

PORT OF STOCKTON

Phone: (209)946-0246



Fax: (209) 466-5984

June 6, 2012

Mr. Phillip Isenberg
Chairman
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

(Also sent by e-mail to: deltaplancomment@deltacouncil.ca.gov.)

Re: DELTA STEWARSHIP COUNCIL DRAFT PLAN VERSION SIX

Dear Chairman Isenberg:

The Port of Stockton (Port) appreciates the opportunities to meet with the Delta Stewardship Council (DSC) staff concerning potential impacts of the draft Delta Stewardship Council Plan (Plan) to the Port. The meetings have provided an excellent opportunity for a positive and beneficial exchange of ideas and potential solutions.

The Port has reviewed the sixth draft of the Plan and also appreciates this opportunity to comment on the Plan's most recent version. The Port respectfully offers the following comments, questions and suggestions:

1. At page 13:37-44 the Sixth Draft Delta Stewardship Council Plan (Plan) reads as follows:

Communities developed to support river traffic to and from the gold country, and later to transport agricultural products from the newly productive farmland reclaimed from the Delta marshes. The advent of the automobile resulted in a flurry of ferry construction and bridge building in the 1920s, and by the 1930s, cars and trucks were replacing steamships for transportation and commercial shipping. The Stockton Deepwater Ship Channel was completed in 1933, opening a direct connection from the San Joaquin Valley to the world and, 30 years later, the Sacramento Deepwater Ship Channel did the same for the Sacramento Valley. Not coincidentally, these channels also opened the Delta to a host of

exotic invasive species that hitched rides on the bottoms and in the ballast of oceangoing freighters.

COMMENT:

Subsequently, one hundred and thirty pages later, the Report acknowledges that current regulations concerning discharging ballast water before entering the Delta reduce the introduction of invasive nonnative species into Delta waterways. It would be appropriate to acknowledge this change in practice at page 13. More specifically the concern about introducing invasive species through oceangoing freighters is essentially historical after vigorous regulations were adopted. The language unfortunately leaves the reader with the mistaken impression that introducing invasive species through oceangoing vessels remains a current and immediate threat to the Delta. The Port does not believe this is true and is troubled and puzzled by including this fact at this early point in the Plan. The language should be modified in one of three ways: 1) it should be clearly stated that this language is included purely for historical context and does not represent a current threat to the Delta; or 2) it should clearly state that regulations have been enacted to minimize this problem; or 3) it should identify with particularity the flaws in the current regulations.

Bluntly speaking, the Port does not understand why it is important to even mention and discuss this historic problem at any point in the Plan, and certainly does not understand why it should be given attention in the very earliest part of the Plan.

2. Page 143:4-8:

Once nonnative species are introduced, they are difficult and expensive to control and often impossible to eradicate. The Department of Boating and Waterways supports programs to control Brazilian waterweed and water hyacinths where they hinder boating, but only where conditions create the worst nuisances. The best measures prevent new infestations, such as the improvements in managing ballast water instituted recently by ocean liners and ports.

COMMENT:

At page 153, the report does not recommend any new implementation plan or mitigation measure implicating the Port or oceangoing vessels in controlling nonnative species. This suggests the problem is adequately addressed by current regulations and the report should acknowledge this fact and that the plan does not recommend additional regulation. See discussion on comment one presented earlier. Overall this discussion seems extraneous and circular, providing little guidance or analysis of the current threats and opportunities facing decisions makers about the Delta.

3. Page 14:7-9:

Dredging opened many of the Delta channels for sport fishing and recreational boating. Today there are more than 100 marinas and waterside resorts, RV parks, grocery stores, and dockside restaurants, and house boating remains popular.

COMMENT:

Contrary to the Report's statement, dredging accomplishes more than just enhance sports fishing and recreational boating. The statement substantially diminishes the importance of dredging activity to economic growth and opportunity for the immediate area.

It would be appropriate to explain at this point that dredging opened up the Stockton inland port to significant international markets, creates job and provide economic opportunities. The report should acknowledge the importance of Port activities to local, regional, state, national and international economies.

