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July 9, 2012

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

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

Re: LAND Follow- Up Comments on Sixth Staff Draft Delta Plan

Dear Ms. Messer:

Thank you for the opportunity to comment on proposed language for the Sixth Draft of the Delta Plan. This follow-up letter summarizes written and verbal suggestions submitted on behalf of Local Agencies of the North Delta (“LAND”) by this office, and by BSK Associates on our behalf, including formal written submissions dated June 13 and June 22, respectively. LAND is a coalition comprised of reclamation and water districts (“districts”) in the northern geographic area of the Delta.¹ LAND supports the Delta Stewardship Council’s (“Council”) work to: (1) promote water conservation and reduce reliance on water supplies from the Delta by those with alternative supplies, and (2) promote levee integrity, facilitate emergency repairs, and secure funding support from all of those who benefit from an adequate levee system, which protects multiple state assets.

LAND has significant 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. These comments are submitted pursuant to the consultation provisions of SB 7x1 (Wat. Code, § 85300, subd. (b)) and are offered in an attempt to promote development of a Plan that meets statutorily mandated legacy community, sustainable agricultural, economic, environmental and other values as the Council pursues its broader co-equal goals.

¹ Current LAND participants include: Reclamation Districts 3, 150, 307, 317, 407, 551, 554, 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.

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The Plan should address the special characteristics of in-Delta diversions and use while promoting reduced reliance and increased regional self-sufficiency.

The Plan still needs to recognize that in-Delta users are entirely dependent upon Delta water and that water use within the Delta has special characteristics. WR P1, which would apply to covered actions by in-Delta water users, appears to require decreased reliance on water obtained from the Delta. WR R4 also requires the same planning for water use within the Delta as for recipients of water exported from the Delta. In-Delta users, unlike those users with alternative supplies, cannot reduce their use of Delta water as a proportion of total consumption. Out-of-basin users of Delta water, on the other hand, should be required to reduce reliance on the Delta by demonstrating a gross reduction in acre-feet, not by “relative percentage,” as WR P1 currently allows.

The Plan also must acknowledge the basic facts of Delta geology and hydrology. With respect to emergency water planning, in-Delta water users do not have alternative water supplies available. There are generally no usable sources of groundwater for conjunctive use and no ability to store water within Delta Reclamation Districts. This complete reliance on surface water is dissimilar to most other regions of California.

For these reasons, WR P1 and WR R4 should provide separate guidance for how new diversions for in-Delta watershed use can be consistent with policies regarding increased efficiency and reduced reliance. The Plan must recognize the practical reality that in-Delta water diversions and uses are already regionally self-reliant. The Plan must also be consistent with area of origin protections applicable to new diversions for use within the Delta. The demands of out of basin water users cannot be met by constraining existing legal uses within the basin.

Moreover, WR P1 should make clear that it applies only prospectively to future diversions that meet the criteria for covered actions. Draft language provided for the Council’s June 28-29th meetings applies to “water . . . used in the Delta.” The policy should, however, apply to new diversions and transfers of water in the Delta that meet the covered action criteria. Since the statewide policy in Water Code section 85201 generally applies to the entire state, the “water used” language creates unnecessary confusion. The policy should apply to “water exported from, transferred through, or diverted in the Delta.”

The Plan should clarify prioritization of investment in levees and risk reduction and include local agencies in the prioritization process.

As explained in the June 22nd BSK letter, the levee investment prioritization provided in RR P1 is unclear and still inconsistent with enhancing the Delta as a place. (Wat. Code, § 29702.) While the staff version of RR P1 now makes clear that the “lower priority” projects may be funded over “higher priority” projects, it is not clear why actual priorities must be included in RR P1 at this time. To the extent the Council determines that it is necessary to include priorities in RR P1, we suggest that the policy make clear that the priorities in RR P1 are for illustrative purposes only.

Additionally, RR P1 should include Delta Reclamation District and Water Agency representatives in the development process for the levee investment priorities. These local agencies and their engineers can provide practical input into the prioritization process. Such involvement would help avoid unintended consequences that might otherwise occur if the priorities are developed in a vacuum without the input of those most affected by levee funding priorities.

The Plan should include policies designed to ensure that any changes in conveyance will adhere to the co-equal goals.

We still believe that the Council should make general recommendations on the types of conveyance options that could potentially meet the co-equal goals. The BDCP does not specifically have statutory responsibility for meeting the co-equal goals; *only* the Council can provide guidance on how conveyance could be improved in the context of achieving the co-equal 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.) The BDCP has no mandate or apparent intent to meet these goals, and the Council can only ensure consistency if they actually have policies addressing these values.

As explained in prior comments, the previously provided explanation as to why the Council cannot opine on conveyance while at the same time it creates policies on other matters essential to the BDCP (e.g., habitat creation) is not compelling and is likely inconsistent with Legislative intent in creating the Council in the first place. It is clear that BDCP would also benefit from receiving guidance from the Council on conveyance. While it may have previously been believed that the BDCP would be completed prior to adoption of the Delta Plan, it now appears that the Delta Plan will be adopted prior to approval of the BDCP. Given that the BDCP’s status is in flux, the Council is in a good

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position to positively influence the BDCP process by identifying character conveyance that would meet the co-equal goals, and should do so.

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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 our written and verbal comments and concerns with the Council's staff at their convenience.

Very truly yours,

SOLURI MESERVE
A Law Corporation



By:

Osha R. Meserve

ORM/cnh

cc: Steering Committee, Local Agencies of the North Delta