statement "the state regulates groundwater and surface water separately even though they are part of an interconnected system" slightly overstates the case. The law recognizes that groundwater and surface water may be hydrologically connected (*U. S. v. Fallbrook Public Utility Dist.* (S.D. Cal. 1958) 165 F.Supp. 806, 847), but in reality encompasses a spectrum of conditions from aquifers that recharge almost instantaneously to those that do not recharge at all. A groundwater aquifer that is not experiencing recharge (or at least not at a rate that is meaningful for human use of the water) can be thought of as "fossil" water that, for all practical purposes, is not part of an interconnected system. Most Central Valley aquifers are probably closer to the recharge end of the spectrum, but each basin, subbasin, and aquifer (where there is more than one) is likely to have unique properties. Because of the wide variation of groundwater basins (in terms not only of the physical attributes of their aquifers, but also in terms of political, economic, and jurisdictional issues) a one-size-fits-all characterization should not be presumed to be the most appropriate approach.

The Vision for What the Delta Plan Will Achieve by 2100

Page 3, Lines 37 & 38

The plan states that California will have a fully integrated, *real time system for tracking and evaluating water use and water quality* for both surface water and groundwater supplies but lacks specifics on how that will be achieved. There are significant cost implications associated with real time tracking of water resources that should be discussed in the Finance Plan.

On page 4, the plan states: that California will "lead the nation in water efficiency and sustainable water use" and that "regions of California that previously had severe groundwater overdraft conditions will sustainably manage these water resources." However, the plan offers no specific information as to how these things will come about, or how we will know if they do. (In fact, California may already "lead the nation" in water efficiency, but there is no discussion of what that leadership entails, or how it would differ from current practice.)

Page 3, Line 9

After "catastrophic" add "levee."

Page 4, Lines 4 – 6

The discussion of agricultural water efficiency improvements on a per capita basis is not relevant since much of California's agricultural products are exported out of state. Focus should be on net agricultural water use efficiency.

Page 4, Lines 18 – 19

It is never possible to "ensure that people, property and statewide interests" "will be protected" in any floodplain, much less the Delta. There will always be residual risk in a floodplain, no matter how much is spent to reduce that risk. Consider changing this statement to read "improvements will be adopted to provide people, property and statewide interests with flood management to appropriate levels of protection."

Geographic Scope and Use of the Delta Plan

Page 4, Lines 38 – 42

The text states:

*The Delta Plan will become a set of integrated and legally enforceable regulatory policies that are the basis for findings of consistency by local and state agencies for proposed plans, programs and*

*projects that meet the definition of a "covered action" (Water Code 85300(a)). In addition, the Delta Plan policy recommendations will provide the basis for the Council to provide advice to state, federal, and local agencies and to take other actions on issues relating to the achievement of the coequal goals.*

The DSC must consider carefully what is a "covered action" under this plan. As stated, a covered action under this plan could include many small projects. The Plan needs to explain in detail what types of projects will be included as covered actions.

Page 5, Figure 1-1

The map shows some areas of the State that are proposed to be covered by the Delta Plan that are neither in the Delta drainage basin nor in an area that receives water from the Delta. The Coachella Valley is one such example. We recommend the map be circulated among those water agencies where the Delta Plan will be in effect to validate that there is a basis for regulating activities.

Page 6, Lines 12-14

The Draft Delta Plan states, *"Certain actions are exempted from the definition of "covered action," including a regulatory action of a state agency, and routine maintenance and operation of the State Water Project or the federal Central Valley Project."*

Water Code (WC) 85057.5 states, "Routine maintenance and operation of any facility located, in whole or in part, in the Delta, that is owned or operated by a local public agency" is exempt from "covered actions."

The Department recommends:

- Quote all of WC 85057.5 to provide the full definition of a "covered action."
- Add the figures referred to in WC 85057.5 7(c), since the definition of a "covered action" in some instances is dependent on whether the work is in the areas shown in these figures: Figure 3.1 of Chapter 3: *Draft Conservation Strategy of the Bay Delta Conservation Plan*, August 3, 2009 and Figures 1 to 5, inclusive, of the latest revision of the *Final Draft Initial Assessment of Dual Delta Water Conveyance Report*.

Page 6, Line 20

The Department believes this proposal is over-reaching. The statutes give DSC authority for "consistency" determinations. Section 85057.5 requires DSC meet the conditions listed when determining a "covered action," including that a plan, project or project "Will occur, in whole or in part, within the boundaries of the Delta or the Suisun

Marsh." The "out-of-Delta" action evaluation and connection requirements are not within the consistency authority of the DSC.

#### Use of Adaptive Management

Page 6, Lines 38-39

The Council is required to review the Delta plan every 5 years and may revise it as the Council deems appropriate. Will the Plan be revised each time a new source of data is available? For example, when modeling or the BDCP is completed? Please provide examples of situations in which the plan would be updated more frequently than once every five years (e.g., would completion of the BDCP prompt development of a new Delta Plan?).

#### Phasing of the Delta Plan

Page 7, Line 37

Please provide reference for using 6, 18-24, and 55" for sea level rise. Also, identify baseline year (2000?). Please explain why the plan used this set of numbers. Consider deferring to the CO-CAT guidance recently adopted by the Ocean Protection Council (OPC) (14" @ 2050 and 40-55" @ 2100). In addition, how do these numbers fit into the various proposed policies, especially as they relate to infrastructure actions and other planning efforts? While the proposed policies don't specifically refer to these Sea Level Rise targets, they are applicable to many of them.

Page 7, Line 39

Please add "and improvements" after "repairs."

Page 8, Lines 3-5

Climate change predictions yield various results and involve some significant extrapolation. Please acknowledge uncertainty in the climate change predictions. Also, describe the climate projections (e.g., are these "worst-case" scenarios?) and identify the source of information for the climate change projections.

Page 8, Line 4

Please consider adding "and improvements" after "repairs."

Page 8, Lines 9-11, 14

Investments in flood management should be accompanied with appropriate land use restrictions to reduce risks to people, property, and state interests to appropriate levels. Improving Delta levee flood protection to urban standards, particularly in the primary zone, could remove an obstacle to growth and significantly increase risks to more people, property, and state interests. Additionally, projects that induce growth may necessitate additional CEQA documentation and therefore additional costs. Legislation barring or limiting new development in the primary zone of the Delta (as an inappropriate land use) would allow investment in flood protection levees without increasing risks to people, property, and state interests. Consider the following:

- Discuss the importance of zoning restrictions, particularly in the primary zone.
- Consider including recommendations to planning agencies to halt future development projects in vulnerable areas of the Delta, including the primary zone.
- Consider adding a recommendation for legislative action to add zoning restrictions in the Delta.

