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SENT VIA EMAIL (deltaplancomment@deltacouncil.ca.gov)

Ms. Terry Macaulay
Deputy Executive Officer, Strategic Planning
Delta Stewardship Council
650 Capitol Mall
Sacramento, CA 95814

Re: LAND Comments on Sixth Staff Draft Delta Plan

Dear Ms. Macaulay:

These comments are submitted on behalf of Local Agencies of the North Delta (“LAND”), which is a coalition comprised of reclamation and water districts (“districts”) in the northern geographic area of the Delta.¹ LAND has provided written and oral comments on previous drafts of the Plan, and is appreciative of the modifications made by the Council staff to these iterative drafts. LAND supports the intent to reduce reliance on water supplies from the Delta by those with alternative water supplies, as well as policies and recommendations that promote levee emergency repairs, which is historically a burden placed on local districts, despite the benefits to multiple state assets.

These districts do have remaining concerns about how the Delta Stewardship Plan (“Plan”) may eventually impact the reliability and quality of water supplies *within* the Delta, the provision of water according to established water rights, and/or, drainage and flood control services to landowners within their respective districts, and wish to consult directly with the Delta Stewardship Council (“Council”) on these and related issues. (Wat. Code, § 85300, subd. (b).) These comments are offered in an attempt to promote development of a Plan that meets statutorily mandated legacy community, sustainable

¹ Current LAND participants include: Reclamation Districts 3, 150, 307, 317, 407, 551, 554, 744, 755, 813, 999, 1002, 2067 and the Brannon-Andrus Levee Maintenance District. Some of these agencies provide both water delivery and drainage services, while others only provide drainage services. These districts also assist in the maintenance of the levees that provide flood protection to homes and farms.

agricultural, economic, environmental and other values as the Council pursues its broader co-equal goals.

While the Council has incorporated a number of comments recommended by LAND into the Plan, several comments have not been responded to in any manner. Numerous changes to the Plan have occurred from the previous to the current draft, yet there are no explanations for any of which are fairly substantive changes. These are not parochial concerns, the transparent disposition of comments is critical to maintaining the effectiveness of the process moving forward. It is expected that the Council staff may have differences of opinion, but without response documentation, no additional facts can be provided to substantiate or refute matters. In general, the Plan has several elements that would be of significant statewide benefit in terms of theoretically improving regional self-sufficiency, but lack the degree of specificity and detail to ultimately reach that goal, and even those that were provided in the previous draft have been dropped. Why? To the extent that the co-equal goals can be met, regional self-sufficiency must be a priority for ensuring that the risks of worst-case scenarios are minimized, and to reduce the disproportionate impacts on the sustainable Delta agriculture and the Legacy Communities.

The Plan does have some general elements that Reclamation Districts (“RD” or “RDs”) support in concept, including RR R2 (Dredging) and DP P2 (Local Land Use). The comments below seek to illuminate Plan deficiencies and significant omissions.

Chapter 1: Introduction

General Comments

The Introduction omits critical information in its assessment of the Delta water supply, including the quantity of upstream diversions (estimated at 11.4 MAF).² However, it is not clear what portion of this is actually consumptive use. The Introduction also fails to offer a balanced assessment of the conveyance plans proposed under the BDCP. Instead, implementation of the BDCP is referenced as “key” to Delta ecosystem restoration, and thereby commences the Plan’s general and uncritical acceptance of the BDCP. (Ch. 1, p. 21). This is prejudicial on face value from an organization with appeal authority over the BDCP. The BDCP is an evolving concept, whose own analyses, as well as the National Academy of Sciences, and the DSC’s Independent Science Board have identified significant scientific and policy defects.

² Sustainable Water and Environmental Management in the California Bay-Delta. National Academies of Science 14 (2012).

