



tél: 916.455.7300 · fax: 916.244.7300  
1010 F Street, Suite 100 · Sacramento, CA 95814

October 10, 2012

**SENT VIA EMAIL** ([deltaplancomment@deltacouncil.ca.gov](mailto:deltaplancomment@deltacouncil.ca.gov))

Delta Stewardship Council  
650 Capitol Mall  
Sacramento, CA 95814

Re: LAND Comments on September 5th Final Draft Delta Plan

Dear Chairman Isenberg and Members of the Council:

This letter is submitted on behalf of Local Agencies of the North Delta (“LAND”) and includes our suggestions for the Final Draft Delta Plan (“Plan”). LAND is a coalition comprised of reclamation and water districts (“districts”) in the northern geographic area of the Delta.<sup>1</sup> LAND has provided written and oral comments on previous drafts of the Plan, and is appreciative of modifications that have addressed concerns about continuing reliability and quality of water supplies *within* the Delta as well as the continuing effectiveness of drainage and flood control services for landowners within these districts. (See Wat. Code, § 85300, subd. (b).)

LAND has the following comments on the Plan that should be corrected prior to completion of the Draft Programmatic Environmental Impact Report (“DPEIR”) and submittal of the Notice of Proposed Rulemaking to the Office of Administrative Law. This letter does not repeat prior comments on previous drafts of the Plan, which to the extent they have not already been incorporated, remain unresolved.

### **Comments on Delta Plan Policies and Recommendations**

WR P1 – Footnote 19 should be retained as it includes important information about the definition of “water supplier,” consistent with applicable law. This important footnote is also deleted on later pages.

---

<sup>1</sup> 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.

RR R7 – Local Delta water and reclamation districts/agencies and the Delta Counties should be included in the development of criteria for setback levees.

### **Executive Summary**

#### Page 3, line 35

The words “delivery” and “for contracted water” should be inserted into the following sentence: “Those restrictions, combined with a drought, caused water delivery shortages for contracted water in many parts of the State in 2007-2009.”

#### Page 5, line 30

The reference to “past abuses” is unclear and should be stricken. The impacts to the Delta from invasive species, San Joaquin River pollutant discharges, and out of basin water transfers are all current impacts on the Delta, and the Plan’s policies and recommendations can only influence current activities and future plans.

### **Chapter 1**

#### Page 13, lines 6-8

DWR has had inflow/outflow data for the Delta for many years, which provides the amount of consumptive use within the Delta. (See, e.g., California Water Plan (2009), Volume 3, pp. D-15 to D-16, available at: [http://www.waterplan.water.ca.gov/docs/cwpu2009/0310final/v3\\_ssjdeltaregion\\_cwp2009.pdf](http://www.waterplan.water.ca.gov/docs/cwpu2009/0310final/v3_ssjdeltaregion_cwp2009.pdf).) Moreover, SB7x 8 required all water users to begin filing Statements of Diversion. With respect to water quality, irrigated lands within the Delta are subject to the CVRQWCB’s Irrigated Lands Program. ([http://www.swrcb.ca.gov/rwqcb5/water\\_issues/irrigated\\_lands/long\\_term\\_program\\_development/index.shtml](http://www.swrcb.ca.gov/rwqcb5/water_issues/irrigated_lands/long_term_program_development/index.shtml).) These sentences should be corrected to reflect the availability of information regarding water use and the existing regulatory environment for irrigated lands in the Delta.

### **Chapter 2**

#### Page 57, lines 36-41

We agree with the Council that there should be a consistency determination for covered activities under the Bay Delta Conservation Plan (“BDCP”). Because the Plan does not include any policies directed toward the conveyance component of BDCP, more than a short form certification of consistency should be required for conveyance in particular. We find it amusing that the SFWCA continues to object to even the short form consistency process for BDCP.

### **Chapter 3**

#### Page 113, lines 10-21

The first two bullet points are somewhat outdated as statements of diversion and use are now required for all diverters of surface water with very limited exceptions. (Wat. Code, § 5101.)

### **Chapter 4**

#### Page 161, lines 7-10

The Plan states that, “Unfortunately, along most of the Sacramento and San Joaquin rivers, levees are near the water’s edge, not set back from rivers, close to the river channels, leaving little room for these habitat features, which often are provided only by trees growing immediately adjacent to or even on the levees themselves.” This language is misleading to the extent it implies that levees could have been placed in other locations. Levees were placed adjacent to the river’s edge because there was no other mechanical way to bring the channel spoils onto the bank to form the levee; the natural channel levees themselves were directly adjacent to the channel or became that way with erosion; and the hydraulic mining debris material needed to be transported down river and the levee design promoted that export.

