February 2, 2012

Phil Isenberg, Chairman, and Council Members
Delta Stewardship Council
Attn: P. Joseph Grindstaff, Executive Officer
980 Ninth Street, Suite 1500
Sacramento, California 95814

CITY OF STOCKTON COMMENTS ON THE DRAFT PROGRAM ENVIRONMENTAL IMPACT REPORT (DRAFT EIR) FOR THE FIFTH STAFF DRAFT DELTA PLAN

The City of Stockton (City) appreciates the opportunity to review and comment on the Draft Program Environmental Impact Report (Draft EIR or DEIR) for the Draft Delta Plan (Plan). This letter provides the City’s individual detailed written comments on the Draft EIR in accordance with the provisions of the California Environmental Quality Act (CEQA) and CEQA Guidelines. In addition to this comment letter, the City, in conjunction with other Delta Coalition stakeholders, is submitting a separately transmitted joint comment letter, which is incorporated by this reference.

The City has been an active participant in the public process associated with the development of the Delta Plan and EIR. The City has submitted detailed comments on the 5th Draft Plan, which is the subject of the EIR, as well as the prior drafts of the Plan. The City has not received any response to any of its prior comments on the drafts of the Plan and thus continues to have significant concerns about the scope and regulatory effect of the Plan. As the largest urban area in the Delta, the City is particularly concerned about the Plan’s effect on the City’s ability to provide for orderly planned development within its boundary and sphere of influence, as well as the related environmental, governance, water supply reliability, economic sustainability, and fiscal effects that may result from the implementation of the Draft Delta Plan.

The City’s comments include both general and specific concerns regarding the technical and legal adequacy of the Draft EIR. Based on the substantive comments provided below and those of the other Delta Coalition stakeholders, the City believes that the Draft EIR fails to meet CEQA’s informational mandate. In accordance with CEQA Guidelines Section 15088.5, the City respectfully requests that the Draft EIR be re drafted to adequately describe the scope and regulatory effect of the Delta Plan and
Response to comment LO195-3

Comment noted.

Response to comment LO195-4

As specified in the Delta Reform Act, the Delta Plan does not retroactively affect previously approved plans, programs, or projects (Water Code §§ 85057.5(b)(6)-(7), 85075.5(c)). However, future projects that fit the definition of covered actions must be carried out consistent with the Delta Plan. Please refer to Master Response 1.
decisions and development pursuant to those plans. If the Council seeks to limit or redirect growth within the Secondary Zone of the Delta, the EIR must disclose that as an effect of the Plan and disclose the types of impacts the Plan’s prohibitory effect could cause.

For example, if the Council’s exercise of its appellate authority over a covered action leads to the inability to build in an area planned for development, that growth that otherwise would have occurred may be shifted to another area with different or more significant impacts, including those resulting from the potential loss of agricultural land, habitat, construction of new infrastructure (including roads, schools, utilities and wastewater treatment and conveyance facilities) and increases in vehicle miles traveled; air pollutant emissions; and greenhouse gases. The redirection of planned growth as a result of the Delta Plan may also have significant growth inducing effects if infrastructure such as roads and sewer lines are required to be extended to areas outside the current urban services boundaries.

As discussed in our comment B.1. below, the City believes the statutory language indicates the Legislature did not intend that the Delta Plan stifle progress in existing urban areas or prevent orderly and carefully planned growth within the Secondary Zone of the Delta. However, because the Plan language is not clear and statements by Council staff have raised concerns about the scope of the Plan, the Draft Delta Plan should be amended to clarify the regulatory provisions for “consistency determinations” as applied to urban areas within the Secondary Zone of the Delta and should be revised to exempt planned urban development within the incorporated City limits and the City’s adopted Sphere of Influence (which would include development consistent with the City’s adopted General Plan, Infrastructure Master Plans and Sphere of Influence/Municipal Service Review which is defined as of the effective date of the Delta Plan.

The Draft EIR should be revised to specifically acknowledge and address those amendments, and make clear that the Delta Plan does not intend to stifle progress in existing urban areas or prevent orderly and carefully planned growth within the Secondary Zone of the Delta. See Detailed Comment B.1. below.

In this vein, the Draft EIR also should specifically acknowledge that existing and planned urban development within existing adopted planning areas in the Secondary Zone of the Delta, located behind levees that meet, or are planned to meet, current State or Federal standards, should be considered consistent with the Delta Plan.
Response to comment LO195-5
This is a comment on the Project, not on the EIR.

Response to comment LO195-6
Please refer to Master Response 1.

Response to comment LO195-7
Please refer to Master Response 2.
Response to comment LO195-8

Please refer to Master Response 3.