Chapter 2: The Delta Plan

General Comments

The Sixth Draft of the Plan continues to pursue a one-sided agenda of promoting habitat through the preclusion of other existing lawful land uses behind levees of current standards, while ignoring the negative consequences of out of basin conveyance. This is a critical concern, why is transfer of water out of the basin accepted without question despite its prima facie unmitigated impacts? The requirement of reduced reliance on the Delta for export has been made a paper analysis without standards or substance. The “paper” water use efficiency required in the Plan means nothing if there are no limitations on exports to maintain a sustainable level; and even this has been dispensed with in the current draft. It is not a co-equal goal if exports trump all other legal mandates. The Plan also continues to overtly reduce flexibility for existing management and capacity for *local* agricultural sustainability and water reliability. The following are some of the unresolved items from the Sixth or earlier drafts:

- Unsubstantiated overstatements of worst-case seismic risk as a justification for new Delta conveyance, and permanent restrictions on Delta development and agriculture;
- Confusing approach to determination of covered actions and inadequate exemptions from consistency review for local projects;
- Preference for setback levees, without peer-reviewed scientific or technical justification, precluding other engineering and more cost-effective solutions;
- Creation of an unnecessary and duplicative new RD oversight entity to assess fees and take over levee maintenance and repair funding with no local accountability;
- Inadequate incentives for sustainable agricultural practices that improve water quality and have species benefits;
- Unrealized opportunities to promote the sustainability of Delta Legacy towns and agriculture that are needed for the area to continue to be economically sustainable;
- Failure to require adequate management and monitoring endowments for long-term habitat projects;
- Failure to eliminate the potential for use of eminent domain to acquire property for habitat projects with major local burdens;
- Lack of acknowledgement of impacts on local communities and RDs from the Plan; and

- Failure to promote water supply reliability through other means than new conveyance, and to provide general guidance regarding the types of conveyance options that would meet the co-equal goals.

The Sixth Draft of the Plan continues to overstate the risk of catastrophic failures in the Delta. The continuing theme of exporting Sacramento water at any cost is not consistent with any definition of “balanced,” and fails to reduce reliance on the Delta. The continued and disingenuous conflation of higher levee risk areas with lower risk areas, and high density secondary zone development with small-scale primary zone development, may be useful for politics but not for resolving problems and developing a plan that is responsive to the actual conditions in a complex Delta.

Moreover, continued Legacy Communities and farming anywhere in the Delta is not at risk even in the event of a catastrophic failure, *if the levees are ultimately repaired*. The risk to conveyance from the same fantastical worst-case earthquake is not impaired by Delta agriculture; the local RDs are in fact the primary means of levee monitoring, repair, and cost sharing for their maintenance.

The Plan should be more focused on risk reduction through accelerated levee maintenance and upgrades, as well as rapid emergency response. The purported ecosystem benefits from expanding habitat will require more levee protection and redesign, not less. More reliable water supply both for isolated and dual conveyance will also require additional levees and improved levee design in the Delta.

The Plan and policies also continue to blindly promote completion of the BDCP as a panacea for the problems of the Delta. The problems of the Delta include massive out of basin water transfers to licensees, return flows from those same unsustainable operations laden with salts and toxins, upstream water storage and diversion in every watershed, urban storm water runoff, as well as deliberate and accidental species introductions which have completely changed the ecosystem dynamics. These issues are not adequately addressed in the Plan.

Again, we still believe that the Council should assess options other than new conveyance (such as screening the existing pumping facilities) and also make general recommendations on the types of conveyance options that could meet the coequal goals. The BDCP does not have statutory responsibility for meeting the coequal goals; only the Council can provide guidance on how conveyance could be improved in the context of achieving the coequal goals “in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.” (Wat. Code, § 85054). Yet strikingly, the mechanism by which to test this balance is

entirely absent as also the metrics by which it could be independently assessed and its scientific credibility ascertained, equally obvious by their absence.

As written, Plan policies and recommendations address parts of the BDCP (e.g., Chapter 4 addresses habitat creation), but do not provide any guidance on the most potentially deleterious aspects of the BDCP (e.g., new isolated conveyance). If the Council is correct that providing any policies regarding conveyance could interfere with the appellate role of the Council with respect to BDCP, then the Council should also forgo having any policies affecting habitat restoration, as that is also a major BDCP component.