Funding for dredging the Stockton Deepwater Channel was authorized by the United States Congress in 1929 and dredging commence the following year. Congressionally authorized dredging opened the Port of Stockton to international trade and national commerce. At the time of writing this report the Port is it is one of the only ports of the West Coast that exports more cargo than it imports and provides thousands of family wage jobs in an area facing chronically high unemployment and underemployment.

The Port asks that the immediate proceeding paragraph be added to the Report at Page 14 as part of the dredging discussion.

4. Page 53:18-26:

Although a regulatory action by another State agency is not a covered action, the underlying action regulated by that agency can be a covered action (provided it otherwise meets the definition). The Council has concurrent jurisdiction over covered actions when that action is also regulated by another State agency. For example, the issuance of a California Endangered Species Act take permit by DFG is a regulatory action of a State agency, and therefore is not a covered action. However, the underlying action requiring the take permit could be a covered action and, if it is, it must be consistent with the Delta Plan's policies. Therefore, even when a covered action is regulated by another agency (or agencies), the covered action still must be consistent with the Delta Plan. In the situation where a covered action is governed by multiple agencies and laws, the action must comply with all relevant legal requirements.

COMMENT:

Establishing concurrent or appellate administrative jurisdiction over state agency decisions chills economic development activities and erodes the finality of such decisions. Instead of adding another layer of regulation and extending the time before a state agency permit is valid, a superior public policy approach is for the DSC to work collaboratively with sister state agencies to make sure the co-equal goals are fully integrated into the sister agencies decision making process.

5. Page 53:27-41 to Page 54: 1-17:

Administrative Exemptions

The Council has determined that the following types of projects are not covered actions because they will not have a significant impact under Water Code section 85057.5(a)(4):

...

◆ Leases approved by a special district formed under the Harbors and Navigation Code if all of the following apply:

a. The uses proposed by the lease are authorized by the applicable general plan and zoning ordinances of the city where the special district is located.

b. The uses proposed by the lease are approved by the city where the special district is located, and the city complies with Water Code section 85225 et seq. (filing of consistency certification for covered actions), if applicable, prior to approval of the lease by the special district.

c. The special district complies with CEQA prior to approving the lease.

◆ Routine dredging activities that are necessary for maintenance of facilities operated by special districts formed under the Harbors and Navigation Code.

The Council will consider, as part of its ongoing adaptive management of the Delta Plan, whether these exemptions remain appropriate and/or whether the Delta Plan should be amended to include other types of projects.

COMMENT:

The draft Plan makes a good faith effort to address the Port's concerns about leasing activities and dredging. The exemption for dredging should recognize that maintenance dredging for the Port has been established by the Federal Government as thirty five feet plus two feet for overdredging.

The final sentence of the quote from page 54:13-17 suggests that the exemption is temporary in nature and could be vacated or modified as part of "ongoing adaptive management". The uncertainty flowing from language poses a very serious concern to the Port. The Port and Corps of Engineers cannot design and process plans for annual maintenance dredging without knowing whether the DSC exemption is in place or not. As we have discussed extensively with DSC staff, due to current BOs, the period of time available for maintenance dredging is extremely narrow and the imposition of an additional process through the DSC would operate to bar dredging in a specific year.

The adverse consequences of missing a year of maintenance dredging would be immediate and devastating to the Port and the region. Almost immediately many large ships would be unable or unwilling to make calls at the Port because of the consistently shrinking draft in the navigational channel. This in turn would reduce the amount of

cargo arriving and departing from the Port thereby reducing the amount of work for union members, truckers, manufactures and other industrialist that depend upon the Port activity. The local economy would probably suffer a loss of several billion dollars and a loss of more than twenty-five hundred jobs.

In short, the inchoate threat posed by the final sentence of the section quoted earlier needs to be removed to assure the Port that the Plan will not have an unintended yet very serious economic consequence to the Port and the region's economy.

6. Page 54: 19-25:

Who Determines Whether a Proposed Plan, Program, or Project Is a Covered Action?

