Fax
(925) 625-0169

IRONHOUSE SANITARY DISTRICT
450 Walnut Meadows Drive . P.O. Box 1105 . Oakley, CA 94561

Telephone
(925) 625-2279

January 10, 2013

VIA: U.S. Mail and
e-mail recirculateddpeircomments@deltacouncil.ca.gov subject line: Recirculated Draft EIR

Ms. Cindy Messer, Delta Plan Program Manager
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Re: Comments on (1) Final Draft of the Delta Plan,[1] (Delta Plan) and (2) Recirculated Draft Programmatic EIR (Vol. 3) (Draft EIR).

Dear Ms. Messer:

Ironhouse Sanitary District (ISD) is pleased to submit the following comments on the two subject documents. Please do not hesitate to call me if you have any questions.

Background

ISD has a fundamental interest in the Delta Plan based on its ownership of the surface of Jersey Island[2] and ISD's use of Jersey Island as an integral part of its wastewater treatment and water recycling operation. Specifically, ISD pumps the recycled water produced at the District's wastewater

[1] Eric Alvarez, Public Information Office, DSC, has advised ISD's legal counsel: "The DSC is not officially soliciting comments on the Final Draft of the Delta Plan – so there is no actual deadline date. However, should you wish to offer some thoughts, you are welcome to address them to: Cindy Messer, Delta Plan Program Manager. E-mail from E. Alvarez to Fred Etzel, December 13, 2012.

[2] Jersey Island is one of eight western Delta islands considered by the California Department of Water Resources to be critical to California's drinking water supply and quality. Source: Actions and Priorities: Delta Protection Act, March 1990, Department of Water Resources, page 2.

treatment works located on its Mainland property located in Oakley, California to Jersey Island via a pipeline which crosses Marsh Creek and then runs along the east side of the Marsh Creek levee to a point where Dutch Slough intersects with Big Break. The pipeline then crosses beneath Dutch Slough to Jersey Island. Once on Jersey Island, ISD discharges up to 4.3 mgd of recycled water into the San Joaquin River off the north-shore of Jersey Island, as well as distributes recycled water to the fields on Jersey Island which are available for application of recycled water.

Jersey Island's existence in the Delta depends on the levee which surrounds Jersey Island. The maintenance and operation of the Jersey Island levee, along with its supporting reclamation works (collectively the "Reclamation Works"), is the responsibility of Reclamation District No. 830 (RD 830), established in 1911. RD 830 owns a 125 foot wide levee right of way around the 15.5 mile perimeter of Jersey Island. RD 830 is financially dependent of revenue from an Operation and Maintenance Assessment District established in 1998 which assesses all Jersey Island property owners based on the degree to which each benefits from the Reclamation Works. Under separate cover, RD 830 is submitting a letter commenting on the Delta Plan and the Recirculated Draft EIR.

The Notice of Availability for the Recirculated Draft EIR states: "The Council does not propose construction, operation, or maintenance of any facilities as part of the Delta Plan. Rather, the Council seeks to influence and encourage other agencies to take certain actions." The Delta Plan itself notes in its Introduction at page 22, "The Delta Plan lays out 14 regulatory policies and 71 recommendations."

ISD's two comments on the two subject documents are similarly policy-oriented. The first comment addresses the policy of sovereign immunity as it affects the financing of the operation and maintenance of Delta levees, and the second concerns policies related to the impacts of climate change and sea level rise and their impacts in Delta levees.

Comment One

At page 286, the Delta Plan States:

Problem Statement

No mechanism exists for ensuring that costs of levee maintenance are borne by all beneficiaries. Current financing of levee operations and maintenance is not well coordinated, and future funding sources are uncertain. Financing of local levee operations, maintenance, emergency preparedness and response, and related data collection and reporting efforts would benefit from greater coordination and integration. [Emphasis added.]

Policies No policies with regulatory effect are included in this section.

Recommendations **RR R2 Finance Local Flood Management Activities** The Legislature should create a Delta Flood Risk Management Assessment District with fee assessment authority (including over State infrastructure) to provide adequate flood control protection and emergency response for the regional benefit of all beneficiaries, including landowners, infrastructure owners, and other entities that benefit from the maintenance and improvement of Delta levees, such as water users who rely on the levees to protect water quality.

Part of the solution to the above stated problem is that the Delta Plan should contain and the Draft EIR should analyze the impacts of a regulatory policy with the force of law directing the Delta Stewardship Council to advocate for and seek federal legislation under which reclamation districts in the Delta are permitted to assess federal infrastructure projects for the collection of funds for their maintenance.