## **Chapter 2 Science and Adaptive Management for a Changing Delta**

Page 9, Line 12

Expand and clarify how “social networks” will be used and how they are effective for use as adaptive management planning.

### Adaptive Management and the Delta

Page 10, Lines 2 - 8

Adaptive management practices and policies proposed could become burdensome on smaller projects or projects that are fixed such as building construction. (See previous comment on covered actions.)

Page 10, Lines 5 - 6

The plan acknowledges that adaptive management isn't always appropriate; similar language should be added to make the “adaptive management” provisions more flexible (see p. 7, Lines 1-5; p. 9, Lines 21-23.)

### **Chapter 3 Governance Plan to Support Coequal Goals**

#### General Comment

A key item that is missing in this discussion is a definition for "consistency." DSC seems to be using the term to require "furthering" of Delta goals, as opposed as not hindering or being "inconsistent." Not every covered action has to further water supply reliability or the environment. Similarly, covered actions that do not advance the coequal goals are not necessarily inconsistent with the Plan.

The Department believes that the proposal in the comment box on page 21 is over-reaching. The statutes give DSC authority for "consistency" determinations. Section 85057.5 requires DSC meet the conditions listed when determining a "covered action", including that a plan, project or project "Will occur, in whole or in part, within the boundaries of the Delta or the Suisun Marsh." The "out-of-Delta" action evaluation and connection requirements are not within the consistency authority of the DSC.

#### Submissions of Certification for Proposed Covered Actions

##### GP P1

Pages 22 & 23, Lines 8 - 41

The Department understands the need to develop a policy for self certification of consistency with the Delta Plan. However, GP P1 has significant cost, time, and procedural implications to state and local agencies associated with covered actions in the Delta. The DSC must carefully consider how this policy will be carried out and the impacts (both direct and indirect) associated with this policy. The Department has the following comments and questions:

Lines 12 -14

How is the information required relevant to a consistency determination with the Delta Plan? Will the Delta Plan designate who has authority to take actions within the Delta? Will it specify what sources of funding can be applied? Will it set required cost benefit ratios or return on investment standards? Again, how is the information required under Line 19 related to a consistency determination? Will the Delta Plan define criteria by which to determine whether a project proponent has sufficient "capacity" to implement their proposed project?

Page 22, Line 15

Please change "addresses" to "affects."

Will covered actions include entire programs such as the Department's long standing Subventions and Special Flood Control Projects programs for Delta levees or will each project need certification? The Department recommends language to include certification of programs as covered actions. Also, please identify how long the process of review is anticipated to take for projects such as levee rehabilitation and habitat restoration. Identify whether there will be a maximum review period, after which a project may proceed.

The Department also recommends language that provides allowance for the covered action to show progress towards achieving results consistent with the Delta Plan. For example, individual levee projects or small ecosystem enhancement projects funded by the Department's Delta Levees programs can show progress towards meeting the co-equal goals but may not necessarily achieve a performance measure or target with one project. These projects coupled with others over a long period of time may be necessary to meet certain performance measures or targets.

The Department recommends not using language requiring a "guarantee" of continuing legal and financial responsibility or a "guarantee" of sufficient funds. What is the standard of the guarantee? It is difficult to provide such guarantees. All public agencies (state, federal, and local) are subject to annual budget cycles and rarely can make binding long-term commitments to programs after capital improvements. This becomes especially problematic for bond funds. There also are tax implications associated establishing endowments using bond funds.

Page 23, Line 18

The Department fully supports the use of adaptive management, however, these policies have significant cost implications and may be burdensome for smaller projects and may constitute unfunded mandates. The adaptive management program for each covered action should be commensurate with the scale of the covered action under consideration. The same is true for associated monitoring and analysis programs. The DSC should weigh the benefits gained from monitoring, analysis, and subsequent changes to a project with the costs associated with the project. Smaller scale covered actions may not be able to bear the financial weight of the language proposed in this draft for adaptive management. Moreover, the development of Plans should specifically be exempted from the requirement of monitoring. The requirement for reports every 2 years (Line 18) suggests a perpetual reporting requirement.

Page 23, Lines 20 - 22

The Department recommends explicitly exempting the preparation of a plan from the requirement to *"incorporate best available science in interpreting performance in achieving targets and as the agency makes any recommendations for changed implementation of the covered action."*

Page 23, Line 31

The Department also recommends striking the language requiring release of "all" information developed related to adaptive management. Some data may be sensitive or critical for security reasons or simply need additional validation prior to release to the public.

Page 23, Lines 37 - 41

Does the economic analysis under GP P1 (d) mean cost-benefit analysis? Regular project-level economic analyses focus on cost / benefit analyses which typically do not address macro-economic considerations that may factor into estimates of the effect on the "state's economic vitality." Similarly, how is a financing plan relevant here? What is the linkage between project financing and the "state's economic vitality"?

#### Policies for Council Use in all Decisions

#### GP P2

Page 24, Lines 4 - 9

*GP P2 of the Draft Delta Plan states, "The Council is committed to making progress on the coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem over roughly similar time frames, with roughly equivalent certainty regarding effectiveness."*

The latter part of this statement is unnecessary and may be infeasible. Progress on some objectives may take longer or have less certainty; the point is to achieve the objectives. Additionally, if this language were kept in the Delta Plan, how would compliance with it be determined? Is there a threshold for certainty of effectiveness of progress on the coequal goals? The part about "roughly similar time frames, with roughly equivalent certainty regarding effectiveness" does not appear to be required in the Water Code and should not be added to the Delta Plan. The Department recommends deleting the phrase "over roughly similar time frames, with roughly equivalent certainty regarding effectiveness" or specify the threshold for "certainty of effectiveness." These vague terms can (and likely) will become a source of great disagreement.

#### GP P4

Page 24, Lines 12 - 16

Under GP P4, what happens if a covered action is found to be inconsistent with the Delta Plan? What happens if this inconsistency finding by the Council is based

solely on the fact that not enough information was provided in an agency's certification? How long might this delay implementation of a covered action? This could have significant implications to a flood control project if these delays result in missing a construction season on a critical portion of a levee thereby increasing risk in the Delta.