Response to comment LO195-9

Please refer to Master Response 5.
Response to comment LO195-10

Please refer to Master Response 1.
No comments

- n/a -

1 The BDCP will also provide certain authorization for the continued operation of the federal Central Valley Project (CVP). It is unclear why the DEIR omits mention of operation of the CVP from a description of the BDCP.
Response to comment LO195-11

Please refer to Master Response 5.
Response to comment LO195-12

This is a comment on the Project, not on the EIR.

The Plan Should Exclude From the Definition of “Covered Action” Projects Undertaken to Implement Regulatory Actions of Other State Agencies

The Delta Plan exempts from the definition of “covered actions” regulatory actions by other state agencies. (DEIR, p. 2A-2.) However, the DEIR states that the underlying actions regulated by those agencies would not be exempt. (Id.) The failure to exempt projects undertaken to implement regulatory requirements, such as wastewater treatment plant upgrades necessitated by a NPDES permit issued by the Regional Water Quality Control Board, is a mistake that may have significant adverse consequences for these projects. The need for entities charged...
Response to comment LO195-13

This is a comment on the Project, not on the EIR.
Response to comment LO195-14

This is a comment on the Project, not on the EIR. Social and economic impacts are not effects on the environment under CEQA, and are not analyzed in the EIR (CEQA Guidelines §§ 15064(e) and 15131). Please refer to Master Response 2 and the response to comment LO195-4.
Response to comment LO195-15
Neither the Delta Reform Act nor the Delta Plan affects water rights (Water Code §§ 85031, 85032(i)). Please see Master Response 5 for further discussion of the EIR’s analysis of the protections for exiting water uses and users. These protections are included in all of the alternatives analyzed in the EIR.

Response to comment LO195-16
The Proposed Project and other alternatives in the EIR assume that water suppliers would be encouraged to implement reliable water supply actions, including wastewater and stormwater recycling, water use efficiency and conservation, and ocean desalination. Neither the Delta Reform Act nor the Delta Plan affects water rights (Water Code §§ 85031, 85032(i)). Similarly, the SWRCB’s update of the flow objectives will not directly affect water rights. Please see Master Response 5 for further discussion of the EIR’s analysis of the protections for exiting water uses and users. These protections are included in all of the alternatives analyzed in the EIR.

Response to comment LO195-17
Comment noted.
Response to comment LO195-18

This is a comment on the Project, not on the EIR.
discussion, the EIR acknowledges land use changes as possible actions by others in response to the plan policies, but the only types of land use changes discussed are land falling, or development of new infrastructure such as wastewater treatment plants, or restoration projects. Finally, Table 22, which lists projects that the EIR does not consider to be "covered actions," and so are discussed as cumulative projects, lists the General Plan Updates for Sacramento and San Joaquin Counties as well as the Delta Protection Commission’s Land Use and Resource Management Plan.

The DEIR thus strongly suggests that development undertaken pursuant to adopted land use plans of local agencies would not be considered to be "covered actions." However, the Plan and EIR’s failure to clarify this issue has created substantial uncertainty among local land use jurisdictions, property owners, and developers.

Based on the above-noted California Water Code Sections and the cited EIR sections, the Description of the Project and Statutory Exemptions should include a specific acknowledgment and/or clarification that existing and planned urban areas in the Secondary Zone of the Delta, including planned urban development, consistent with adopted General Plans, Specific Plans, Master Development Plans, and other entitlements and related certified environmental documentation, within a city’s incorporated city limits under Sphere of Influence in the Secondary Zone of the Delta, shall be exempt from the “consistency determination” requirements for “covered actions.”

By way of examples, planned development within the Secondary Zone of the Delta is covered by the City’s adopted 2005 General Plan and Infrastructure Master Plans and the corresponding comprehensive Environmental Impact Report, which was certified on December 11, 2007 and a Notice of Determination, which was filed by the City on December 12, 2007, and by the San Joaquin County Local Agency Formation Commission’s modified Sphere of Influence Sphere Plan and Municipal Service Review for the City, which was adopted on September 19, 2008. These plans and programs, as well as contemplated urban developments consistent with those adopted land use and infrastructure plans and implementation programs, should, therefore, be exempt from the “covered actions” provisions under California Water Code, Sections 65057.5(b)(6)(A) and (7)(A).

