

SOLURI MESERVE

A Law Corporation

1822 21st Street, Suite 202
Sacramento, California 95811

916.455.7300 (telephone)

916.244.7300 (facsimile)

www.semlawyers.com

April 11, 2011

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 First Staff Draft Delta Plan/Second 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 in the northern geographic area of the Delta.¹ LAND participants are primarily concerned with how the Delta Stewardship Plan (“Plan”) will eventually impact provision of water and/or drainage and flood control services to landowners within their respective districts, and wish to consult with the Delta Stewardship Council (“Council”) on these and related issues. (Water Code, § 85300, subd. (b).) These comments are offered in an attempt to promote development of a Plan that accommodates local agricultural, economic, environmental and other values as the Council meets its statutory mandates.²

These comments focus on those chapters appearing in the March 18, 2011 Second Draft Delta Plan (“2nd Draft Plan”) that were also included in the February 14, 2011 First Draft Delta Plan (“1st Draft Plan”). New chapters recently made available for the first time in the 2nd Draft Plan will be commented on later (specifically, Chapters 2 (Adaptive

¹/ Current LAND participants include: Reclamation Districts 3, 150, 551, 554 and 999. 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.

²/ In some instances, it may be appropriate for the Council to consider recommending clarifying amendments to SB 7x1.

Management), 3 (Governance) and 9 (Finance)). *Due to the many drafts of chapters to come, we request that redline revisions of each chapter be provided online so that it is possible for reviewers to easily discern where changes have been made.*

Chapter 1: The Delta Plan

General Comments

Under the applicable statute, the Plan has several required components. (See, e.g., Water Code, §§ 85302 – 85306.) In reviewing the draft Plans, however, it appears that many of the policies and recommendations create additional requirements that are not authorized under the statute. As the Council is aware, there are already many existing statutory and regulatory directives that affect land use and other decisions in the Delta besides the Plan content and Council consistency determinations described in SB 7x1. The Council should be careful not to exceed its statutory authority or to create conflicting legal requirements that may result in unintended consequences. Additionally, the Plan is supposed to promote continued agriculture in the Delta. (Water Code, § 85020, subd. (b).) Many of the Plan policies and recommendations go too far in restricting continued agriculture in the Delta by adding new consistency and review requirements that are not necessary to meet the Council's statutory mandates, including promotion of the coequal goals. LAND requests that the Council carefully consider the effects on existing agriculture and communities in the Delta when determining the appropriate content of the Plan, and avoid layering of additional regulatory requirements, except where necessary to meet the Council's statutory mandates.

Specific Comments

p. 3, lines 9-11: Do not overstate risks, and differentiate risks in specific regions.

The risk of catastrophic failures in the Delta is overstated with respect to many islands in the north delta, which are not comprised of peat, have levees in better condition than many other areas, and are not significantly below sea level. Moreover, continued farming anywhere in the Delta is not at risk even in the event of levee failures, if the levees are ultimately repaired.

p. 3, lines 39-42: Recognize that the existing Delta already has significant habitat values.

This section should reference expansion of existing interconnected habitats, not re-establishment. The Delta already includes significant open space, habitat and migratory bird corridors. Farmers within the Delta currently manage lands sustainably to enhance

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wildlife benefits – both by participation in formal certification programs and informal means. Moreover, habitat quality improvement projects should initially be focused on existing *publicly owned* lands.

p. 4, lines 14-21: Recognize that agriculture is a value that must be protected and enhanced, consistent with SB 7x1.

This vision statement fails to acknowledge statutory requirements recognizing and protecting continued agriculture in the Delta, specifically to: “Protect and enhance the unique cultural, recreational, and *agricultural values* of the California Delta as an evolving place.” (Water Code, § 85054, subd. (b), italics added.) The Council should consult generally with the policies included in the Delta Protection Commission’s recently adopted Land Use and Resource Management Plan (“LURMP”) for Agriculture. (Available at: <http://www.delta.ca.gov/res/docs/MP-Ag.pdf>.)

pp. 4-6: Support consideration of entire Delta watershed.

LAND support Council’s description of the geographic scope of the Plan, which would consider the entire Delta watershed to meet coequal goals. As Reclamation Districts, we have no control over upstream activities that affect Delta water quality and quantity.

p. 7, lines 25-27: Council should not blindly promote completion of BDCP.

LAND supports the Council’s statement that “The Council has determined that any consideration or use of BDCP related studies or concepts in the Delta Plan will not have a pre-decisional effect on any possible future appeal of a Department of Fish and Game determination related to the BDCP.” Furthermore, DSC should not assume that BDCP completion will promote the coequal goals embodied in SB 7x1.