Page 24, Line 16

Section 85020(h) seems to speak to the State's intent to make sure the governance structure has adequate funding to carry out its objectives. What is the linkage to project proponents having to demonstrate complete funding in hand? Large-scale projects rarely have 100% funding approved before starting implementation. Is the Delta Plan going to prescribe sources of reliable funding for project implementation?

GP P8

Page 24

This is an example where DSC seems to be stating that covered actions should further the plan objectives, as opposed to be merely consistent, in other words, not inconsistent.

Communications Plan to Implement the Delta Plan

Page 25

The term "full transparency" (Line 3) needs to be clarified. Also, Line 11 states: "Where required by law or as it deems feasible and appropriate, the Council will provide findings for its actions, which shall be posted publicly." Is this consistent with the expectation of "full transparency"?

Improving the Capacity of the State and Local Agencies – Recommendations for Legislative Action

GP R1

Page 27, Lines 6 - 8

The benefit assessment flood management agency recommended under GP R1 for the Delta is a very complex subject and must consider all of the various benefits the Delta provides to the State of California. The DSC should describe in detail what this agency's function would be and how the agency would be organized and explore more fully the feasibility and benefits of this proposal.

GP R2

Page 27, Lines 9 - 12

This proposed recommendation has no support within the text. No reason is proposed to expanding the DPC's jurisdiction over Suisun Marsh where BCDC already has land use authority.

**Chapter 4 Manage Water Resources**

WR P1 Water Flow Standards

Page 29, Line 11

Under WR P1, the State Water Resources Control Board (SWRCB) is to develop public trust flow standards for the Delta and the Delta watershed by January 2, 2014 and January 2, 2018, respectively. This policy is significant to many of the programs the Department is involved with in the Delta. The Department has the following questions and comments:

Page 29, Lines 13 - 16

If adopted, Items a) and b) could lead to major policy and institutional changes concerning water use by agriculture for large areas outside the legal Delta. By stating that the "Coequal Goals" must be achieved, the Delta Plan could set in motion a significant expansion of government regulations, as well as impose major new costs on California agriculture and California taxpayers. Will these flow standards, as adopted by the SWRCB, be a covered action under the Delta Plan? What if these new flow standards do not meet the Coequal Goals?

Page 29, Lines 17 - 19 and page 30, Lines 1 - 3

The DSC also must carefully consider policies that rely on dates for other agencies to complete certain actions as in WR P1 c) and d). If the SWRCB fails to meet the dates above to adopt public trust flow standards, then covered actions after this date will be found inconsistent with the Delta Plan. This, in turn, would limit the Council's ability to approve any work in the Delta, including levee rehabilitation projects. The time frame may become long and extremely problematic, especially if the schedule is beyond the agency's control, such as a court action. Also, the existing Delta and Delta watershed flow standards should be described in this section.

Page 30, Lines 1 - 3

The policy, as written, does not clarify what it means for the SWRCB to “act” by a certain date. Does “act” mean developing the objectives, setting the objectives and developing a plan to implement them, or actually having an implementable plan, i.e., post-litigation. If it is the latter, then the time schedule set forth in policy WR P1 is not realistic.

As part of its water control planning process, the SWRCB does not adopt public trust flow standards. Instead, the SWRCB will identify beneficial uses of the Bay-Delta, water quality objectives for the reasonable protection of those beneficial uses, and a program of implementation for achieving the water quality objectives. The public trust is imbedded in several of the beneficial uses, e.g., fish and wildlife, recreation, etc., but there is no specific public trust beneficial use. In developing water quality objectives, the SWRCB has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect the public trust whenever feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 446.) What is “feasible,” however, is a matter for the State Water Board to determine. (*State Water Resources Control Board Cases* (2006) 39 Cal.App.4th 674, 778 (*Robie Decision*)). In determining what is “feasible” to protect the public trust values such as fish and wildlife, the SWRCB must determine whether protection of those values, or what level of protection, is “consistent with the public interest.” (*Ibid.*) WR P1 is essentially asking for something the SWRCB’s process does not provide.

WR P1 should be revised as follows: By January 2, 2014, adopt water quality objectives that feasibly protect the public trust resources for the Delta that are necessary to achieve the Coequal Goals.

#### WR P2 Regional Water Self Sufficiency

Page 30, Lines 4 - 45

This policy concerns regional water self-sufficiency. As currently written, the policy requires all water agencies within the study area of the Delta Plan to develop and implement a plan similar to an Integrated Regional Water Management Plan that includes various items such as: planning for possible interruption of Delta Water Supply, water recycling, the development of non-potable groundwater to offset declines in a region, consideration for implementing desalination. If the regional plans are not developed and implemented, then water resource planning covered actions will be deemed inconsistent with the Delta Plan.

Essentially, the DSC is using its consistency authority to reach well-beyond the Delta (the Delta Plan’s study area essentially includes all of California) to regulate water agencies all around California. To withhold a consistency determination on water

resource planning covered actions (assumed to mean actions related to the BDCP's implementation and operation of the State Water Project and Central Valley Project), the DSC is looking to indirectly regulate entities that the legislation really did not provide the DSC with direct authority to do so. The Department questions this policy in that it makes the Department's ability to move forward, i.e., obtain a consistency determination, dependant on whether other agencies (of whom the Department has no control over) comply sufficiently with this policy.

Page 30, Line 4

The term *all water agencies* should be defined. Some agencies may be too small to meet these requirements. *Regions* as used in this plan should also be defined. The guidance in this document is insufficient for local agencies to develop plans for disruption of their Delta supply.

Page 30, Lines 15 - 22

The term "standards established... for water use efficiency standards" in this policy statement is unclear; a definition should be provided. Is this referring to the 20% reduction by 2020 or other standards?

Developing the 20% per capita reduction goal by the year 2020 was specifically stated in SBX7-7. SBX7-7 requires DWR to evaluate progress towards the 20% goal and report to the Legislature by 2016 and recommend changes to the water use efficiency standards (Water Code section 10608.42). In another part ((10608.20 (b) 2 (A)) it specifies that indoor residential water use standard be adjusted by the Legislature by statute. The DSC is proposing to develop revised standards beyond 2025. The Department believes this should be a legislative action.

Page 30, Lines 38 - 40

The development of non-potable groundwater should be defined and how this fits into current SWRCB policies should be discussed.

