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

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

Dear Mr. Grindstaff:

The Port of Stockton (Port) has serious concerns related to the adequacy and accuracy of the Delta Plan (Plan) Program Environmental Impact Report (EIR) prepared by the Delta Stewardship Council (Council) dated November 2011. Two major areas of concern are the adequacy of the environmental document and the fact that the current project description may be altered and may not be the project that the Council ultimately approves. The Port is providing an overview of the issues of concern (adequacy of the EIR and status of the Plan) and then provides more detailed concerns related to the adequacy of the EIR.

1.0 Overview

1.1 Adequacy of the EIR

The general purpose of CEQA is to inform decision makers and the public as noted below:

“15002. GENERAL CONCEPTS

(a) Basic Purposes of CEQA. The basic purposes of CEQA are to:

1. Inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities.

2. Identify the ways that environmental damage can be avoided or significantly reduced.

3. Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible.

Response to comment LO214-1
Comment noted.

Response to comment LO214-2
Comment noted.
Response to comment LO214-3

The Final EIR includes the Recirculated Draft Program EIR, which included an evaluation of the Final Staff Draft Delta Plan.

Response to comment LO214-4

Please refer to responses to comments LO214-5 through LO214-21 below. Regarding the project description, please refer to Master Response 1.


No comments

- n/a -

- Impact analysis methodology, cumulative assessment and mitigation measures
- Potential for physical impacts to occur as a result of the proposed plan is not address. Additionally, the document is intended to provide the analysis necessary for NEPA clearance. NEPA requires socio-economic analysis to be conducted.

2.1 Inadequate project description of the proposed action and resulting inability to conduct a legally adequate assessment of the impacts

The primary responsibility of an EIR is to identify significant effects on the environment, which can only be provided when there is an adequate description of the project. The following section of CEQA identifies this concept very succinctly.

"§ 21002.1. USE OF ENVIRONMENTAL IMPACT REPORTS; POLICY
In order to achieve the objectives set forth in Section 21002, the Legislature hereby finds and declares that the following policy shall apply to the use of environmental impact reports prepared pursuant to this division:

(a) The purpose of an environmental impact report is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided."

CEQA states clearly what should be in a project description:

"15124. PROJECT DESCRIPTION
The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.

(a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map.

(b) A statement of objectives sought by the proposed project. A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project.

(c) A general description of the project’s technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.

(d) A statement briefly describing the intended uses of the EIR.

(1) This statement shall include, to the extent that the information is known to the Lead Agency,

(A) A list of the agencies that are expected to use the EIR in their decision making, and
Response to comment LO214-5

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. In addition, the Delta Plan must be reviewed at least once every five years and may be revised as the Council deems appropriate pursuant to Water Code section 85300(c). Hence, the Delta Plan would be amended when the BDCP is ready for incorporation. Please refer to Master Response 1.
Response to comment LO214-6
The Final EIR includes the Recirculated Draft Program EIR, which included an evaluation of the Final Staff Draft Delta Plan.

Response to comment LO214-7
The decision whether to use this EIR for tiering purposes will be made by future lead agencies at the time that projects are proposed and environmental review begins.

As described in Section 2B of the Draft Program EIR, the Delta Stewardship Council does not propose or contemplate directly authorizing any physical activities, including but not limited to construction or operation of infrastructure. Rather, through the Delta Plan, the Delta Stewardship Council seeks to influence the actions, activities, and/or projects of other agencies, the details of which would be under the jurisdiction and authority of the agencies that will propose them in the future and conduct future environmental review. Without specific details of future projects, it is not possible for the Delta Stewardship Council to develop quantitative thresholds of significance, conduct site-specific quantitative analyses, and design site-specific mitigation measures. Accordingly, in the absence of specific proposed physical projects, this EIR makes a good faith effort to disclose the potentially significant environmental effects of the types of projects that may be encouraged by the Delta Plan and to identify program-level mitigation measures. Impacts on each of the potentially affected resources areas are analyzed at a program level in Sections 3 through 22 of this EIR.

Response to comment LO214-8
Please refer to Master Response 1.
Response to comment LO214-9

This is a comment on the Project, not on the EIR. See also Master Response 1.

Response to comment LO214-10

As described in Section 2B of the Draft Program EIR, the Delta Stewardship Council does not propose or contemplate directly authorizing any physical activities, including but not limited to construction or operation of infrastructure. Rather, through the Delta Plan, the Delta Stewardship Council seeks to influence the actions, activities, and/or projects of other agencies, the details of which would be under the jurisdiction and authority of the agencies that will propose them in the future and conduct future environmental review. Without specific details of future projects, it is not possible for the Delta Stewardship Council to develop quantitative thresholds of significance, conduct site-specific quantitative analyses, and design site-specific mitigation measures. Accordingly, in the absence of specific proposed physical projects, this EIR makes a good faith effort to disclose the potentially significant environmental effects of the types of projects that may be encouraged by the Delta Plan and to identify program-level mitigation measures. Impacts on each of the potentially affected resources areas are analyzed at a program level in Sections 3 through 22 of this EIR. Please refer to Master Responses 2 and 3.
Response to comment LO214-11

Please refer to Master Response 3.

Response to comment LO214-12

Please refer to Master Response 3.
Response to comment LO214-13

Please refer to Master Response 3.
Response to comment LO214-14

Please refer to Master Response 2.

Response to comment LO214-15

The impact analysis in the Draft Program EIR compared the potential impacts of the Proposed Project and the alternatives to the existing conditions, as presented in each of the resource chapters. These analyses include construction-related impacts. Because the Delta Stewardship Council lacks authority to require other agencies to adopt any particular mitigation or to change policies, especially for noncovered actions, which represent most of the potential actions evaluated in the Draft Program EIR, it is assumed that each significant environmental impact is significant and unavoidable, as described on page 2B-2 of the Draft Program EIR. The Draft Program EIR did not include modifications to the Proposed Project, but evaluated five other alternatives in an attempt to identify methods to reduce significant adverse impacts of the Proposed Project.
Response to comment LO214-16

Please refer to Master Responses 2 and 4.

Response to comment LO214-17

The EIR study area encompasses the regions in which each alternative could cause impacts. The three study areas used in this EIR are the Delta (including the Suisun Marsh), the Delta watershed, and areas outside of the Delta that use Delta water. Draft EIR (Vol. 1), p. 1-14; see also Water Code § 85059. Because different impacts are likely to occur in different locations, each section of the EIR—including the analysis of cumulative impacts—specifies the study area for the impact analyzed. Please refer to Master Response 2.

Response to comment LO214-18

The Revised Project, which is the November 2012 Final Draft Delta Plan, was analyzed in the Recirculated Draft Program EIR (Volume 3 of the Draft Program EIR) which was circulated for public review and comment from November 30, 2012 through January 14, 2013.

Response to comment LO214-19

The draft Delta Plan and the alternatives considered in the EIR encouraged other agencies and entities to fund the projects encouraged by the plan. 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 LO214-20

The Delta Plan Program EIR was prepared in accordance with CEQA. This EIR is not intended to be a NEPA environmental impact statement; however, all of the alternatives are analyzed at an equal level of detail as under NEPA. Please refer to Master Response 2.
Response to comment LO214-21

Comment noted.

3.0 Conclusion
In conclusion, based upon a review of the EIR, the Port respectfully submits that the EIR is not adequate and may have significant issues related to accuracy of the data for all of the reasons detailed above. The only remedy is to prepare a revised Plan, then prepare a revised Draft EIR and recirculate to allow the public to review and comment.

Sincerely,

Jeffrey D. Wingfield
Port of Stockton