Chapter 2: Science and Adaptive Management (Chapter 4 of 1st Draft Plan)

Comments on this chapter will be provided at a later date.

Chapter 3: Governance (Chapter 10 of 1st Draft Plan)

General Comments

Local districts undertake continuing maintenance and operational activities to provide essential water and flood control services. This chapter should be written in a manner that takes into account the continued need for provision of these services without adding onerous and unnecessary requirements.

Specific Comments

pp. 22-23: Submission of Certification for Proposed Covered Actions.

The submission requirements appear to be disproportionately detailed and onerous with respect to covered actions that may be associated with continued agricultural operations in the Delta. Such an approach could result in a conflict with the Council's statutory mandate to develop a Plan that protects the agricultural values of the Delta. Further description of what types of actions "[w]ill have a significant impact on achievement of one or both of the coequal goals" (Water Code, § 85057.5, sub. (a)(4)) should be developed to ensure that these requirements are not applied so broadly that it is impossible to undertake any agricultural or community projects in the Delta. As explained above, LAND is primarily concerned with the viability of continued agricultural and related activities in the Delta, not development for other purposes.

GP R1: This recommendation should reference the need to coordinate the creation of any new districts with existing districts. Reclamation districts already cooperate amongst themselves to provide essential services, including provision of mutual aid in emergencies. Any recommendations of the Council for legislative action should build on these existing systems and relationships, and avoid new requirements that would jeopardize the continued provision of essential services/infrastructure by existing local agencies.

Chapter 4: Manage Water Resources (Chapter 5 of 1st Draft Plan)

General Comments

While management of water resources in the entire Delta watershed should be improved, a full range of potential improvements should be considered. The 1st draft of the Plan appears to focus too much attention on better quality water for export, to the exclusions of other opportunities to more carefully manage the state's limited water supplies.

Specific Comments

p. 29, WR P1: Avoid unintended consequences of stringent deadlines for flow standards.³

While adoption of flow standards may be desirable, it does not make sense to deem all “projects or covered actions”⁴ inconsistent with the Plan if the State Water Resources Control Board (“SWRCB”) does not adopt public trust flow standards by 2014. In particular, LAND is concerned about the draconian effect such a policy could have on covered actions that local districts may need to undertake to further continued agricultural operations in the Delta. LAND would support such a requirement, however, for major *new diversion projects* that would have significant impacts on Delta flows, such those proposed in the Bay Delta Conservation Plan (“BDCP”).

p. 30, WR P2: Greater regional self sufficiency is key to meeting the coequal goals. LAND supports the policies set forth to promote regional self sufficiency.

p. 31, WR P3: Additional water use reporting requirements must be consistent with existing requirements.

Better water use information must be obtained in a cost effective manner that will lead to actual benefits. For instance, the reporting requirements in SB 7x8 appropriately allow water users to show that metering would be infeasible in specific circumstances. Moreover, it is possible to estimate water use by crop. We are working with the office of the Delta Watermaster to determine what type of reporting is appropriate in the Delta. The Delta is different than other areas of the state in that water is being pumped off of the islands during many months of the year, and that Delta inflow and outflow data can provide information regarding in-Delta water use. The Council should not add additional burdens with respect to reporting water use. Instead, the Council should rely on existing requirements to increase the amount of data available regarding water use. If the Plan includes a policy regarding water use reporting, it should simply support the SWRCB and other agencies’ efforts to carry out existing statutory mandates.

³ / See also ER P5 on page 34 of the 2nd Draft Plan.

⁴ / It is not clear why the term “projects” is used here. According to the statute, the Council would only have jurisdiction over “covered actions” as defined in Water Code section 85057.5.

p. 31, WR P4 and P5: Additional public review time is necessary for SWP contracts and water transfers.

These policies refer to a transparent process, yet only 14 days of notice is provided. This is not adequate time; 30 days notice would be a minimum in order for smaller local agencies and members of the public to participate in these processes.

p. 31, WR P6: The Plan should not preclude projects within potential BDCP conveyance alignments and Ecosystem Restoration Areas.

Water Code section 85057.5, subdivision (a)(7)(A) and (B) state that projects within the Secondary Zone approved prior to the effective date of the Delta Plan or projects approved prior to the effective date of the BDCP would not be considered “covered actions” for purposes of the Council’s consistency review. Subdivision (7)(C) of that same section removes that exemption for projects located within: (1) certain mapped BDCP Restoration Opportunity Areas or as shown in a final Bay Delta Conservation Plan (attached hereto as Exhibit A, available at:

http://baydeltaconservationplan.com/Libraries/Current_Documents/Chapter_3_Conservation_Strategy_Combined_v2.sflb.ashx), and (2) the alignment of a conveyance facility as shown in Figures 1 to 5 of the Final Draft Initial Assessment of Dual Delta Water Conveyance Report, dated April 23, 2008 (Attached hereto as Exhibit B, available at: <http://www.water.ca.gov/news/newsreleases/2008/061908assessmentdual.pdf>, pp. 7-12), and future revisions.