Page 30, Lines 41 - 42

The policies provided on storm water capture and recharge could have just the opposite of the intended effect. Storm water runoff upstream of the Delta can have a positive effect on Delta flows. Local water recycling may increase the demand for water originating from the Delta because it is higher in quality and, therefore, has greater potential for being recycled.

Page 30, Lines 43 - 45

The cost implications and energy requirements associated with desalination needs to be considered in this policy. The Department recommends brackish and other saline sources be included in this policy.

WR P3

Page 31, Lines 1 – 8

The phrase “water users who impact the Delta” presumably refers to all water users within the drainage of the Sacramento and San Joaquin Basins. But the scope of this phrase is expanded by specific reference to “agencies currently receiving water diverted or exported from the Delta or Delta Watershed, and those anticipating receiving water diverted or exported,” which would include areas outside the Central Valley. Most of the area so defined is outside the boundaries of the legal delta.

Page 31, Line 5

Reporting of water use should be balanced with the water agency’s size and impact so as not to become too burdensome. The Department also recommends adding language ... “or successor information management system” where a specific information management system is named. Also, Identify whether enforcement funding will be increased for overseeing water use.

Page 31, Line 7

Water Planning and Information Exchange (PIE) is still in a conceptual state.

Page 3, Line 7

The Department recommends reporting a full water balance (production from all sources, deliveries, system losses and changes in storage – including groundwater), rather than just uses. The Delta Stewardship Council recommendation would not provide any additional value to the reporting than is already done, and would duplicate existing reporting. Reporting water uses is done in other forums, such as urban water management plans and public water system surveys.

On the other hand, a full water balance would provide some value added. It would greatly enhance the numbers for the California Water Plan, and help policy makers and the public understand how water moves around the State. If done right, it could also promote coordination between water utilities, wastewater utilities and other groups at a regional level.

Page 31, Line 8

The phrase "production from all sources" would presumably require full reporting of groundwater use in any area deemed to "impact the Delta." Because this policy would apply to all "water users who impact the Delta" it would apply to regions outside the boundaries of the legal delta.

#### WR P4

Page 31, Line 9 - 19

The Department already has in place a set of principles governing the process for engaging the public when the Department is negotiating State Water Project-wide amendments to the long-term water supply contracts or amendments to two contracts transferring Table A amounts from one contracting agency to another. Because of the existing principles the Department must follow, the public will receive advance notice of the time and place for formal negotiation sessions concerning contract terms of the type listed in WR P4 of the Second Staff Draft Delta Plan. This public process offers the public an opportunity to observe the negotiations and comment at a much earlier stage than would be provided by Recommendation WR P4.

Page 31, Lines 9 - 19

The Department expects substantial public attention will follow negotiations on the renewal of the long-term water supply contracts. In addition to the public participation principles discussed in the above paragraph, the CEQA environmental review process will offer the public opportunity to review and comment after contract negotiations have produced a proposed draft for environmental review.

In administering the long-term water supply contracts, DWR must follow provisions in the Central Valley Project Act (CVP Act), Water Code sections 11100 et seq. Specific provisions in the CVP Act that are central to DWR's administration of the long-term water supply contracts are Water Code sections 11160 and 11260. DWR's administration of the long-term water supply contracts is also authorized in the Burns-Porter Act, Water Code sections 12930 et seq. Specific provisions of this Act that are central to DWR's administration of the long-term water supply contracts are CWC 12931, 12934 and 12937.

#### WR P5

Page 31, Lines 20 - 27

This policy discusses publication of a summary of through Delta water transfers 14 days prior to the transfer taking place. It is unclear if the Council plans to require their approval of the water transfers. Water transfers need to complete CEQA/NEPA

requirements and that may be a better time to have the summary published. Problems with the transfer can be addressed through the CEQA/NEPA processes and not delayed until later when the process is very close to being final. Advocates for water transfers feel the water transfer process needs to be streamlined. Adding a summary publication of the water transfer and possible approval by the Council is counter to streamlining water transfers.

Publication of data 14 days before implementation of a water transfer depending on conveyance through the Delta would give the public little opportunity to influence a transfer. At a point 14 days before a transfer is implemented, only technical administrative decisions are being made. Discretionary policy decisions about transfers occur much earlier than this. The SWRCB approval process allows the public an opportunity to analyze and comment on the transfer at a time when the transfer is being shaped. For transfers not needing a temporary change approval from the SWRCB, the CEQA environmental review process allows public participation before the transfer contracts are signed. Perhaps the expected capital cost debt service and annual operations and maintenance costs could be added to the CEQA process.

#### WR P6

Page 31, Lines 28 – 31

This policy on projects within the alignment of a conveyance facility is at the same time vague and overly restrictive. There may be projects proposed in these areas that are consistent with the coequal goals (such as levee rehabilitation projects) that DSC finds beneficial. This language would prevent DSC from a consistency finding.

The Department has contributed financially to levee improvement projects that are along some of these routes, and may have future levee improvement projects along these routes. Would these projects be considered as consistent with the intent of the plan? Since it states, “no project” (not “no covered action”) would this restriction include levee maintenance? Please:

- Define “Project”
- Specify that landside levee improvement projects in the Delta are consistent with the intent of the plan and could proceed even if within the alignment of a proposed conveyance facility.
- Add the figures referred to in WC 85057.5 7(c): Figure 3.1 of Chapter 3: *Draft Conservation Strategy of the Bay Delta Conservation Plan*, August 3, 2009 and Figures 1 to 5, inclusive, of the latest revision of the *Final Draft Initial Assessment of Dual Delta Water Conveyance Report*.
- Change the words “project” to “covered action” in WR P6 to clarify that *maintenance work is not included in this requirement*.

WR P7

Page 31, Lines 32 - 34

Fiscal impacts and staffing levels need to be considered to meet this date for Integrated Storage Investigations. Please consult with the Department to determine a reasonable time frame.

WR P8

Page 31, Lines 35 - 38

This policy may impact smaller agencies disproportionately. The term tiered rate structure should be defined.

WR R1

Page 32, Lines 3 - 8

This is a recommendation and has no enforcement authority. It puts the DSC on record as being willing to take this on and, therefore, puts some pressure on the parties to come to resolution on BDCP. The Department questions the validity of this recommendation as a forcing function?

WR R2

Page 32, Lines 9 - 14

What constitutes the sustainable management of a groundwater basin? What management practices are "unsustainable," and over what period of time? Is the extraction of groundwater at rates greater than the rate of recharge always considered unsustainable? What if it occurred for one year during extreme drought? What if the drought lasted 2 years, or 5 years, or 10 years? What if there was no appreciable recharge of the aquifer?