On Jersey Island, the Western Area Power Administration (WAPA) operates transmission towers and lines which traverse it and other Delta islands. On Jersey Island, WAPA occupies easements which are 200 feet in width and are calculated to contain 86.81 acres. These transmission towers and line easements are protected by the Jersey Island Reclamation Works operated and maintained by RD 830. The RD 830 Board of Trustees has determined that the continuous maintenance and operation of the Reclamation Works does provide a benefit to the maintenance and operation of the WAPA high tower transmission lines within the District. This benefit accrues from the maintenance of the levees which in turn allow access over the land surface of the island for the continuous maintenance and operation of the high tower transmission lines.

RD 830's annual assessment for WAPA is $49,853, or 14% of the total annual maintenance and operation costs of $860,430. WAPA has refused to pay this assessment, claiming that as an agency of the federal government, it "is tax exempt and not assessable for the purpose of providing funds for the construction, maintenance, repair or operation of Reclamation District No.

830 works."[3] This exemption is based on the doctrine of sovereign immunity as embodied in case law, such as *United States v. County of Allegheny* (1944) 322 U. S. 174.

Refusal by WAPA to pay its fair share of the RD 830 O & M assessment, while likely legally correct, places an unreasonable burden on the other property owners who are subject to the assessment, including ISD ratepayers. This is because ISD is far and way the majority landowner on Jersey Island. Therefore, its ratepayers shoulder in majority part the financial burden shirked by WAPA. Congressional legislation is necessary to overrule relevant case law so that federal projects are no longer able to claim sovereign immunity from assessments imposed by local reclamation districts, such as RD 830, in order to fund the cost of maintaining the reclamation works for which they are responsible.

For these reasons, the Delta Plan should contain and the Draft should analyze the impacts of a regulatory policy with the force of law directing the Delta Stewardship Council to advocate for and seek congressional legislation under which reclamation districts in the Delta are permitted to assess federal infrastructure projects which directly benefit from the operation and maintenance of their reclamation works.

Comment Two

The Delta Plan at page 25 contains Table 1-1 Summary of Anticipated Changes Affecting the Delta by 2050 and 2100. This Table states that by 2050 sea level rise in the Delta is predicted to be 14 inches and by 2100 it is predicted to be 40 to 55 inches.

The Draft EIR at page 21-11 states:

21.4.3.2.3 Impact 21-3b: Conflict with Operations of Proposed Facilities Due to Climate Change and Sea Level Rise

Effects of Project Operation

Because of the long-term nature of climate change and sea level rise, **impacts related to climate change and sea level rise are considered in this EIR only as they affect project operations.**

[3] H. R. Miller, Realty Specialist, Department of Energy, Western Area Power Administration, letter of August 11, 2011 to RD 830.

Climate change conditions are projected to increase sea level water elevations in San Francisco Bay and western Delta (BCDC 2011). [Emphasis added.]

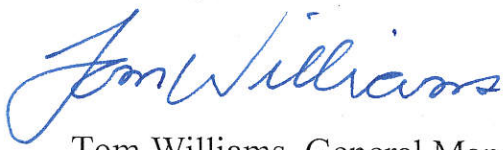
Conclusion

It is not known at this time how implementation of the Revised Project would result in construction and operations of Delta ecosystem restoration projects, including the location, number, capacity, operational criteria, and methods and duration of activities. **Project-level impacts would be addressed in future site specific environmental analysis conducted at the time such projects are proposed by lead agencies. However, because the Delta ecosystem restoration projects encouraged by the Revised Project could be affected by increased surface water elevations due to sea level rise which could be detrimental to aquatic resources that inhabit shallow water areas, the potential impacts on Delta restoration projects due to climate change and sea level rise are considered significant.** [Emphasis added.]

Long term climate change and sea level rise pose a significant risk of levee failure for the western Delta Islands, including Jersey Island. Unfortunately, the Draft EIR defers analysis of this risk to when future, site specific projects are proposed by lead agencies. While this is an expedient approach for the immediate purpose of the Draft EIR, it is nonetheless shortsighted and totally ignores the realities of climate change and sea level rise and their inevitably devastating impact on all Delta island levees. The Draft EIR should at least establish an analytical framework for analysis of these impacts as they will certainly become manifest.

This concludes ISD's comments on the two subject documents. Thank you for your attention to this letter.

Sincerely,



Tom Williams, General Manager

Cc: ISD Board of Directors