A policy that forbids *all projects from these areas* is not the same as the statutory direction that these projects may be “covered actions” if they meet the criteria listed in Water Code section 85057.5, subdivision (a)(1)-(4). Moreover, even a cursory review of the maps in the Final Draft Initial Assessment of Dual Delta Water Conveyance Report reveals that it would be very difficult to determine where a given parcel is in relation to the maps because they are conceptual in nature. Last, these maps are already outdated and do not match the most current BDCP conveyance and habitat creation plans.

Since the statute attempts to define which projects are covered actions and does not mandate that the Council *forbid* any type of development in the Delta, it is not helpful for the Council to add a more restrictive policy than found in the statute. As discussed by Council member Notolli, the Council should avoid additional restrictions that would interfere with existing agricultural and other activities in the Delta as various plans progress. There is no need or justification for this policy, therefore, alternative language is not being proposed.

Chapter 5: Ecosystem Restoration (Chapter 6 of 1st Draft Plan)

General Comments

LAND is concerned that ecosystem restoration be conducted in a manner that does not interfere with existing agriculture and communities in the Delta. Moreover, any burdens from creation of habitat should be borne by the habitat projects, not neighboring landowners. To this end, Land Use Policy P-3 of the LURMP states:

New non-agriculturally oriented residential, recreational, commercial, habitat, restoration, or industrial development shall ensure that appropriate buffer areas are provided by those proposing new development to prevent conflicts between any proposed use and existing adjacent agricultural parcels. Buffers shall adequately protect integrity of land for existing and future agricultural uses and shall not include uses that conflict with agricultural operations on adjacent agricultural lands. Appropriate buffer setbacks shall be determined in consultation with local Agricultural Commissioners, and shall be based on applicable general plan policies and criteria included in Right-to-Farm Ordinances adopted by local jurisdictions.

(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

p. 34, ER P4: Setback levees are not feasible in areas that are already in farming and other uses.

Setback levees that interfere with or result in a taking of existing permanent crops and homes should not be a priority. Alternatively, it would clearly benefit species and their habitat for the Council to promote resolution of issues surrounding application of Army Corps policies regarding vegetation on levees. If this issue could be resolved, valuable contiguous riparian habitat could be created in appropriate areas without setback levees. The Council should therefore consider adoption of recommendations regarding the Army Corps levee policies; consultation with the Department of Water Resources regarding its recommendations on this issue, which affects over 1,500 miles of levees in the state, would likely be informative.

p. 35, ER R1: It should not be presumed that the BDCP would be beneficial or meet the coequal goals.

Major new conveyance facilities would result in significant environmental and other impacts, including a severe reduction in flows through the Delta. Should the Council proceed with ecosystem and conveyance planning recommendations independent of BDCP, it should fully consider all feasible alternatives to construction of major new conveyance facilities in the North Delta that would reduce or avoid environmental and other impacts (e.g., suites of options such as continued through-Delta conveyance, reduced water exports/water conservation, and increasing groundwater/aboveground storage).

p. 35, ER R5: The Delta Conservancy Strategic Plan should preclude use of eminent domain to obtain habitat and include strong policies to coordinate with local agencies and landowners in planning and implementing habitat projects.

With respect to the recommendations made to the Delta Conservancy, a sub-recommendation should be added to preclude use of eminent domain for habitat projects. Local Habitat Conservation Plans (“HCPs”) do not allow condemnation of land for the simple reason that these lands are already been managed effectively by local residents and their support is needed to maintain the conservation benefits. The willing seller requirement of these HCPs protects existing habitat and species, and promotes a positive, collaborative approach to new land acquisitions and protective easements. Moreover, coordination with local agencies and landowners is essential to the long term success of any major habitat project and should also be recommended. Inclusion of mutual benefits for habitat projects from the inception of the planning process results in vastly better ecological effects on the ground than projects that are delayed by ongoing disputes with affected landowners.