Page 32, Lines 9 - 14

How will success be measured or even recognized? In many cases it will take years for groundwater levels to recover.

The policy does not include how it will address managing surface water and groundwater as the same system in areas that receive surface water from outside the groundwater basin and/or Hydrologic Region. It gets further complicated in times that surface water deliveries are reduced or not available, which results in groundwater use

to meet water demands (especially times of drought or reduced flows through the Delta). This can result in groundwater overdraft, especially if water deliveries from outside the area are curtailed for extended periods. The need for conjunctive use projects is increased in these areas, but it is unclear how it will be addressed in the Plan.

Groundwater regulation to prevent overdraft presumes agreement on what constitutes "overdraft." It also requires developing consensus on related concepts, none of which is straight-forward, such as defining the "safe yield" of an aquifer and the "surplus waters" of a groundwater basin.

Recommendation WR R2 states that "failure to integrate management of groundwater and surface water makes it difficult, if not impossible, to achieve the coequal goals." There should be an explanation provided. The coequal goals are described as "providing a more reliable water supply for California and protecting, restoring and enhancing the Delta ecosystem." It is implied that groundwater management at the state level will lead to a more reliable water supply, but the reason for this are not spelled out in the plan.

### WR R3

Page 32, Lines 15 – 20

This policy discusses no new points of Delivery of SWP water if the proposed point of delivery could increase the demand on the Delta. This could be an issue for some of the SWP contractors that have not historically taken full delivery of their supply. These contractors have been paying for the facilities for many years to take the water at such time when their demand increases. Under this policy, when the demand increases, they may not be able to take delivery. Also, SWP contractors add new turnouts to the California Aqueduct. An additional step will be added to this turnout process to evaluate the potential change in demand the turnout may create.

Page 32, Line 17

The Department recommends that net demand on the Delta be used in Line 17.

## Chapter 5 Ecosystem Restoration

### ER P1

Page 33, Lines 9 - 21.

The DSC needs to carefully consider language in policies that cite documents or maps such as in this policy where Figures 4 and 5 in the *Draft Ecosystem Restoration Program's Conservation Strategy for Stage 2* are the basis for initial determinations of consistency. Over time, these maps will likely change causing a need to change the policy.

These figures are not readily accessible for review. For the purposes of this plan:

- Define: "EMZ" and "EMU"
- Add Figure 4, "Land Elevations in the Delta EMZ will largely determine what habitat types can be accommodated," and
- Add Figure 5, "Map of EMUs within the Delta EMZ," on pages 35 and 47 of the *Draft Ecosystem Restoration Program's Conservation Strategy for Stage 2 Implementation for the Sacramento-San Joaquin Delta Ecological Management Zone (Draft ERPCS)* to the Delta Plan.

### ER P2

Page 34, Lines 3 - 17

This policy seems to require compliance with specific biological opinions, several of which are being challenged, and will likely be changed. The Department recommends that this policy regarding the Reasonable and Prudent alternative actions be deleted as it does not change what is legally required under existing court orders.

### ER P3

Page 34, Lines 18 - 28

As written, this requirement could apply to virtually the entire Delta. There needs to be a definition of terms, and be more focused on say the Yolo Bypass and Cosumnes River for example.

ER P4

Page 34, Lines 26 - 28

What is the definition of feasibility? Is it based on economic feasibility, engineering feasibility or some other feasibility?

ER P5

Page 34, Lines 29 – 32

This policy states that the SWRCB should adopt public trust flow standards for the Delta that are protective of beneficial uses and contribute to achievement of the ecosystem restoration objectives of coequal goals. Flow standards developed for the Delta should support both coequal goals. It should also be noted that beneficial uses include water supply.

As stated previously, the DSC should consider policies that rely on dates for other agencies to complete certain actions as in the last sentence of this policy. If the SWRCB fails to meet the dates above to adopt public trust flow standards then covered actions after this date will be found inconsistent with the Delta Plan. This, in turn, would limit the Council's ability to approve any work in the Delta, including levee rehabilitation projects. The time frame may become long and extremely problematic, especially if the schedule is beyond the agency's control, such as a court action. Consider revising this language to allow projects that meet the coequal goals to proceed.

ER R1

Page 35, Lines 8 - 12

This recommendation is setting a deadline for the completion of the BDCP process. This may become a limiting factor in progressing with a complete Plan. The Plan should instead require status updates to the Council on progress.

ER R3

Page 35, Lines 17 - 22

Sea level rise is only one component of climate change that will have serious impacts on both water supply and ecosystems. Encourage resiliency for all of the potential climate change impacts not just sea level rise.

ER R4 & ER R5

Page 35, Lines 27 - 37

Are these recommendations for a plan in ER R4 discussing the same plan referred to in ER R5? Please clarify. Also, in ER R4, the Draft ERPCS is referred to. The Department recommends language that does not refer to a draft document since this will likely change. Perhaps the plan should refer to the objectives of the draft ERPCS.

Page 35, Line 29

The Department suggests removing "economic sustainability and" from this sentence. In deference to the two co-equal goals of ecosystem health and water supply reliability, prioritization and integration of large-scale ecosystem restoration in the Delta should be based on sound science and ecological principles, not on considerations of economic sustainability.

Page 35, Line 34

This recommendation discusses "Payment in Lieu of Taxes" to replace lost local government revenues resulting from the removal of properties from property tax rolls for ecosystem restoration or water supply purposes. This may be contrary to State policy and this change in State policy and how it may affect any lands the State holds should be evaluated before "Payment in Lieu of Taxes" is included in the public draft(s) of the Delta Plan.

**Chapter 6 Improve Water Quality**

WQ P1

Page 37, Lines 11 - 15

This policy restricts findings of consistency for covered actions unless the proponents demonstrate full compliance with Total Maximum Daily Load (TMDLs) obligations. This language could limit some projects that the DSC deems worthwhile. For example, this language could stop the ecosystem restoration of Dutch Slough. What if the proposed project is not linked to TMDLs? Should the responsibility for meeting TMDLs be assigned to a levee rehabilitation project? Also, the SWRCB may issue orders or time schedules that a project proponent is in compliance with yet can't demonstrate full compliance. Some issues regarding TMDLs may also be under the jurisdiction of the courts resulting in long delays in meeting compliance. This language would unduly restrict the DSC's ability to forward its objectives of meeting the coequal goals.