Similarly, several master planned developments and related entitlements within the Secondary Zone of the Delta and the City’s Sphere of Influence and city limits, such as the Sanctuary Master Planned Community, for which a Master Development Plan, Development Agreement, General Plan Amendments, Prezoning, a large-lot Tentative Subdivision Map, other entitlements, and corresponding environmental documents were approved/certified and a Notice of Determination was filed prior to September 30, 2009 and prior to the effective date of the Delta Plan. Such projects should also be deemed exempt from “covered actions” provisions under California Water Code, Sections 65057.5(b)(6)(A) and (7)(A).
Response to comment LO195-19
The adopted San Joaquin County Multi-Species Habitat Conservation and Open Space Plan and existing resources of the program are part of the existing conditions, as described in Section 4 of the EIR.

Response to comment LO195-20
The reliable water supply actions described in Section 2A are provided for consideration throughout the study area. It is recognized that not all actions would be technically feasible in all locations.

Response to comment LO195-21
The Recirculated Draft EIR discusses the completion of the Economic Sustainability Plan. RDEIR (Vol. 3), p. 2-13. However, social and economic impacts are not effects on the environment under CEQA, and are not analyzed in the EIR (CEQA Guidelines §§ 15064(e) and 15131). Please refer to Master Response 2.
Response to comment LO195-22
Please refer to Master Response 2.

Response to comment LO195-23
Comment noted.
Response to comment LO195-24
Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

Response to comment LO195-25
Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

Response to comment LO195-26
The adopted HCP/NCCPs in the Delta are described in Appendix D of the EIR. The CEQA Guidelines endorse such use of appendices to streamline the body of the EIR’s analysis (CEQA Guidelines § 15147).

Response to comment LO195-27
The sources of information indicated in the bullets are the major sources of information relied upon for the following discussion and line 14 indicates that sources of information are not limited to the ones listed in the bullets. The adopted HCP/NCCPs in the Delta were reviewed during preparation of the EIR and have been added to the reference list of Section 4.

Response to comment LO195-28
This is a comment on the Project, not on the EIR.
Response to comment LO195-29
The proposed BDCP is a reasonably foreseeable future project that is being evaluated by the Department of Water Resources as the CEQA lead agency. The cumulative impacts of the proposed Delta Plan, in combination with the impact of the proposed BDCP, are described in EIR Sections 22 and 23. As described in section 4.4.3.2.5 of the EIR, named projects and projects encouraged by the Proposed Project are not likely to conflict with the plans identified in this comment or other adopted HCPs, NCCPs, or other conservation plans. Although it is possible that the Delta Plan, BDCP, and the identified plans could affect the availability of land for mitigation actions by conservation plan permit holders, future site-specific environmental analyses conducted at the time specific projects are proposed by lead agencies will address those impacts, once sufficient information is available to support such an analysis.

Response to comment LO195-30
The San Joaquin County Multi-Species Habitat Conservation and Open Space Plan is described in Section 2.3.7.1 of Appendix D.

Response to comment LO195-31
Mormon Slough is part of the Mormon Slough Bypass Project not the Lower San Joaquin River Control Project.

Response to comment LO195-32
Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

Response to comment LO195-33
A revised Figure 5-3 was issued as an erratum to the Draft Program EIR on November 4, 2011.

Response to comment LO195-34
Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

Response to comment LO195-35
Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.
Response to comment LO195-36

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.
Response to comment LO195-37
Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

Response to comment LO195-38
Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

Response to comment LO195-39
Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

Response to comment LO195-40
Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

Response to comment LO195-41
The text referred to in this comment is addressing existing conditions, not future facilities.

Response to comment LO195-42
Several of these standards address several types of structures; therefore, the text was not changed.

Response to comment LO195-43
Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

Response to comment LO195-44
As described in Section 2A, the term "major development" in the EIR is used for all residential developments of five or more parcels.

Response to comment LO195-45
In response to this comment, please see text change(s) in Section 5 in this FEIR.
Response to comment LO195-46

Please refer to response to comment LO195-45. A new conveyance facility failure is considered unlikely because of the expected compliance with federal, state, and local requirements and guidelines. Proposed residential development in the Secondary Zone would be subject to existing and proposed requirements to provide 200-year flood protection, to reduce flood risks in urban, urbanizing, and rural areas.

Response to comment LO195-47

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

Response to comment LO195-48

As specified in the Delta Reform Act, the Delta Plan does not retroactively affect previously approved plans, programs, or projects (Water Code §§ 85057.5(b)(6)-(7), 85057.5(c)). Please refer to Master Response 1.