Chapter 6: Improve Water Quality (Chapter 7 of 1st Draft Plan)

General Comments

Farmers in the Delta implement a wide range of sustainable practices that conserve water and improve water quality. For instance, many grape growers are “certified sustainable” under the Lodi Rules Sustainability Program. This is an intensive, third party audited program that covers all aspects of wine grape growing. Beneficial practices in the program include:

- *No Till Centers* - Planted to cover crops of grasses and legumes provide for soil tilth, soil nutrients, erosion control, and beneficial insect habitat;

- *Mechanical Cultivation Under Berms* – Cultivation decreases herbicide requirements, promotes better water penetration, and controls noxious weeds;
- *Drip Irrigation* – Results in improved water utilization, decreased water requirements, water placement exactly where and when needed by vines, and provides better uniformity control;
- *Use of Technology* – Neutron probes, for instance, can be used to determine soil moisture. Pressure probes can be used to determine vine hydration. In vineyard weather stations can be used to track evapotranspiration, degree days, temperature and humidity to strategically plan both irrigation and fungicide spray requirements;
- *Vegetative Buffers* – Grasses planted on vineyard borders and in swales can be used to control erosion and catch soil sediments prior to run off; and
- *Integrated Pest Management* – Alternatives to conventional pesticides and “soft” chemicals can be used to avoid beneficial insect kills.

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*. To this end, the Council may wish to also adopt the language of Agriculture Policy P-7 of the LURMP, which states:

Encourage management of agricultural lands which maximize wildlife habitat seasonally and year-round, through techniques such as fall and winter flooding, leaving crop residue, creation of mosaic of small grains and flooded areas, wildlife friendly farming, controlling predators, controlling poaching, controlling public access, and others.

(Available at: <http://www.delta.ca.gov/res/docs/MP-Ag.pdf>.)

Specific Comments

p. 37, WQ P1: “Full compliance” with TMDL standards is not a clear policy and should not be included in the Plan.

This policy assumes that the SWWCB and RWQCB are not carrying out their enforcement duties with respect to TMDLs. While it may be appropriate for the Council to consider the compliance of a covered action with the applicable TMDL, the Plan policies should not duplicate or interfere with the duties of the SWRCB and RWQCB with respect to TMDLs.

Chapter 7: Reduce Delta Flood Risk to People, Property, and State Interests
(Chapter 8 of 1st Draft Plan)

General Comments

The 2nd Draft Plan includes numerous policies to restrict development within the Delta with the ostensible goal of reducing risks. However, the Council should be aware that development within the Delta is already severely limited by existing state and local requirements.

Development rights are restricted by the county General Plans as well as the Delta Protection Commission's Land Use and Resource Management Plan. In unincorporated areas of Yolo County within the Delta, for instance, the zoning designation generally limits density to two dwellings per parcel. The LURMP allows local governments to only approve limited development of parcels within the Primary Zone. Before approving these developments, local governments must find that "development will not adversely impact agricultural lands or increase the potential for vandalism, trespass, or the creation of public or private nuisances on private or public land," and that "development will not result in any increased requirements or restrictions upon agricultural practice in the primary zone." (Pub. Resources Code, § 29765, subd. (g) & (j).)

Careful consultation with those familiar with each of the Delta Counties' planning and zoning designations should be undertaken before additional restrictions are considered. Moreover, only those areas of the Delta that are *actually at risk* for incompatible development (for instance areas near major metropolitan areas) should be targeted with new

Plan policies to avoid unnecessary interference with ongoing agricultural and related activities.

Specific Comments

p. 40 RR P3: Policies regarding levee classifications should take into account existing land uses and the feasibility of major levee upgrades.

This policy would appear to foreclose consistency of any covered action if the area does not conform to the classifications in Table 7-1. First, this result is not in any way required by SB 7x8. Though the policy cites Water Code sections 85021 and 85302, neither of these sections even refer to risks associated with substandard levees. The last two cited sections refer to the promotion of "effective emergency preparedness, appropriate land

uses, and strategic levee investments (Water Code § 85305, subd. (a)), and making recommendations for “state investments in levee operation, maintenance, and improvements in the Delta (Water Code, § 85306).

Second, the classification standards suggested in Table 7-1 are not feasible, attainable or necessary. As discussed at the March 25, 2011, Council meeting, none of the Delta islands comply with these standards. Moreover, given the populations of many of the islands, there are many alternative means besides construction of environmentally destructive “superlevees” to adequately protect people and property.

Last, it is unreasonable for the Council to layer new flood control requirements over the top of existing FEMA standards, especially in rural and agricultural areas. Instead, the Council should focus on ways to assist local governments to bring levees into conformance with existing requirements, including facilitation of funding and reimbursement for levee maintenance and repairs.

pp. 40-41 RR P4: Investment priorities should not be designed to foreclose investment in locally important levee systems.