A State or local agency that carries out, approves, or funds a project is the entity that determines whether a proposed plan, program, or project is a covered action. If requested, Council staff will meet with an agency's staff during early consultation to review the consistency of a proposed action and to make recommendations. The agency's staff may also seek clarification of whether a proposed action is a covered action, provided that the ultimate determination on whether it is a covered action shall be made by the agency. Should an agency determine that the proposed plan, program, or project is not a covered action, the determination is not subject to Council review but may be subject to judicial review.

COMMENT:

The DSC only reviews a decision if an approving agency believes an action constitutes a Covered Action, makes a certification and thereafter, an adverse party timely files an appeal with the DSC challenging the agency's certification. If the agency does not make the certification then an opponent's remedy is to challenge the decision in court for failing to acknowledge the action was a Covered Action and failing to make the required certification.

The language should emphasize the goal of processing appeals as expeditiously as possible to avoid adverse economic consequence flowing from the delay a public agency or citizen faces from the DSC appeal process.

7. Page 178:19-29:

Agriculture and the Delta's Economy

The total value of Delta crops was approximately \$702 million in 2009. Truck and vineyard crops account for 54 percent of crop revenues on 18 percent of acreage. The top five Delta crops in terms of value were (1) processing tomatoes, (2) wine grapes, (3) corn, (4) alfalfa, and (5) asparagus. The highest per-acre values in the Delta come from truck crops mainly situated in the southern Delta and deciduous crops principally located in the northern Delta. Table 5-1 summarizes top crops by gross value and acreage.

When related value-added manufacturing such as wineries, canneries, and dairy products are included, the total economic impact of Delta agriculture is 13,179 jobs, \$1.059 billion

in value added, and nearly \$2.647 billion in economic output in the five Delta counties. Including value-added manufacturing, the statewide impact of Delta agriculture is 25,125 jobs, \$2.135 billion in value added, and \$5.372 billion in economic output (DPC 2012b).

COMMENT:

This analysis should incorporate the Port's impact on the Delta economy. The Plan should mention that the Port imported and exported 3.1 million tons worth of cargo and 1,600 direct or 10,400 indirect jobs.

8. **Page 179:18-37:**

Other Contributors to the Delta Economy

The Delta's infrastructure not only supports its residents and businesses, but also includes facilities that transport people and products through the Delta from the Sierra on the east to the Bay Area on the west, or from the Sacramento Valley on the north to the San Joaquin Valley on the south. The Delta's economy benefits from the surface transportation, utilities, and other infrastructure that crisscross the Delta to serve local needs, provide access to regional urban markets, and, in turn, link the Delta's economy to national and global markets.

The Delta's most recognizable infrastructure components are its levees, which are described in Chapter 7. Key transportation corridors include Interstates 80, 5, and 205; State Routes 4, 12, and 160; and railroads operated by Union Pacific, Burlington Northern Santa Fe, Amtrak, and the Altamont Commuter Express. County roads are important for transporting crops to market and for local circulation.

The ports at Stockton and West Sacramento are served by deep water shipping channels that the U.S. Army Corps of Engineers maintains along the San Joaquin and Sacramento rivers and the Sacramento Deep Water Ship Channel. These ports connect to San Francisco Bay, and ultimately, to the Pacific Ocean, providing a valuable asset to Delta communities. Rice and other crops grown in the Central Valley and other products are exported across their docks, and fertilizer and other bulk commodities are imported. The Marine Highway Corridor is a recent initiative to expand maritime traffic between the Delta ports and Oakland's port, in part to reduce truck travel and its air quality impacts. Areas for water-dependent industries are located in Collinsville, Rio Vista, Pittsburg, and Antioch, where they benefit from the Delta's abundant and high-quality water.

COMMENT:

The Plan should add that the Federal Government has designated the shipping channel as a Maritime Highway and subsequently approved a TIGER grant of over \$22 million to enhance the ability of the ports of Stockton and Sacramento to move interstate and international cargo by water rather than by traditional methods such as trucks. As a result each port has significantly modified their business plans to enhance and facilitate multi-model movement of cargo and goods by waterways.