Additionally, we remain concerned that the Plan still restricts the ability of local agencies to continue to provide essential services and for Delta communities to prosper. In particular, too many typical, local projects could be considered covered actions, thereby interfering with the sustainability of Delta communities and the functionality of local governments.

Specific Comments

Draft 6, p. 50: Consistency Certification for Existing Plans Will be Onerous.

It still appears that local agencies may be required certify all existing plans for consistency. LAND believes that the Council should focus its efforts on consistency of covered actions going forward. Local governments do not have the staff or resources to deal with such a consistency process for the myriad of local ordinances. If covered actions are undertaken that are not consistent with the co-equal goals, those projects would require a consistency certification in any case.

Draft 6, pp. 51-56: Appropriate Projects Should not be Considered Covered Actions.

LAND continues to support the Council's consideration of excluding projects that local lead agencies have determined to be exempt from CEQA from the definition of a covered action. (See Pub. Resources Code, §§ 21080, subd. (b), 21080.01-21080.08, 21080.7-21080.33, 21084, subd. (a), CEQA Guidelines, § 15061, 15260-15285, 15300-15332.) LAND also appreciates the inclusion of Administrative Exemptions. The Council should clarify, however, how projects may lose their exempt status due to "unusual circumstances." (Plan, p. 53.) It is unclear why some projects are listed as susceptible to unusual circumstances, whereas others have been omitted. The list on pages 53-54 appears to include both projects that could have unusual circumstances and others that would not. Additionally, the term "unusual circumstances" is a term of art

under the California Environmental Quality Act (“CEQA”); it is not clear whether the Council intends this legal definition or some other definition. (See e.g., CEQA Guidelines, § 15300.2, subd. (c).)

For the benefit of local planners and landowners, the Plan would also be improved by including a specific list of common projects which are deemed exempt. Examples of such projects include:

- Co-location of existing water intakes;
- Screening of existing water intakes;
- Major repairs to levees (beyond routine maintenance);
- Road and other existing infrastructure maintenance; and
- Construction of farm related buildings and agricultural product processing facilities.

Draft 6, p. 56: Continued Funding of Ecosystem Restoration Must be Ensured.

Under G P1, ecosystem and water management covered actions require “[d]ocumentation of access to adequate resources...” These actions must be held to the appropriate PAR and associated endowment funding mechanisms used to protect adjacent landowners from under- or un-funded restoration projects and their related weed management problems.

Chapter 3: A More Reliable Water Supply for California

General Comments

The Sixth Draft Plan continues to emphasize improving regional self-sufficiency, which is the keystone of a sustainable water future for the state.

It is still unclear whether these policies in this chapter are appropriately applied to existing diversions in the Delta for in-Delta use. Because these uses are within the region where the water is located and are therefore regionally self-reliant, it is not clear that the same policies should apply to these diversions as are applied to other areas receiving water exported from the Delta that are not locally or regionally self-reliant. While all water users must use water reasonably, those using water within their own watershed, where it is available for further re-use, should not be subject to the same requirements as those relying on exported water. This is especially important when considering new requirements for small entities in rural areas. For example, what provision could Delta RDs have for the provision of new water supply due to catastrophic events? There are

limited groundwater supplies and the available in-stream water is proposed to be reduced by 40+ percent in the dry season by BDCP conveyance alone.

Specific Comments

Draft 6, p. 90: Conveyance Policies and Recommendations are Needed.

As discussed above, the Council should provide at least general direction to the BDCP and any future process on conveyance. The Plan should provide some policy direction for the development of improved conveyance that: (1) recognizes that conveyance may come in many forms (i.e., may not include an actual tunnel or canal); and (2) should not substitute one co-equal goal (restoring the Delta) for another (reliable water supply). On this second point, specific policies could include:

- Conveyance should not simply relocate environmental, species and water quality problems to new places but instead should provide improvements in conditions throughout the Delta;
- Any change in diversion point for new conveyance must not injure any legal user of water;
- Conveyance should not interfere with the ability to restore Delta ecosystems; and
- A broad spectrum of conveyance options should be evaluated prior to selecting any option. Examples include continuing through Delta (and screening the current intakes) as well as a west Delta island based intake. (Note that the Council does not need to prefer any of these options but should provide leadership on the issue of at least considering these options as possible projects.)