Moreover, the Department has been identified as a party responsible for meeting the methyl mercury TMDL for the Delta and for dissolved oxygen (DO) in the San Joaquin River. This policy appears to require the Department to demonstrate that it has sufficiently met its portion of the responsibility to the DSC for any Department proposed action in the Delta that must be found by the DSC to be consistent with their plan. DSC should evaluate how this might apply to the Temporary Barriers Project or Franks Tract Project to determine the full ramification of this policy.

WQ R4

Page 38, Lines 9 - 10

The term "all water users" needs to be defined. Does this mean individuals? What size water agency would this be applicable to?

**Chapter 7 Reduce Delta Flood Risk to People, Property, and State Interests**

General Comment

Please address how the Delta Plan will be coordinated with the Central Valley Flood Protection Plan, beyond just financial considerations. Both plans are legislatively mandated to be developed and updated on the same 5 year cycle. The Delta Watershed Area and the CVFPP Planning area are nearly identical. Coordination would avoid redundancy and promote greater understanding.

RR P1

Page 40, Line 4 - 6

There may be certain projects that could reduce flood flow capacity to a minor amount that fit into an overall plan. Perhaps use language such as: may significantly reduce the net flood flow capacity through and/or around the Delta.

RR P2

Page 40, Line 14

How do you determine whether human exposure to risks (first bullet) has been "minimized"?

Page 40, Lines 20 - 25

How is an "adequate level of flood insurance" (fourth bullet) determined? Many islands with residents in the Delta have levees that do not meet FEMA flood insurance standards. Levee improvement projects improve the level of protection provided to an area, but not necessarily to FEMA levels. Could levee improvement projects proceed without documentation of flood insurance? Additionally, reliance on flood insurance may encourage and increase exposure to risk. Consider removing this requirement or exempting levee and habitat projects from this requirement.

In addition, this policy would require flood insurance for every covered action. This should not be applied to all covered actions.

RR P3

Page 40, Lines 30 - 33

This policy needs to clearly explain how Table 7-1 Levee Classification based on Land Uses will be used. What does the term consistency mean? Does this mean that houses cannot be built behind levees that have less than a FEMA 200 year design? Or, is this restricted to the definition of urbanizing? For example, on Bethel Island, living space must be above the floodplain.

This policy is also unclear on which agency is being referred to. Does this include the county, reclamation districts, and/or the Department? What if the covered action is being proposed by a fishery agency? Does this agency have to conform the Table 7-1? The term conformity also should be defined. This will have serious implications for the Delta and should be stricken until a more thorough evaluation of the need and expected outcomes of this policy is made.

RR P4

Pages 40 – 41, Lines 34 of page 40 through Line 19 of page 41

This policy revolves around investment priorities. The term "investment priorities shall recognize..." should be defined. A covered action is not necessarily an "investment priority" but could arguably fit within an investment priority. The fifth bullet states that investment priorities shall be in compliance with Table 7-1. The term "compliance" needs to be defined. There are many cost issues associated with investment priorities. It may not be a wise investment of public funds to meet the terms of Table 7-1. Also, compliance with Table 7-1 may be in direct contradiction to the last bullet requiring a benefit-cost analysis. Does this mean that every potential project receiving State funds must perform all of the analyses and considerations listed below,

including a "Delta-wide comparative benefit/cost analysis"? This will be a significant burden on project proponents if required project by project. Levee rehabilitation costs in the neighborhood of several million dollars per mile may not meet the requirements of a traditional benefit-cost analysis. Also, identify who determines if investment priorities are in compliance with the Water Code.

This recommendation also appears to require additional studies prior to initiation of levee improvement projects and possibly some levee maintenance projects. Who would be responsible for these studies? If the studies showed alternative strategies such as flood-proofing, relocation of infrastructure, flood insurance, or changes in land use were most cost-effective, would the levee project be denied as inconsistent with the Delta Plan? Would the Council have the authority to require other agencies to initiate the alternative strategies? Identify who would be responsible for comparing costs of levee projects to alternative options.

It would likely be cost-prohibitive for an individual Reclamation District considering a levee project on their island to conduct a Delta-wide comparative benefit/cost analysis for their particular project. A comparative benefit/cost analysis would require coordination and funding.

- Identify who would be responsible for conducting a Delta-wide comparative benefit/cost analysis.
- Identify the source of funding for this analysis.
- Identify the parameters of a benefit/cost analysis, especially the weight that should be given to population, how salinity intrusion should be factored into the analysis, and whether this is intended for comparisons among islands.
- Describe what would happen to the levee project if the cost/benefit analysis shows the costs outweigh the benefits.
- Consider allowing the highest-class levee project where the benefits outweigh the costs as being consistent with the Delta Plan. (For example, if a Class 4 levee does not pass a benefit/cost analysis, but a Class 3 levee does pass this analysis, allow the Class 3 levee as being consistent with the Delta Plan, even if land uses are not consistent with a Class 3 levee. It may be better to provide an increased level of protection than to not increase the protection at all.)

Many islands have tiny residential areas surrounded by mostly agricultural land, and are protected by HMP and/or PL 84-99 levees. The State, through the Department, currently contributes financially to upgrade levees to meet HMP and PL 84-99 standards on islands both with and without residential areas. This improves the protection provided to these areas, although not to the level of FEMA standards. This recommendation could substantially reduce the Department's work to improve the stability of levees in the Delta, since costs to improve levees beyond PL 84-99 reduces the levee miles that can be completed with the existing funds.

- Consider altering Table 7-1 to acknowledge that residents live in areas protected by levees that do not meet PL 84-99 standards and upgrading these levees to PL 84-99 improves the protection.
- Specify the conditions for which an area is considered residential, commercial, or industrial (e.g., minimum populations) with the understanding that more areas requiring FEMA 200-year levees means greater costs and fewer levee miles rehabilitated for a given sum of money.
- Consider adding a footnote that allows projects that upgrade levees to a PL 84-99 standard on islands with residential/commercial/industrial areas as a first step to improve the protection provided by the island.
- Class 4 through Class 8 Levee characteristics – The Factor of Safety may be too high for most of the Primary Zone of the Delta; depth of foundation (10 feet or greater) may contain organic materials.