9. **Page 196:18-36:**

Sustain a Vital Delta Economy

Many of the preceding policies and recommendations in this chapter deal with aspects of the Delta's economy, such as maintaining agriculture and encouraging recreation and tourism. The Delta's economy also benefits from the surface transportation, utilities, and other infrastructure that crisscross the Delta to serve local needs and link the Delta to regional, national, and global markets. Facilities such as natural gas wells, wind turbines, other renewable power sources, electric transmission lines, and fuel pipelines need to be planned carefully to avoid conflicts with water supply, ecosystem restoration, or flood management facilities and existing and planned land uses. The ports at Stockton and West Sacramento are valuable assets to Delta communities and the state. Areas for water-dependent industries are located in Collinsville, Rio Vista, Pittsburg, and Antioch.

Problem Statement

Other economic opportunities in the Delta, including port and energy uses, could suffer if unplanned development, flooding, or other land uses interfere with them.

Policies

No policies with regulatory effect are included in this section.

Recommendations

DP R18 Support the Ports of Stockton and West Sacramento

The ports of Stockton and West Sacramento should encourage maintenance and carefully designed and sited development of port facilities.

COMMENT:

A major threat to sustaining and increasing economic growth at the Port of Stockton involves maintaining the shipping channel depth. This concern should be added to the list of potential threats that could cause "economic opportunities (to) suffer."

10. **Page 221:37 through page 224:23:**

Dissolved Oxygen

Dissolved oxygen (DO) in water is essential to the survival of most fish and many other aquatic organisms. Depletion of DO in a water body because of decaying organic matter is a classic water quality problem that can result in clear signs of pollution such as fish kills and foul odors. Low DO concentrations also can have less obvious effects. DO events occur regularly in the channels of Suisun Marsh and the Stockton Deepwater Ship Channel and sporadically elsewhere in the Delta, with several waterways listed as impaired by the RWQCB.

Figure 6-2 2

Nutrients Create Delta Water Problems

Nitrate concentrations at the point where the San Joaquin River enters the Delta dating back to 1908 show how much this important plant nutrient has increased. High nutrient concentrations are linked to a variety of problems including dissolved oxygen depletion, growth of nuisance aquatic plants, and taste and odor problems in drinking water.

Source: Adapted by the Delta Stewardship Council with data provided by USGS

One of the most significant water quality issues affecting the Delta in recent decades has been low DO episodes (DO concentrations less than regulatory objectives) in the Stockton Deepwater Ship Channel reach of the San Joaquin River in the Delta, which were thought to act as a barrier to salmon migration (Central Valley RWQCB 2005). Until the last few years, low DO events were a regular occurrence in this part of the Delta primarily during the summer and fall months.

The Stockton Deepwater Ship Channel DO problem has existed since at least the 1960s. The Central Valley RWQCB added this segment of the Delta to its list of impaired water bodies in 1998 and adopted a TMDL in 2005 that follows a phased approach requiring studies and initial actions followed by reconsideration of TMDL requirements in 2012. Extensive studies have identified several contributing factors, including inputs of algae from upstream (probably related to nutrient loads), discharges of total ammonia from the Stockton Regional Wastewater Control Facility, increased channel depth due to dredging, and reduced net flows (Central Valley RWQCB 2005). More information about how an adaptive management approach to DO in the Stockton Deepwater Ship Channel can be found in the sidebar titled Applying Adaptive Management in Water Quality Decisions.