These recommendations accord with the Synthesis of Recommendations from the Delta Independent Science Board (“DISB”) on the Fifth Staff Draft Delta Plan, which suggested that the Council “may want to consider taking a more assertive approach” regarding parallel Delta planning efforts, including the BDCP (available at: http://deltacouncil.ca.gov/sites/default/files/documents/files/Final_Synthesis_Recommendations_DISB_5thStaffDraftDeltaPlan.pdf.) The DISB noted that the Fifth Draft did not embrace the Council’s statutory role as integrator of Delta planning. The Delta Plan should be an overarching document that guides and integrates the plans of various agencies at the local, state, and federal levels. The Sixth Draft retains this weakness, and should include stronger substantive guidance for the BDCP.

Draft 6, p. 100, WR P1: Clarification for in-Delta Water Users is Still Needed.

Policy WR P1 labels a proposed action inconsistent with the Plan if a water supplier has “failed to reduce their reliance on the Delta and adequately contribute to improved regional self-reliance.” This provision applies indiscriminately to in-Delta users as well as users of exported water. Though this policy only applies to “water suppliers” the Plan should recognize that in-Delta users are already regionally self-reliant, and may be unable to reduce their use of Delta water as a proportion of total consumption due to limited groundwater availability. While the provision allows in-Delta users to satisfy this requirement by showing a reduced total consumption of water, the Council should clarify how use-reduction efforts will be evaluated.

Draft 6, p. 101, WR R4: Water Use within the Delta Should be Addressed Separately from Use of Exported Delta Water.

Recommendation WR R4 places in-Delta water suppliers at a comparative disadvantage with suppliers of exported Delta water when demonstrating reductions in water use. Whereas non-Delta water suppliers may demonstrate compliance by either reducing net water use or their percentage of water used from the Delta, in-Delta suppliers would be effectively compelled to reduce net usage because other sources of water are scarce or unavailable. It is also problematic to require in-Delta suppliers to plan for 36-month interruptions of Delta water supplies. The Plan should exempt in-Delta suppliers from these provisions or present feasible alternatives.

Suppliers of exported Delta water may comply with this provision without actually decreasing their reliance on Delta water. A supplier’s total use of Delta water may increase, but this is permitted under WR R4, so long as Delta water decreases as a proportion of net use. Allowing users of exported Delta water to draw greater amounts of water so long as they better diversify their water sources is contrary to the coequal goal of restoring the Delta ecosystem.

The Plan also fails to acknowledge that in-Delta agricultural water use fundamentally differs from use of exported Delta water because most water used within Delta islands is returned to the Delta waterways. The only water that is consumptively used is water taken up by crops and lost to evaporation. For the foregoing reasons, the Plan should not group in-Delta agricultural water use with similar uses located outside of the Delta.

Draft 6, p. 102, WR R8: The Council should coordinate state agency actions.

The Sixth Draft has removed the Council from playing a coordinating role in the redesign and retrofitting of state agency facilities. The Council should remain involved in coordinating disparate agency actions to ensure progress is made towards achieving reduced reliance on Delta water exports.

Chapter 4: Protect, Restore, and Enhance the Delta Ecosystem

General Comments

LAND continues to be concerned that ecosystem restoration be conducted in a manner that does not interfere with existing agriculture and communities in the Delta. The comments by the Council's own scientist regarding the potential failure of restoration projects to meet their goals and objectives make it clear that these projects should be completed on public lands first, demonstrate that they have beneficial effects, and then phased in strategically to have the greatest possible effect with the smallest impact on existing uses. The self-evident and chronic failures of the existing state habitat projects to manage for listed species, manage against invasive weeds, and provide evidence of their benefits is of grave concern. In particular, there appear to be significant funding gaps for public projects as compared with typical private habitat projects, which are required to have adequate endowments. The participation of willing landowners in habitat projects is critical to the success of this proposal on any scale. Of similar importance is that any burdens from creation of habitat should be borne by the habitat projects, not neighboring landowners. (See, e.g., Land Use Policy P-3 of the LURMP, available at: <http://www.delta.ca.gov/res/docs/MP-Land%20Use.pdf>.) A similar policy should also be adopted by the Council.