Table 7-1, Pages 42 & 43

Under Class 2 (footnote (b)) - Dozens of islands in the primary zone of the Delta do not meet HMP standards, although they have residents and infrastructure of statewide interest. Upgrading to HMP improves protection for these islands. The Department has considered upgrading to HMP to be a priority as a step to improve the protection provided to an island. Consider allowing projects that upgrade levees to HMP on islands with statewide interests if a higher level of protection is not cost-effective according to the cost/benefit analysis (if required).

Page 42

Under Class 5 - the Department is not aware of a FEMA 200-year levee standard. DWR's Urban Levee Design Criteria sets standards for 200 year levees.

Page 43

The *Interim Levee Design Criteria for Urban and Urbanizing Areas in the Sacramento-San Joaquin Valley* was written specifically for urban areas, defined as 10,000 residents or more, or urbanizing areas, defined as an area that is planned or anticipated to have 10,000 or more residents within the next 10 years. Many of the agricultural Delta islands have small residential areas (e.g., Sherman Island, Lower Roberts Island, King Island, Terminous Tract) and upgrading to FEMA 200-year design on all of these islands could significantly exceed the financial estimates in the Delta Plan. This could substantially reduce the Departments work to improve the stability of levees in the Delta. Consider removing footnote (h) or specifying the minimum population for which it applies with the understanding that more areas requiring Class 5 levees means greater costs and fewer levee miles upgraded for a given sum of money.

Page 43

Under footnote (c), what is considered to be a populated area according to this definition? More than eighty islands in the Delta have at least one resident, including more than fifty Delta islands with non-project levees. Additionally, many islands (regardless of residency status) have a transient or temporary daytime population (e.g., workers for agricultural operations, commuters, recreationists) who could be at risk if the island's levee failed. Please:

- Address why this footnote appears to conflict with footnote "h," which requires islands with residential areas to upgrade to Class 5, not Class 7 or 8.
- Consider removing this footnote or specifying the minimum population for which it applies with the understanding that more areas requiring Class 7 or 8 levees means greater costs and fewer levee miles upgraded for a given sum of money.
- Consider adding a footnote that allows projects that upgrade levees to PL 84-99 on islands with residents as a first step to improve the protection provided by the island.

Page 42

Class 6, 7 & 8 - Under the last line of levee characteristics, the author is likely referring to the Central Valley Flood Protection Plan. Also, the criteria for providing the urban level of flood protection is being developed at the same time as the Central Valley Flood Protection Plan.

#### RR P6

Page 41, Lines 23 – 38

This policy is unclear on how it would be implemented. The North Delta project proposed by the Department and US Army Corps of Engineers (Corps) may diminish some potential value of portions of the Cosumnes River/Mokelumne River confluence, while enhancing flood management and the ecosystem in this area of the Delta. The Department recommends less restrictive language such as: "In general, covered actions in the following geographical areas shall not diminish..." rather than "No covered action in the following geographical areas shall diminish..."

Page 41, Lines 25 – 33

Please provide a map of the areas described in RR P6.

Also, under this recommendation, please note that the property values of any of the areas called out in these three bullets that are not currently covered by existing Delta Primary Zone development restrictions under the Delta Protection Act of 1992 (i.e.

Stewart Tract) could automatically drop (requiring payment of just compensation) as the Delta Plan "reserves" these areas as future flood plains.

RR R1

Page 43, Lines 4 – 6

This recommendation appears to require flood insurance for everything in the Delta, including all SWP and flood activities. The Department is not aware of any flood insurance except for residential.

RR R4

Page 43, Lines 16 - 21

The buffer zones are beneficial to flood management projects but a 100 foot zone may not be adequate. Moreover, requiring a 100 foot buffer on the land side of all levees, while theoretically a good idea, would likely lead to significant litigation, including inverse condemnation claims. The State and local agencies cannot afford to do setbacks for all Delta levees. This recommendation needs more consideration.

RR R6

Page 44, Lines 14 - 17

The DSC needs to consider the geographic limits of any flood control assessment district in the Delta. Will this be constrained to the Delta, or the DSC geographic scope?

RR R7

Page 44, Lines 18 - 19

This recommendation would be very restrictive in that even doing nothing with the land can contribute to subsidence via oxidation. The only land management activity that the Department is aware of that doesn't contribute to subsidence is keeping the land wet. This recommendation would involve leases on State-owned land and could have significant implications to the farming operations on Twitchell and Sherman Island. It may also interfere with the gas industry in the Delta, which may be a factor in subsidence.

**Chapter 8 Protect and Enhance the Unique Cultural, Recreation, Natural Resources, and Agricultural Values of the California Delta as an Evolving Place.**

DP P1

Page 45, Lines 13 – 16

This policy begins with the language “No covered action for municipal, industrial, and/or agricultural development activities will be consistent with the Delta Plan until the Economic Sustainability Plan prepared by the Delta Protection Commission is completed...” Do development activities include improvements to flood management infrastructure? If so, this could delay vital public safety improvements.

Page 45 and 46, Line 13 on page 45 and Lines 1 – 7 on page 46

To the extent that the Economic Sustainability Plan recommends the retention of land in agricultural uses in the Delta, and some of that land may be needed to meet the restoration or mitigation requirements for current and future habitat recommendations from State and federal agencies and as may be required for BDCP or flood protection, how will the Council address and reconcile those competing requirements?

Page 46, Lines 5 - 7

In what form does the Council intend to include the Economic Sustainability Plan? Will it be incorporated into this chapter or will this chapter refer to the Economic Sustainability Plan? One concern is as the Sustainability Plan changes how will the Delta Plan change to reflect those changes OR will the Delta Plan only incorporate this initial version?

The Department suggests projects not be delayed based on the completion or acceptance of the Economic Sustainability Plan.

DP P2

Page 46, Lines 8 – 12

Again, this policy starts out that “No covered action related to legacy towns will be consistent with the Delta Plan until the Delta Protection Commission has developed a strategy...” What date is this strategy anticipated to be completed? As above, the Department recommends less restrictive language.

DP R1

Page 46, Lines 15 – 17

This is a recommendation for a Delta Investment Fund. A discussion on how this fund would be set up and the source of funding needs to be discussed.

DP R2

Page 46, Lines 18 – 22

Does the Council intend (1) that the in lieu payments replace both the land component and living improvements component of the current property tax structure, and, (2) that the in lieu payments replace only the generally applicable rate currently restricted on most of the Delta agricultural properties by reason of the Williamson-Act contracts on them? And, what would be the source of these funds?