These investment priorities would preclude ever investing in levees in rural and agricultural areas of the Delta. Yet it is essential that these levees be maintained. Moreover, issues affecting Delta islands are different than criteria or examples used for river flooding. Flood insurance is dependant on levee conditions meeting specific standards, which can only be maintained through levee investments. Delta legacy communities should not be precluded from priority to receive funding for critical levee maintenance and improvements.

p. 44, RR R6: Any new Flood Control District should not detract from funding of existing districts with flood control and related responsibilities.

It is not clear that a new entity with taxation powers is necessary. To the extent the formation of such an entity is necessary, its formation should not detract from funding for existing local entities with taxation authority.

Chapter 8: Protect and Enhance the Unique Cultural, Recreational, Natural Resources, and Agricultural Values of the California Delta as an Evolving Place (Chapter 9 of 1st Draft Plan)

General Comments

Promotion of agriculture in the Delta should be addressed more fully in this portion of the Plan; creation of special agricultural districts is one way to promote agriculture. LAND recommends that staff confer with the Delta County Agricultural commissioners for recommendations regarding policies that would promote the Delta's agricultural values.

Specific Comments

p. 45, DP P1: Habitat creation projects should be held to the same standard as other covered actions.

If the Council chooses to halt consistency findings for covered actions until the Economic Sustainability Plan is prepared, all covered actions should be included. For instance, habitat projects that are managed in a way to spread invasive weeds have significant effects on agriculture. Conveyance projects can also change local hydrology and groundwater dynamics can directly harm wildlife and agriculture. Thus, there is no legitimate reason to restrict application of this policy solely to "municipal, industrial, and/or agricultural development activities."

p. 46, DP R1 and R2: LAND supports Policies DP R1 and R2.

Chapter 9: Finance Plan to Support Coequal Goals (Chapter 11 of 1st Draft Plan)

Comments on this chapter will be provided at a later date.

Chapter 10: Delta Plan: Integration of Policies, Performance Measures and Targets, and Adaptive Management (Chapter 12 of 1st Draft Plan)

This chapter is not yet available for review.

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Thank you for considering these comments on the first and second drafts of the Plan. We look forward to further collaboration with the Council and staff as the Plan progresses.

Very truly yours,

SOLURI MESERVE
A Law Corporation

By:



Osha R. Meserve

ORM/mre

cc: Steering Committee, Local Agencies of the North Delta

Restoration Opportunity Areas (ROAs) represent a boundary within which some fraction of lands would be restored to tidal habitats.