Response to comment LO195-49

The Proposed Project identifies areas within incorporated cities and their spheres of influence and specified growth areas (as shown in Attachment C-2 in the Draft Program EIR) to be developed in accordance with existing general plans, including areas within the Secondary Zone. However, as described in Section 6 of the EIR, implementation of the alternatives would result in significant adverse impacts to some existing land use plans.
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proceed in an orderly, phased, manner, and infill development may be hampered
(portions of the Downtown and most of the infill areas of the City are located in the
Secondary Zone of the Delta). Should the Council limit or impede development in
the Secondary Zone, urban sprawl into existing agricultural lands may be induced.
The provision of public services may be made less efficient if the Council treats
adopted land use plans as covered actions and requires changes in those plans, or
projects that implement those plans. Treating adopted land use plans as covered
actions will have the effect of prohibiting or limiting growth in the Secondary Zone,
which in turn could cause growth to be shifted away from planned areas, with
resulting unvaluated, and potentially greater, environmental impacts. If it is the
Council’s view that land use plans and projects implementing adopted plans
constitute “covered actions,” then the EIR needs to plainly disclose this and
evaluate the Plan’s effect on local land use decisions and development pursuant to
those plans. If the Council seeks to limit or redirect growth within the Secondary
Zone of the Delta, the EIR must disclose that as an effect of the Plan and disclose
the types of impacts the Plan’s prohibitory effect could cause.

The following General Plan Goals and Policies demonstrate the City’s commitment
to environmental protection and smart, sustainable growth:

Goal LU-1 To ensure that Stockton’s future growth will proceed in an orderly
manner, encourage and provide incentives for infill development, prevent urban
sprawl, and promote the efficient and equitable provision of public services.

Policy LU-1.12 Commuting Distances
The City shall strive to minimize the commuting distances between residential
concentrations and employment centers by encouraging infill development and a
mix of residential densities.

Policy LU-1.13 Growth Phasing
The City shall phase growth based on the availability of adequate water supplies,
market forces, infrastructure financing capacity, and the timing of the design,
approval, and construction of water supply and transportation facilities and other
infrastructure.

Goal LU-2 To promote the protection of agricultural lands outside the Urban
Service Area to the north and east, and to discourage the premature conversion of
agricultural lands within the Urban Service Area.

LU-2.1 Agricultural Land Preservation
The City shall limit the wasteful and inefficient sprawl of urban uses into agricultural
lands.

No comments
- n/a -
Response to comment LO195-50

This is a comment on the Project, not on the EIR. Moreover, and as described in Master Response 1, the Delta Plan does not retroactively affect previously approved plans, programs, or projects (Water Code §§ 85057.5(b)(6)-(7), 85057.5(c)).
local jurisdictions that approve building permits for compact housing and mixed-use development near transit.

**Goal TC-5** To promote development of pedestrian and bikeway facilities for transportation and recreation,

**Goal TC-6** To encourage and maintain the operation of the Port of Stockton as an asset to the community and a source of jobs, while minimizing environmental impacts in accordance with CEQA.

**Goal HS-4** To improve air quality and to minimize the adverse effects of air pollution on human health and the economy.

**Policy HS4-15 Infill Near Employment**
The City shall identify and adopt incentives for planning and implementing infill development projects within urbanized areas near job centers and transportation nodes.

**Policy HS-4.20 Develop Policies Requiring Minimizing of Greenhouse Gas Emissions**
The City shall adopt new policies, in the form of a new ordinance, resolution, or other type of policy document, that will require new development to reduce its greenhouse gas emissions to the extent feasible in a manner consistent with state legislative policy as set forth in Assembly Bill (AB) 32 (Health & Safety Code, § 38500 et seq.) and with specific mitigation strategies developed by the California Air Resources Board (CARB) pursuant to AB 32. In furtherance of this effort, the City shall monitor the process by which CARB promulgates rules, regulations, limits, plans, and reduction measures pursuant to AB 32 to determine whether they result in recommended or mandatory principles or strategies by which greenhouse gas emissions reductions or minimization can be achieved through the land use planning process. If CARB does not formulate any such principles or strategies, then the City's own greenhouse gas emission reduction and minimization strategies shall be consistent with those promulgated by CARB. If CARB's efforts pursuant to AB 32 do not result in recommended or mandatory principles or strategies by which greenhouse gas emissions reductions or minimization can be achieved through the land use planning process, the City shall develop its own such principles and strategies. In doing so, the City shall consider the following potential mitigation strategies:

a. Increased density or intensity of land use, as a means of reducing per capita vehicle miles traveled by increasing pedestrian activities, bicycle usage, and public or private transit usage.