**Chapter 9 Finance Plan to Support Coequal Goals**

General Comment

Page 47

Consider the addition/integration of federal laws and regulations and how this affects the availability of federal funds. Decisions made under/through this plan should not preclude the availability of federal funding through programs such as FEMA or PL84-99.

Guiding Principles

Page 48, Lines 22 – 35

A discussion of who determines which beneficiaries and which stressors pays should be provided. The largest beneficiaries of levee work may be those directly protected by those levees. Yet, those directly protected by levees, such as Reclamation Districts, do not necessarily have the funding to construct surrounding levees. Consider adjusting this section to reflect that ability to pay will be a factor or that there may be many beneficiaries.

Near Term Needs (2025)

Page 49, Line 12

Line 12 refers to costs exceeding \$20 million. Does this refer to just studies? Delta improvement costs are likely to be in the billions.

Water Conveyance Funding

Page 49, Lines 19 - 23 (Includes footnote 20)

If the preamble to Chapter 8 commits BDCP's implementing entity to the new conveyance and associated mitigation only, it de facto will not meet the definition of a Natural Community Conservation Plan (NCCP), and DSC cannot approve adoption of the BDCP as being consistent with the Delta plan. NCCPs have a much higher standard of enhancement beyond what is required for mitigation.

Table 9-1 Page 50

Please provide a source for this table. The figures for habitat restoration from Prop 84 and 1E seem high. The Department believes that no more than \$75 million from Prop 84 in total potential exists given existing plans and appropriations and much of the \$75 million Prop 84 has been allocated. The Prop 1E section should read 5096.825, all of which has been allocated for FloodSAFE efforts, however. The Department recommends removing such specific (and high) figures from this table. Or at least add the caveats to the footnotes.

Delta Flood Control Costs and Existing Funding Sources

Page 52, Line 11

The Delta Plan (Line 11) refers to the Delta Vision Strategic Plan's estimate of the costs to upgrade the Delta levees as approaching \$4 billion. As shown in Table 9-3, this estimate is based on upgrading levees to a PL 84-99 standard, which the Draft Delta Plan deems to be insufficient for residential, commercial, and industrial land uses. Many of the islands have residential uses, and the financial plan should estimate costs for an upgrade to Class 5, 7, or 8 levees surrounding these islands, if this is to be required. The costs should be adjusted to reflect the levee standards of the final Delta Plan, since upgrading to a seismic levee could be significantly more expensive than upgrading to PL 84-99.

Page 52, Lines 12 - 13

The Department is not aware of flood management under the jurisdiction of the Bureau of Reclamation.

Page 52, Line 18

The reference to the Delta Levees System Integrity Program is incorrect. The Department manages the Delta Levees Program that includes both Subventions and Special Projects.

Page 52, Lines 20 – 21

Revise the third paragraph in this section to read "For nonfederal capital costs, the Flood Control Subventions Program can contribute up to 75 percent (50 percent starting in 2013) of the eligible costs."

Table 9-3, Page 53

Table 9-3 only discusses costs for Class 2 and Class 3 levees. What about the other classes (seismic super levees?) The costs for these would be astronomical. Please discuss costs for all of the levee classifications (as defined in Table 7-1) in Table 9-3.

#### User Charges for Water

Page 54, Lines 28 – 36

This section discusses water agencies selling water. This is not correct. Water agencies provide water to their customers who, in turn, are charged for the treatment, conveyance, operation, and maintenance costs of getting the water to the customer. The actual water cost is zero. Water agencies bill their customers to cover these costs based on how much water they use. The only time water has a cost is when it is being purchased for a water transfer. On Line 29 change "quality" to "treatment."

#### Reallocating Funds

Page 55, Lines 5 – 6

The text discusses generating funds by reallocating dollars among agencies. Reallocating funds does not generate any funds.

### Cost Efficiencies

Page 55, Lines 8 – 10

Should this chapter refer to increased cost efficiencies? A discussion of who benefits from the cost savings and who pays (the beneficiary?) should be provided. Please clarify how water supply and quality improvements, improved ecosystem health and levee improvements are a cost savings that represent a potential source of funding for the Delta Plan.

### Carbon Offsets

Page 55, Lines 12 – 15

Carbon markets have been volatile and prices have fallen recently. Analysis of carbon markets must be compared against the loss of net revenue from no longer farming the land.

### Diversion Fees

Page 57, Lines 6 – 7

Units should be provided for the fee levels in Lines 6 and 7 (\$/Acre-foot?)

Page 57, Lines 9 - 14

The last paragraph discusses fee revenue reductions from agricultural diverters. The Department believes that such a modest fee imposed on agricultural diverters would have very little negative impact on agricultural water demand by the large majority of those diverters in California. If some agricultural water diverters are now charging their farmers water rates so low that a \$1.25/AF "beneficiary pays" diversion fee would result in a significant increase in their farmers' unit water costs, then such a fee might result in increased water use efficiency, and reduced agricultural water waste, thus resulting in reduced water use within the service areas of those agencies. That may not be a negative outcome.

### Other Stressor Fees

Page 58, Line 8 - 34

The non-physical fish barriers are believed to provide a positive impact to native fishes. Items 3, 6, 7 and 8 also appear to be ways to reduce stressors. Fees attached to mitigation or enhancement measures will result in an economic disincentive.

Water Marketing Fees

Page 59, Lines 23 - 31

The water transfers in the Delta watershed with which the Department is associated involve a much smaller amount of water than the 400,000 acre-feet mentioned in the draft plan. The Department's water bank in 2008 involved only 78,000 acre-feet, and that was a drought year when demand for transferred water was high. In average or wet years, the volume of transfers would be much lower. A transfer fee of \$10 per acre-foot would produce much less revenue than the \$4 million mentioned in the draft.

FP R2

Page 60, Lines 16 - 18

This recommendation discusses development of a fee for services provided by the Council. The Council services should be described.

FP R9

Page 61, Lines 3 - 8

This recommendation discusses creating regional assessment districts. This adds to the overhead of some of the smaller reclamation districts that currently work on very tight budgets based on their own assessments. The plan needs to determine the benefits and costs associated with adding an additional level of assessments on these reclamation districts.

FP R10

Page 61, Line 9

The Department believes that fines and forfeitures (e.g., those collected by State and Regional RWQCBs) are part of existing State Agencies' regulatory responsibilities, thus DSC would have no authority to collect these revenues and give them to the Delta Conservancy.