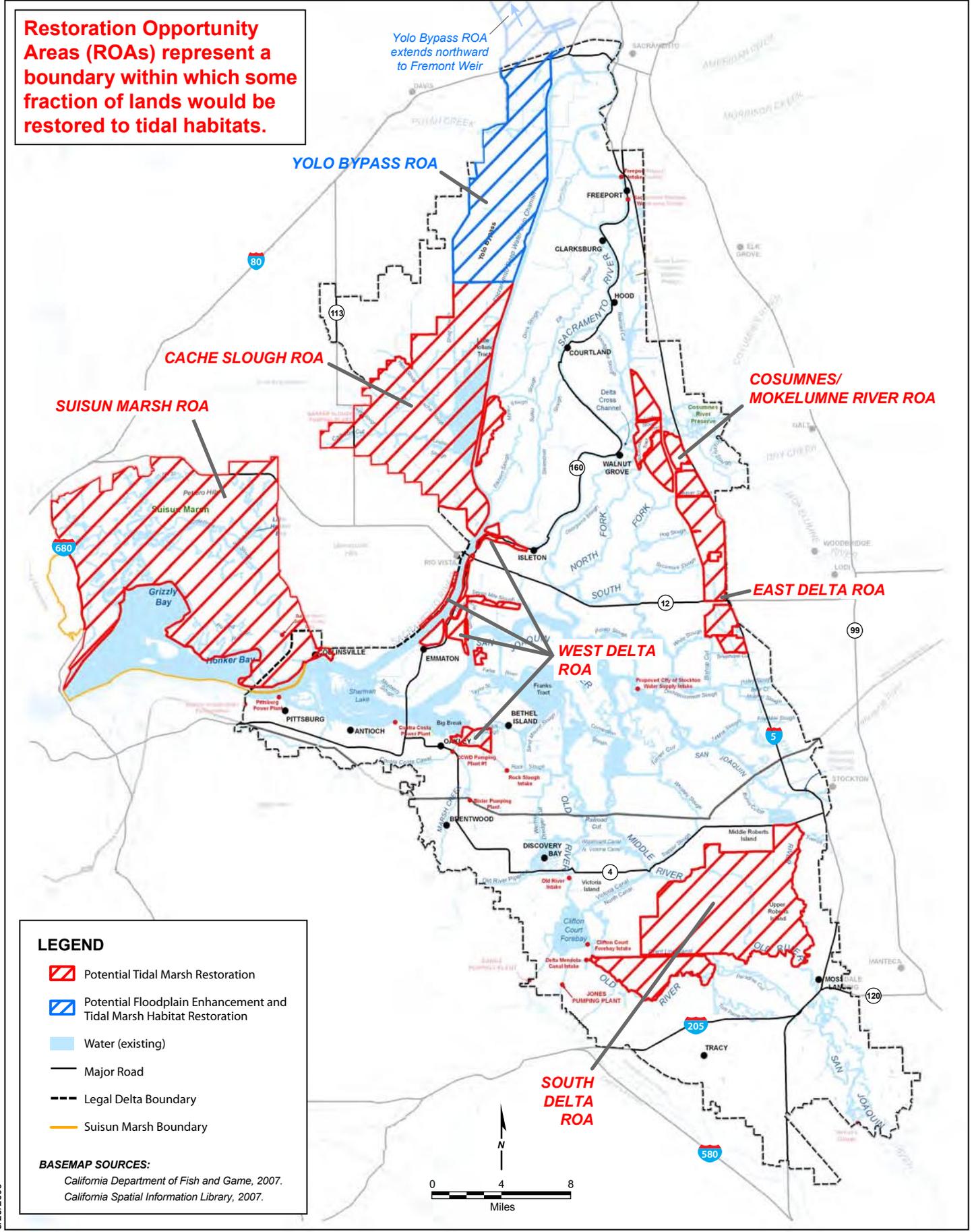


Figure 3.1 Restoration Opportunity Areas (ROAs)

6/29/2009

**An Initial Assessment
of
Dual Delta Water Conveyance**

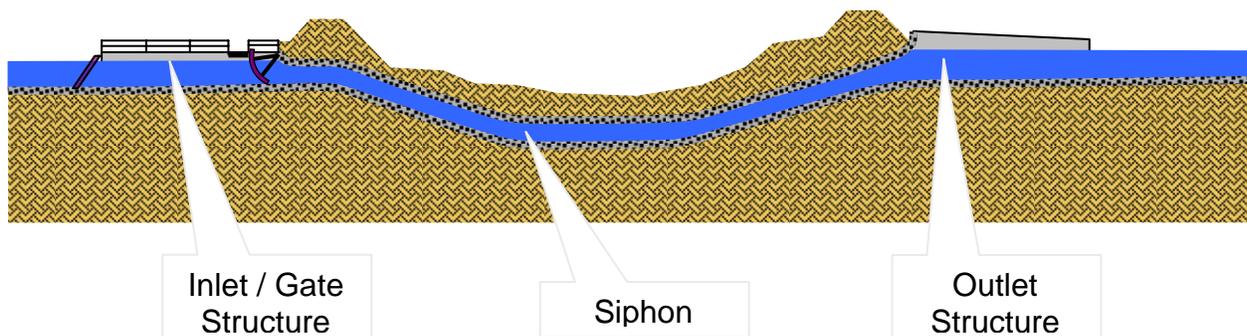
**As requested by the Delta Vision Blue Ribbon Task Force
Prepared by California Department of Water Resources**

May 2008

The new canal would be isolated through Delta sloughs and rivers using siphons and culverts. A new forebay would be constructed on the island south of the existing Clifton Court Forebay and north of the Delta Mendota Canal. A gated outlet structure would be provided at the new forebay to deliver 4,600 cfs of water to the Jones Pumping Plant of the CVP. The new forebay would connect to the California Aqueduct by a new 10,300 cfs capacity unlined canal.

The intake facilities at Hood include a trash rack, flood control gates, sedimentation basin, fish screen, fish bypass channel, low head pumping plant, and control structure. The pumping plant would require the water by 20 feet for it to flow to the export facilities. Siphons would be constructed at the Mokelumne, San Joaquin, Old, and Middle Rivers; and Beaver, Lost, Snodgrass, and Disappointment Sloughs (see Figure 1 for a typical siphon section). Culverts would be located at White, Sycamore, and Hog Sloughs. Bridges would need to be constructed or altered at State Route Highways 160 at Hood, 12, and 4; and at Lambert, Dierssen, Twin Cities, Barber, Walnut Grove, Blossom, Peltier, Woodbridge, Eight Mile, McDonald, Tracy, Calpack, Clifton Court, Byron, and Burns Roads. Affected railways are the Burlington Northern Santa Fe and Southern Pacific.