Thus, the narrow spacing of the levees were deliberate and levees generally performed their function as designed. Now, the Plan’s mandate for an analysis of the benefits of setback levees should not conflate this useful engineering technique for wide meandering rivers (such as the upper Sacramento) with an impractical design for the tidally dominated Central Delta.

The Plan also conflates descriptions of headwater riparian ecosystems in broad alluvial plains and the upper, and middle Delta. (See, e.g., Plan, p. 61.) There are many miles of both the upper Sacramento and San Joaquin Rivers that do not have adjacent levees. The levees within the Delta were typically built on the natural high ground, developed from overbank sediment deposits; these would be the only areas historically with dense trees in the Delta. Historically, there would not have been broad floodplains in the conventional sense; rather, there would be large areas of tidal freshwater emergent wetland. (See, e.g, SFEI

Sacramento-San Joaquin Delta Historical Ecology Study (2012), available at: <http://www.sfei.org/DeltaHEStudy>.) The erroneous description provided in the Plan implies a historic ecosystem that simply did not exist in the Delta, except on tributary rivers.

Page 161, lines 14-15

There is actually little controversy regarding the USACE vegetation policy, given comments by numerous scientists at recent conferences, DSC science presentations, and public comments at large. It would be more accurate to state that there is limited support for this policy.

**Chapter 5**

Page 194, line 8

The phrase “and work for its water management agencies and facilities” is confusing and should be deleted.

Page 194, lines 18-19

As explained in prior written and verbal comments to the Council, in-Delta water users within most of the Primary and Secondary zones of the Delta (as compared to users within the Delta Watershed) do not have the same suite of options available to them to reduce reliance on the Delta for their water supplies. The reference to “conjunctive use of groundwater, or participation in regional supply projects” is misleading and should be deleted as to in-Delta water users. “Groundwater supplies in the Primary Zone of the Delta are continually recharged due to flows in Delta channels and the soft, deep soils of Delta islands. The water table is relatively shallow.” (California Water Plan (2009), Volume 3, pp. D-15, available at:

[http://www.waterplan.water.ca.gov/docs/cwpu2009/0310final/v3\\_ssjdeltaregion\\_cwp2009.pdf](http://www.waterplan.water.ca.gov/docs/cwpu2009/0310final/v3_ssjdeltaregion_cwp2009.pdf).)

With groundwater in communication with surface water, substitution of groundwater in the Delta would not reduce reliance on Delta water. Moreover, participation in regional supply projects in the Delta would not reduce reliance on the Delta. Water use efficiency and recycling are the key tools available to in-Delta users to reduce reliance on the Delta.

**Chapter 7**

Chapter 7 has improved from prior drafts but the Plan continues to overstate risks in the Delta. Moreover, the Plan fails to include adequate policies and recommendations to limit risks to critical water infrastructure, including the facilities necessary for continued through Delta conveyance. Other than RR R3 and RR P1, most of the policies and recommendations focus on additionally limiting development in the Delta.

In general, risks in the Delta are not substantially different from the risks to any other location in the Central Valley or Coast. Yet, the risk of flooding from the San Joaquin River to the Central Valley, and the associated levees and their condition, are not described in the Plan. Moreover, the risk to critical state water and power infrastructure

at the CVP and SWP pumping plants from the “cataclysmic failure” of levees, equipment and canals from the identical earthquake scenario are also not addressed.

The Plan also continues to rely on such materials as the multi-levee mass catastrophe model developed by the State Water Contractors to justify the new diversion facilities proposed by the BDCP. (See Figure 7-1.) While the multi-levee catastrophe is theoretically possible, it would require a worst-case scenario under unrealistic conditions. And if the scenario occurred, the response would be the same with or without the Delta Plan since the Plan does not require improvements to the existing water supply infrastructure to ensure continuing water exports under that worst case scenario. Nor does the Plan promote a system of emergency storage and rationing in the areas dependent on those water supplies to meet water needs during such an emergency.

In the years to come, the Plan should be amended to more comprehensively address the need to protect critical water infrastructure from flooding and earthquake risks. Though the Plan urges the completion of the BDCP to improve water supply reliability (WR R12), it is not clear that addition of diversion points in the North Delta under BDCP will in fact increase water reliability. Even with the BDCP, the SWP and CVP will rely on the same antiquated facilities in the South Delta, and the Council is not in a position to require levee improvements in the absence of a covered action.

\* \* \*

Thank you for considering these comments on the Seventh Draft of the Plan. Please contact me with any questions.

Very truly yours,

**SOLURI MESERVE**  
**A Law Corporation**

By:



Osha R. Meserve

ORM/mre

cc: Steering Committee, Local Agencies of the North Delta