b. Increased energy conservation through means such as those described in Appendix F of the State Guidelines for the California Environmental Quality Act.
As specified in the Delta Reform Act, the Delta Plan does not retroactively affect previously approved plans, programs, or projects (Water Code §§ 85057.5(b)(6)-(7), 85057.5(c)). Development is anticipated to continue to occur throughout the Delta and Suisun Marsh in accordance with adopted general plans within incorporated cities and their spheres of influence and specified growth areas (as shown in Attachment C-2 in the Draft Program EIR) under the Proposed Project and all alternatives considered in the Draft Program EIR. Under the Proposed Project and Alternative 1A, development also could continue to occur in accordance with general plans outside of these areas if specific adverse impacts were avoided or mitigated, as described in Appendix C. Under Alternatives 1B, 2, and 3, development could continue to occur throughout the Delta and Suisun Marsh in accordance with general plans without additional mitigation described for the Proposed Project and Alternative 1A. Therefore, population and housing would be as projected for the Delta and Suisun Marsh under existing general plan growth projections. Please refer to Master Responses 1 and 2.
Response to comment LO195-52

Please refer to response to comment LO195-51.

Response to comment LO195-53

The Proposed Project policy RR P3 includes the following footnote 1 in Table C-2 of Appendix C of the Draft Program EIR: "Urbanized areas will be required to be fully compliant with DWR 200-Year standards by 2025 to be consistent with the deadline established for Urban Areas by Central Valley Flood Protection Act of 2008."
Response to comment LO195-54

Please refer to the response to comment LO195-51.

Response to comment LO195-55

As specified in the Delta Reform Act, the Delta Plan does not retroactively affect previously approved plans, programs, or projects (Water Code §§ 85057.5(b)(6)-(7), 85057.5(c)). Development is anticipated to continue to occur throughout the Delta and Suisun Marsh in accordance with adopted general plans within incorporated cities and their spheres of influence and specified growth areas (as shown in Attachment C-2 in the Draft Program EIR) under the Proposed Project and all alternatives considered in the Draft Program EIR. Under the Proposed Project and Alternative 1A, development also could continue to occur in accordance with general plans outside of these areas if specific adverse impacts were avoided or mitigated, as described in Appendix C. Under Alternatives 1B, 2, and 3, development could continue to occur throughout the Delta and Suisun Marsh in accordance with general plans without additional mitigation described for the Proposed Project and Alternative 1A. Therefore, air quality would be as projected for the Delta and Suisun Marsh under existing general plan growth projections. Please refer to Master Responses 1 and 2.

Response to comment LO195-56

Please refer to the response to comment LO195-51.
Response to comment LO195-57
As described in Section 16 of the Draft Program EIR, adequate potential exists to accommodate housing for projected populations through 2030 within the Delta and Suisun Marsh as described under existing general plans. Please refer to the response to comment LO195-51.

Response to comment LO195-58
Please refer to the response to comment LO195-57.
Response to comment LO195-59

Please refer to the response to comment LO195-51. The EIR evaluated the potential impacts of the Proposed Project and other alternatives compared to the existing conditions, including existing master plans for utilities and public services. The EIR did not evaluate potential impacts to future modifications to those plans. However, as described in Section 6 of the EIR, implementation of the Proposed Project and other alternatives would have significant adverse impacts on some land use plans, including areas that have been designated for future utilities and service systems.
Response to comment LO195-60

Please refer to the response to comment LO195-59.

Response to comment LO195-61

Please refer to the response to comment LO195-59.
Response to comment LO195-62

CEQA does not require analysis of environmental justice or social and economic impacts. Social and economic impacts are not effects on the environment under CEQA, and are not analyzed in the EIR (CEQA Guidelines §§ 15064(e) and 15131). Please refer to Master Response 2.
Response to comment LO195-63

Information for Table 23-1 was obtained from published information by California Natural Resources Agency for the Bay Delta Conservation Plan. Information related to Delta outflow criteria for other alternatives was not available from published sources.

Response to comment LO195-64

The term "non-habitat restoration" is defined based upon the description of ER P3 on page 117 of the Fifth Staff Draft Delta Plan. This term would include any plan or construction project that was not specifically designed for habitat restoration, including "new or amended local or regional land use plans."

Response to comment LO195-65

As described on page 23-29 of the Draft Program EIR, "Physical improvements associated with BDCP-related operation of ecosystem restoration and enhancement, reduction of other stressors, and Delta conveyance, in addition to the Delta Plan, could change water quality in some portions of the Delta by increasing the extent and duration of time for fresh water or saline water." These changes could include increased salinity and other water quality changes near the intakes for the Stockton's Delta Water Supply Project.

Response to comment LO195-66

In response to this comment, please see text change(s) in Section 5 in this FEIR.

Response to comment LO195-67

Please refer to response to comment LO195-51.

Response to comment LO195-68

Comment noted.
No comments
- n/a -
No comments
- n/a -
No comments

- n/a -