Specific Comments

Draft 6, p. 148, ER P3: Delta Legacy Communities are Now Treated the Same as Incorporated Cities.

LAND appreciates the change in the ER P3 to exclude legacy communities from application of ER P3. (See also Chapter 5.)

Draft 6, p. 148, ER P4: Infeasibility of Setback Levees in Many Areas Must be Recognized.

LAND appreciates the Council's recognition that setback levees are not feasible in many locations. However, the Plan delegates the creation of criteria for determining setback levee placement to the Department of Water Resources. The Plan should provide greater guidance to DWR to ensure that the final criteria reflect the range of Delta conditions. Setback levees may have advantages in the upper watershed, but the conditions of the Delta such as tidal range may obviate any ecological benefits from these costly engineering features. Additionally, the Council should address the fact that land taken for setback levee construction could reduce tax assessments and reduce RD revenues.

Draft 6, pp. 151-52: Policies Regarding Use of Eminent Domain are Still Needed.

The Council still needs to be clear that eminent domain should not be used to obtain habitat and include strong policies to coordinate with local agencies and landowners in planning and implementing habitat projects. As explained in previous comments, there is no existing statutory protection against use of eminent domain for acquisition of land for habitat creation/restoration.

Although DP R4, p. 193, provides that "Agencies...should purchase from willing sellers, when feasible," the acquisition of land through eminent domain should be explicitly precluded for habitat projects. Local Habitat Conservation Plans ("HCPs") do not allow condemnation of land for the simple reason that these lands are already managed effectively by local residents and their support is needed to maintain the conservation benefits. Consistent with this practice, FWS has recently committed to no use of eminent domain in the Everglades Headwaters restoration project. (See <http://www.npr.org/2011/09/12/140403285/agency-takes-new-approach-to-save-everglades-land>.)

Draft 5, p. 124, ER R7: Stressor Impact Workshops should be Returned to the Plan.

The Sixth Draft does not include a Fifth Draft recommendation that the Delta Science Program, along with other agencies and stakeholders, conduct workshops to develop recommendations to reduce stressor impacts. The likely value of the BDCP will likely come from the benefits associated with these stressors and future stressors. The Council should return this provision to the Plan because it promotes stakeholder involvement and will facilitate the adoption of better-informed policies.

Chapter 5: Protect and Enhance the Unique Cultural, Recreational, Natural Resources, and Agricultural Values of the California Delta as an Evolving Place.

General Comments

LAND appreciates the Council's inclusion of DP R8 through R19 and incorporation of Delta Protection Commission recommendations. The Plan should also develop measurable targets for recreation, tourism, and agricultural sustainability, and track performance over time.

Chapter 6: Improve Water Quality to Protect Human Health and the Environment

General Comments

The role of sustainable agricultural practices as a means to improve water quality still is not recognized in this Chapter. Policies applicable to all users of water that originated in the Delta should be included in the Plan.

As explained in previous comments, the co-equal goals cannot be met without a concerted and implementable sustainability strategy. The Plan should include policies to promote these and other sustainable practices in the Delta, upstream of the Delta, as well as in areas that rely on water exported from the Delta. Most importantly, this chapter ignores the issue that transfers of water from the Sacramento River, upstream of most of the Delta, will have immediate and significant effects on water quality, water levels, and habitat. The Plan should better emphasize that Delta flows, reservoir storage levels, and transfers of water via proposed conveyance facilities will act upon each as parts of a cohesive system. This interplay of parts will likely affect water quality, including salinity levels, in the Delta.

Specific Comments

Draft 6, p. 217: Conveyance should Inform Discussion of Salinity Levels.