Figure 1
Typical Siphon for Crossing Sloughs and Rivers



The location of the isolated facility is near the alignment of the Peripheral Canal proposed in the 1970s. Construction of the isolated facility would consist of a cut and fill method so that acceptable excavated materials could be used for embankment levees. Based on information obtained during the planning phase of the Peripheral Canal, it is expected that most of the foundation materials that will be encountered during excavation consists of cohesive soils. Some peat and silty and sandy materials will also be encountered. Geotechnical exploration and testing will confirm the type and extent of foundation materials. Laboratory testing and analyses will determine the strength and suitability.

Excavation will most likely be performed in segments. Dewatering wells will most likely be installed to provide a dry work area while the canal is being excavated and embankments are being constructed.

The top of the embankment would be at least four feet above the maximum water surface to provide freeboard for wind-driven waves, embankment consolidation, subsidence, and

Figure 2
Configuration A – Eastern Alignment Isolated Facility with no through-Delta Improvements
 Several potential eastern alignments are shown

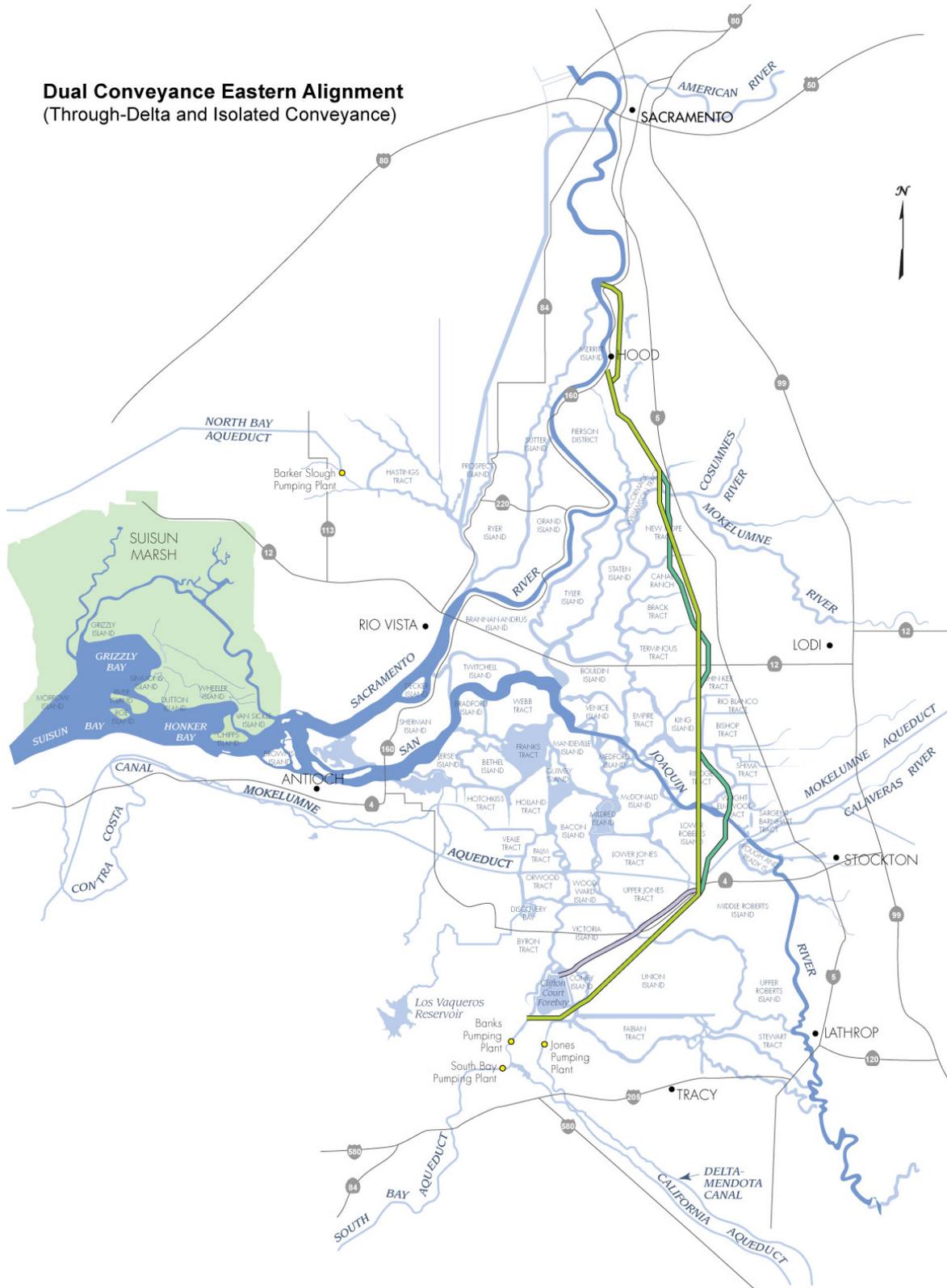


Figure 3
Configuration B – Eastern Alignment Isolated Facility with through-Delta Improvements
 Several potential eastern alignments are shown.