ADAPTIVE MANAGEMENT IN WATER QUALITY DECISIONS An adaptive management approach to water quality control decisions should be taken to plan for and assess their outcomes. The following is an example of how the Delta Stewardship Council's three-stage, nine-step adaptive management framework (see Appendix) was used for water quality decision making in the total maximum daily load (TMDL) process to improve dissolved oxygen (DO) concentrations in the Stockton Deep Water Ship Channel (SDWSC). **Adaptive Management Step Improving DO Concentrations in the SDWSC Plan** Define/redefine the problem. Low concentrations of DO in the SDWSC periodically exceeded the Central Valley Basin Plan water quality objectives for DO for many years. Low DO acted as a barrier to migrating salmon. Establish goals and objectives. Goal: Meet the water quality objectives for DO in the SDWSC. Objectives: Maintain minimum DO concentrations of 5 milligrams per liter (mg/L) at all times and 6 mg/L Sept.–Nov.3 Model linkages between objectives & proposed action(s) Hydrodynamic and water quality models informed the development of a Physical and Chemical Processes Conceptual Model and a Biological and Ecological Effects Conceptual Model. The models identified at least four primary factors or processes influencing oxygen concentrations: (1) San Joaquin River flow through the SDWSC, (2) SDWSC volume, (3) algae and oxygen-demanding substances from the San Joaquin River upstream of the SDWSC, and (4) oxygen-demanding substances, including ammonia discharged from the Stockton Regional Wastewater Control Facility (RWCF). http://www.sjrdotmdl.org/concept_model/index.htm Select action(s) (research, pilot, or full-scale) and develop performance measures Selected Actions: (1) Conduct studies to identify causes for the low DO levels and assign responsibility to correct the problem; (2) reduce RWCF ammonia discharges to the San Joaquin River; and (3) construct a Demonstration Dissolved Oxygen Aeration Facility (Aeration Facility). Performance Measures: □ Administrative – Implement Phase I TMDL actions. □ Output – Implement studies; select wastewater treatment improvements to reduce ammonia discharges

including engineered wetlands and nitrifying bio-towers; develop pilot-scale aeration project. Outcome –DO concentrations are maintained at or above the water quality objectives for DO. Aquatic life, including resident and migratory fish, is not affected by low DO conditions.

Design & implement action(s) Actions Selected: (1) Conduct ongoing studies to improve the conceptual models; (2) add engineered wetlands and two nitrifying bio-towers to the RWCF; and (3) design, build, and operate the Aeration Facility at Rough and Ready Island to determine its applicability for increasing DO concentrations in the SDWSC.

Design & implement monitoring plan Collect baseline DO data prior to aerator operations. Conduct ongoing studies to test the understanding of linkages in the conceptual models. Conduct compliance monitoring at the RWCF as required by the permit. Conduct performance monitoring of the Aeration Facility to measure achievement of the target (increased DO concentrations in the SDWSC).

Evaluate and Respond Analyze, synthesize & evaluate Technical Working Group assessment of the study results and aeration pilot-study results. Communicate current understanding. Technical reports, study results, and web-based conceptual models were developed and maintained on a website. Pilot Report Aeration System and staff presentation to the Central Valley RWQCB (Feb. 3, 2011).

Adapt Development of a revised control program (Phase II TMDL) including identification of additional or modified actions. Development of an aeration agreement with long-term funding for operation and maintenance of the Aeration Facility, including possible future modifications. Development of a system-level (long-term) monitoring plan for the Aeration Facility. Periodic review of control program actions and aerator operations.

Not Reviewed or Approved by Delta Stewardship

COMMENTS:

This section should be revised as follows:

Dissolved Oxygen

Dissolved oxygen (DO) in water is essential to the survival of most fish and many other aquatic organisms. Depletion of DO in a water body because of decaying organic matter is a classic water quality problem that can result in clear signs of pollution such as fish kills and foul odors. Other direct causes of DO depletion are high temperatures and inputs of oxygen demanding constituents and compounds such as ammonia indirect causes including changes in the hydrologic pattern (e.g., flow decreases in riparian systems) which may result in stagnant flows and/or increased temperature. Low DO concentrations also can have less obvious effects. DO events occur regularly in the channels of Suisun Marsh and the Stockton Deepwater Ship Channel and sporadically elsewhere in the Delta, with several waterways listed as impaired by the RWQCB.

Figure 6-2 2

Nutrients Create Delta Water Problems

Nitrate concentrations at the point where the San Joaquin River enters the Delta dating back to 1908 show how much this important plant nutrient has increased. High nutrient concentrations are linked to a variety of problems including dissolved oxygen depletion,

growth of nuisance aquatic plants (Which deplete oxygen during upon their death and decaying process), and taste and odor problems in drinking water.