New conveyance in the North Delta could decrease the dilution of San Joaquin water on the southern end of the Delta. (DISB, p. 15.) The northern portion of the Delta, too, will receive less freshwater under most BDCP alternatives. Because any new conveyance around or through the Delta will directly affect salinity levels by varying freshwater input, the omission of the BDCP from this salinity discussion renders the discussion incomplete.

Draft 6, pp. 229-30, WQ R8: Encouragement to Develop Water Quality Objectives for Selenium should be Returned to the Plan.

In the Fifth Draft, WQ R6 (now WQ R8) recommended that the SWRCB, San Francisco Bay and Central Valley Regional Water Quality Control Boards continue to participate in efforts to revise water quality objectives for the element selenium. The Sixth Draft removed this provision, despite retaining a discussion of the dangers of highly concentrated selenium. (Plan, p. 225.) The Council should re-incorporate this provision.

Draft 5, p. 141, WQ R4: Small Community Water Facilities should be Funded.

The Fifth Draft provided that state funding should be prioritized for small communities lacking resources for wastewater treatment or without access to safe drinking water. This provision was dropped from the Sixth Draft. The Council should consider reinserting this provision into the Plan, as it furthers the goal of improving water quality and will enhance the quality of life for the Delta's residents.

Chapter 7: Reduce Risk to People, Property, and State Interests in the Delta

Specific Comments

Chapter 7, p. 246-247: Flood Risk in the Delta is Inflated.

The arguments regarding flood risk in this section are grossly over inflated and couched with language that is unacceptable in a major state plan. These are theoretical and unsubstantiated arguments also noted by the lack of citations or any explicatory rationale. Moreover, the relative economic value is not a functional metric, except in the most simplistic analysis.

Risk is also presented in an overly basic manner, which needs to include these economic factors, as well as the exposed population, and the relative severity of those potential impacts over time. For example, temporary displacement of 200 people during a flood is not equivalent to the flood loss of major economic crop, such as dichondra which is only produced on a few parcels within one district, and neither of these has the same risk or cost as a spontaneous levee failure in West Sacramento during a flood. The analysis then fails to identify in a meaningful way that the fundamental protection of the Delta has been effectively managed by reclamation districts, and that these districts in collaboration with the state have achieved substantial improvements to the flood infrastructure in the last decade through bond funding. Those improvements significantly

reduce risk to people and property. Yet, levee protection cannot be maintained if maintenance by the districts is reduced.

The uneven application of policies purportedly for public benefit that reduce funding, harm agriculture and take land pose a real risk to Delta levees. In terms of flood risk, wildlife refuges, and some habitat projects, have never paid the flood maintenance fees or in lieu fees, raising the direct economic burden on agriculture further. Recently there are cases where these parties are voting against fees for levee maintenance and improvement projects.

Draft 6, p. 249, Figure 7-2: Figure 7-2 should be Removed from the Plan.

LAND continues to object to inclusion of this figure in the Plan. It presents an unrealistic and worst case picture of the risks associated with levee failures. Moreover, even if the figure is reliable, further study indicates that the Delta would flush and restore its freshwater character in a relatively short time period. In the 2009 Delta Risk Management Strategy (“DRMS”), prepared by the same author that predicted the scenario shown in Figure 7-2, the infusion of freshwater to flush salinity is shown to be a viable option that may be completed more or less quickly depending upon reservoir storage levels and the extent of levee damage. (DRMS, p. 11-9.) In addition, the Plan fails to note that many measures may be taken to alleviate the duration of elevated salinity in the Delta, including the development of fine-tuned flow management strategies and keeping sufficient levee repair materials on hand.³

Draft 6, p. 269, RR R2 (formerly RR R10): Any New Flood Control District should not Deduct from Funding of Existing Districts with Flood Control and Related Responsibilities.

It is still not clear that a new entity with taxation powers is necessary and/or would not be duplicative of functions already being carried out by local reclamation districts. From the local agency perspective, the primary improvement in the process would come from better coordination between the existing participants and streamlining of documentation requirements and not creation of a new layer of bureaucracy. While LAND appreciates the addition of the reference to cooperation with existing reclamation districts, this should be a requirement, not merely a suggestion.