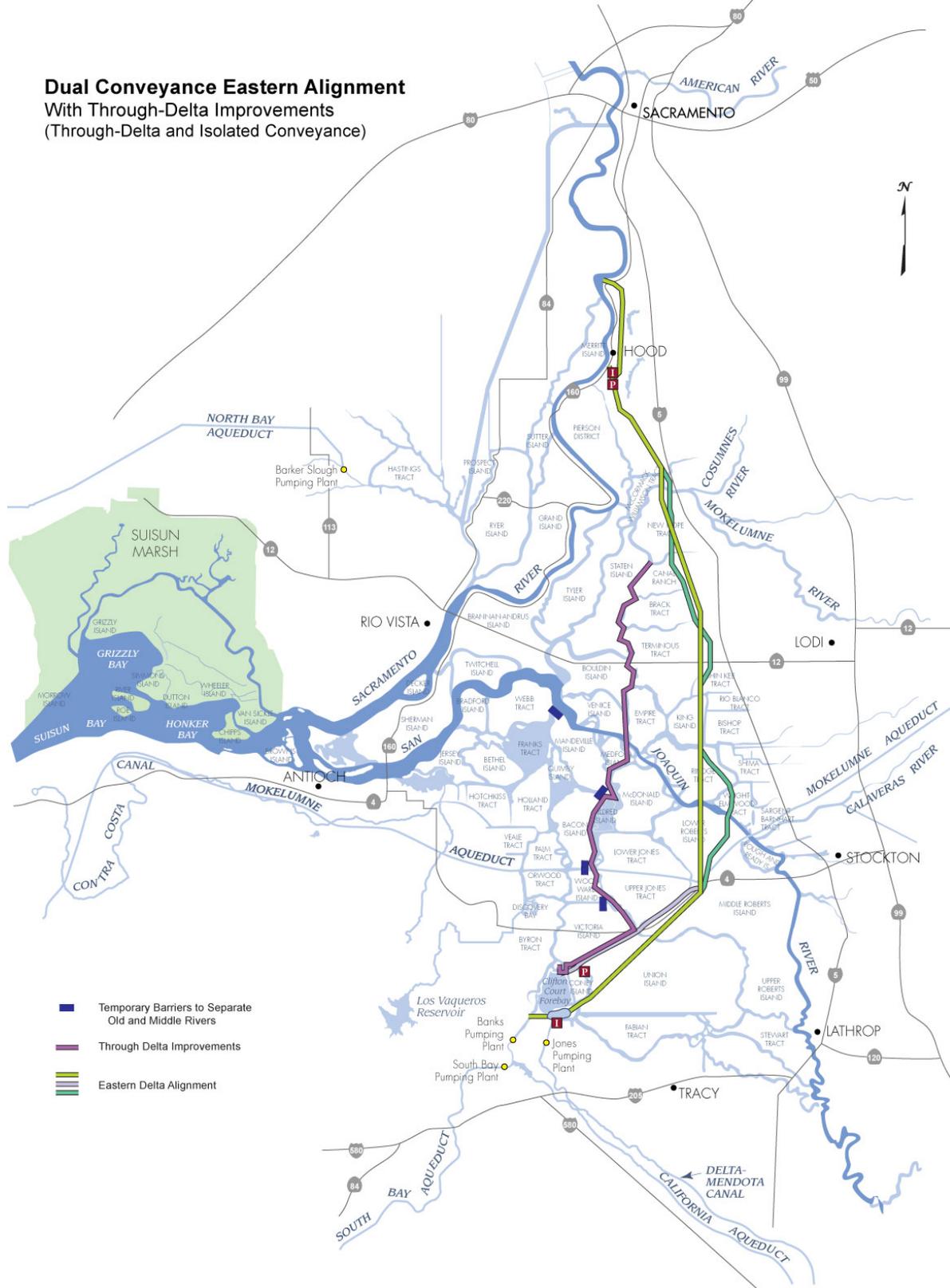


Figure 4
Configuration C – Western Alignment Isolated Facility with no through-Delta Improvements
Two potential western alignments are shown.



Figure 5
Configuration D – Western Alignment Isolated Facility with through-Delta Improvements
 Two potential western alignments are shown.