Source: Adapted by the Delta Stewardship Council with data provided by USGS

One of the most significant water quality issues affecting the Delta in recent decades has been low DO episodes (DO concentrations less than regulatory objectives) in the Stockton Deepwater Ship Channel reach of the San Joaquin River in the Delta, which were thought to act as a barrier to salmon migration (Central Valley RWQCB 2005). Until the last few years, low DO events were a regular occurrence in this part of the Delta primarily during the summer and fall months, but have occurred at other times throughout the calendar year...

11. The Report's recommendation is found at Page 231: 1-4:

WQ R11 Manage Dissolved Oxygen in Stockton Ship Channel

The State Water Resources Control Board and the Central Valley Regional Water Quality Control Board should complete Phase of the Total Maximum Daily Load and Basin Plan Amendment for dissolved oxygen in the Stockton Ship Channel by January 1, 2013.

The improved wastewater treatment processes at the Stockton Regional Wastewater Control Facility were fully operational starting in 2006. This, along with other discharge reductions upstream, appears to have greatly reduced the frequency and severity of low DO episodes in the Stockton Deepwater Ship Channel. The California Department of Water Resources (DWR) aeration facility also has been shown to be an effective remedy for the occasional DO depletion problem that might occur under current conditions. The actions taken to comply with the current TMDL, along with improved flows and load reductions in the San Joaquin River watershed, appear to have provided a solution to this longstanding water quality problem. If continued, the actions taken to comply with the Stockton Deepwater Ship Channel TMDL should be sufficient to prevent future DO depletion problems.

The DO depletion problems in Suisun Marsh are caused by seasonal operations of ponds and wetlands managed for waterfowl hunting. For most of the year, duck club ponds are drained and occasionally flooded to promote the growth of plants that are the favored food of water fowl. When these ponds are flooded up for hunting in the late summer and fall, the decay of accumulated plant matter followed by tidal exchanges of water with adjoining channels can cause severe DO depletion. Some of these low DO events have caused documented fish kills. The San Francisco Bay RWQCB has started the TMDL process to address DO depletion in Suisun Marsh.

The best pathways to address other Delta low DO problems will vary with local conditions and causes, but likely will be a combination of reduced loadings of oxygen-demanding substances and changes to flow conditions, under the framework of adaptive management. As TMDLs are developed to address low DO concentrations in the Delta, actions needed to improve DO conditions will be implemented through SWRCB and regional water quality control board programs, including NPDES permits, stormwater permits, the Irrigated Lands Regulatory Program, and water rights. Low DO conditions in

the Delta need to be addressed to prevent these conditions from increasing in extent and severity.

COMMENTS: The second paragraph should be revised to read as follows:

The improved wastewater treatment processes at the Stockton Regional Wastewater Control Facility were fully operational starting in 2006. This, along with other discharge reductions upstream and increased flows in the San Joaquin River at various times during this period, appear to have greatly reduced the frequency and severity of low DO episodes in the Stockton Deepwater Ship Channel. The California Department of Water Resources (DWR) aeration facility also has been shown to be an effective remedy for the occasional DO depletion problem that might occur under current conditions. The actions taken to comply with the current TMDL, along with improved flows and load reductions in the San Joaquin River watershed, appear to have provided a solution to this longstanding water quality problem. If continued, the actions taken to comply with the Stockton Deepwater Ship Channel TMDL should be sufficient to prevent future DO depletion problems.

12. **California Environmental Quality Act.**

The Port is unable to locate statutory or CEQA guideline support for issuing a sixth draft report prior to responding to comments submitted on the fifth draft report. To the same extent the sixth version which is significantly different than the fifth version in several environmental important areas does not appear to have been based upon any CEQA review. This approach does not conform to the CEQA rule that CEQA review should be integrated into the governmental action. Public Resources code section 21006.

The Port of Stockton appreciates this opportunity to comment and continues to working collaboratively with the Delta Stewardship Council on matters of common concern.

Very truly yours,



Richard Aschieris
Port Director