³ Jack R. Benjamin & Associates, Inc. *Preliminary Seismic Risk Analysis Associated with Levee Failures in the Sacramento-San Joaquin Delta* (2005).

Draft 6, p. 270, RR R3: Any New Fees must be Shared with Local RDs.

The proposition 218 process makes it very difficult technically and financially to implement significant fee changes over a short time frame. In addition, under or unfunded habitat programs are now actively voting against levee protection and improvements in 218 elections. The economic burden of maintaining the levee infrastructure for protecting these facilities falls on the RDs, so a portion of any new fee imposed should be provided to the local RDs to carry out flood control activities.

Draft 6, p. 271, RR P1: Small Communities and Critical Infrastructure should be Accorded Commensurate Priority with Urban and Urbanizing Areas.

The DPC and reclamation districts should be involved in developing priorities for State investments in Delta levees. Furthermore, the economics-based risk analysis fails to take into account the state prioritized Delta as Place values. Policy RR P1 goes on to prioritize state investment according to three tiers. Urban and urbanizing areas are given top priority, but small communities and “critical infrastructure of statewide importance” are relegated to second priority. Funding would be better allocated by removing this priority distinction and focusing on addressing the most critical levee needs regardless of community size, since the system is interdependent and only as strong as the weakest levee. The prioritization included at the end of RR P1 also appears incomplete and is confusing. This categorization process should be conducted at the time the priorities are developed.

Draft 6, p. 273, RR P2 (Formerly RR P3)

We appreciate the removal of Table 7-1, which was the source of much confusion.

Draft 6, p. 275, RR R7 (formerly RR R4): Local Interests must be Participate in the Development of Setback Levee Criteria.

LAND appreciates the Council’s removal of the onerous and non-implementable requirement that siting of future permanent structures set aside adequate lands for placement of setback levees. However, the Council continues to direct the DWR, DFG, and Delta Conservancy to develop setback levee criteria without providing any guidance as to the substance of such criteria. At a minimum, the DPC and the three regional Water Agencies should be part of this analysis. Setback levee placement should not interfere with existing local planning jurisdictions, and current land use should not be obstructed without landowner acquiescence, through willing sellers.

Draft 5, p. 180, RR R7: Levee Failure Working Groups should be Returned to the Plan.

The Fifth Draft's RR R7 recommended the convening of working groups to address appropriate responses to routine and catastrophic failures. This provision was omitted from the Sixth Draft. LAND encourages the Council to return this provision to the Plan because it will facilitate interaction between DWR and local parties and will better accommodate the needs of the Delta community.

Draft 5, p. 185, RR R12: Flood Reoperations should be Returned to the Plan.

The Fifth Draft's RR R12 recommended a collaborative evaluation of upstream reservoir flood control management procedures. This sort of collaboration between agencies and local utilities helps accomplish the Council's duty to improve agency integration, and should be returned to the Plan. This is a critical point for the implementation of the Plan; it is the only reasonable way to manage a complex system.

Chapter 8: Funding Principles to Support the Co-equal Goals

General Comments

The Council should include a policy requiring payment of in-lieu taxes for an action to be determined consistent with the Delta Plan. Such payments are essential to protecting and enhancing the unique cultural, recreational, natural resources, and agricultural resources of the Delta as an evolving place.

Specific Comments

Draft 6, pp. 290-91: The Plan should Employ Both the "Beneficiary Pays" and "Stressors Pay" Principles.

Reference to the "beneficiary pays" and "stressors pay" principles should be returned to the Guiding Principles. In addition, the Guidelines should include stressors on fish caused by reduced flows as well as entrainment and entrapment in major water diversion facilities.

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Ms. Terry Macaulay
June 13, 2012
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Thank you for considering these comments on the Sixth Draft of the Plan. LAND would be pleased to discuss the specifics of these comments and concerns with the Council's staff at their convenience. We look forward to continued collaboration with the Council and staff as the Plan is completed.

Very truly yours,

SOLURI MESERVE
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By: 
Osha R. Meserve

ORM/cnh

cc: Steering Committee, Local Agencies of the North Delta