RLO035 Solano Co

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SUBJECT: Solano County Comments on Delta Plan (revised Project), Recirculated Draft Programmatic EIR and Regulations Associated with the Delta Plan (Rulemaking)

Dear Chairman Isenberg and Members of the Delta Stewardship Council:

Thank you for the opportunity to review the above referenced documents. Solano County has provided comments on several drafts of the Plan and the prior EIR. We will not duplicate those comments, but ask that they be incorporated by reference, as they remain pertinent and applicable to the final draft Plan and recirculated EIR. In accordance with the wishes of the Delta Stewardship Council, we have limited our current review to the revised project (Plan), the Recirculated Draft PEIR analysis and the Rulemaking documents. We remain hopeful that these comments and the plethora of similar comments that numerous agencies, individuals and organizations have provided in earlier drafts and in this, final version will be given serious consideration for incorporation into the final documents adopted by the Council. RLO035-1 RLO035-2

Comments on the final draft Delta Plan and PEIR

Even as a programmatic document the re-circulated PEIR seems to lack substantive analysis and is potentially problematic in that it is virtually impossible to construct a meaningful assessment of impacts for programs and projects due to core information and actions that are missing in the document and the Delta Plan itself and remain largely undetermined. Similar comments from a myriad of sources including Solano County were made on the prior draft PEIR that was circulated yet the re-circulated draft still has the same flaws. How can the Co-Equal Goals so fundamental to the 2009 water legislation truly and fairly be achieved under such circumstances? The Plan and draft PEIR must have foundational information from which to construct meaningful policies and recommendations which, to date are missing. Fundamental to this are a set of agreed-upon flow objectives from the State Water Resources Control Board, RLO035-3 RLO035-4

Response to comment RLO035-1

Please see the responses to the commenter's prior letter, LO218.

Response to comment RLO035-2

Comment noted.

Response to comment RLO035-3

Please refer to Master Response 2. 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. To the extent known, projects that may be encouraged by the Delta Plan are named in the EIR. In addition, types of projects that may be encouraged by the Delta Plan are identified. 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 21 of this EIR.

Response to comment RLO035-4

The proposed BDCP is a reasonably foreseeable future project that is not part of the Delta Plan. It 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. Please refer to Master Response 1. The Delta Plan encourages the SWRCB to complete the updated Bay-Delta Water Quality Control Plan flow objectives. However, only the SWRCB has authority to set those objectives. The Delta Plan and the EIR therefore cannot project what those objectives will be. The Delta Plan and the sources it cites (including especially the SWRCB's 2010 Flow Criteria Report) explains that the flow objectives that best advance the coequal goals will be those that bring about more natural functional flows within and out of the Delta. *See* Delta Plan, pp. 136 to 142, 155, and sources cited therein. The EIR thus assumes, consistent with CEQA, that

the SWRCB will adopt updated objectives that will advance such a flow regime. The general assumption of a more natural flow regime is sufficient for the EIR's programmatic approach. The impacts of the flow objectives are analyzed in greater, quantitative detail, in the SWRCB's Draft Substitute Environmental Document in Support of Potential Changes to the Water Quality Control Plan for the San Francisco Bay-Sacramento/San Joaquin Delta Estuary: San Joaquin River Flows and Southern Delta Water Quality (December 2012). See Master Response 5 for further discussion.

and an assessment of options for infrastructure development for a reliable water supply, which we understand was intended to have been satisfied by a largely-completed BDCP slated for incorporation into the Plan. Section 85304 of the Delta Reform Act requires (page 37) "The Delta Plan shall promote options for new and improved infrastructure relating to the water conveyance in the Delta, storage systems and for the operation of both to achieve the co-equal goals." On page 9 line 32, the Plan introduction states that the "Plan does not make recommendations regarding Delta conveyance." Reference to a BDCP for which there is little or no detail does not fulfill this mandate. By the same token, actions and goals toward furtherance of ecosystem restoration cannot be determined until the basic details relative to how much water the Delta needs to promote ecosystem health are released. For this, the SWRCB objectives are a necessary component. Lacking this information, the entire Delta Plan is premature. In many respects it is a plan waiting for substantiating information to support its core conclusion. This is not reflective of fair and balanced public policy development. RLO035-4

The draft recirculated PEIR is inadequate as it fragments review of the Revised Project (final draft Plan) by only allowing comparison with the prior proposed project (prior Plan). It is important to be able to review the revised project with all of the information on the other alternatives for meaningful review and comparison of impacts and proposed mitigation with the recently revised project. This is key, the Programmatic review is supposed to provide a clear overall picture, with tiered, project EIR's then providing additional project detail. Also, throughout the PEIR, specific mitigation measures (short term construction impacts) seem inappropriately specific given the programmatic nature of the document, while most of the project-related impacts (or mitigations) are completely absent, in many cases leaving us unable to identify, compare or comment on impacts or determine significant impacts (or mitigation) of the alternatives in relation to the revised project. This leaves us unable to comment on impacts to agriculture from the conversion to habitat, for example. This is a significant omission. Also, by this approach, the document is unable to provide a full presentation under the Cumulative impacts of the revised Project. This is a critical component of a programmatic document. For example, the impacts of recreation, environmental restoration, conversion and a loss of agriculture and its effects, emergency response will cumulatively impact county services significantly, which is not identified or discussed in this document. RLO035-5

We are concerned with the increasing focus on development in the Delta evidenced by a number of added policies and recommendations throughout the Plan and PEIR, despite the fact that a great deal of regulation of development already occurs through the DPC and County General Plans, as well as the Stewardship Council's focus on covered actions. Covered actions policies, already quite onerous, have become even so relative to reporting requirements (PEIR Chapter 2). While the County recognizes the importance of protecting not only the Delta, but people and property, it is important to not preclude appropriate activities that would aid agriculture and legacy towns through excessive bureaucratic regulation. In some respects, we see the Delta Plan as hostile towards Delta Agriculture which is ironic given that Delta agriculture is far more sustainable than areas that are less hospitable to agriculture that would benefit by Delta Plan policies as currently drafted. Also, we believe the increased regulations places additional strain on already overtaxed resources of the Delta Counties, and constitutes yet another unfunded mandate. We recognize the significant issues that impact the Delta comprise much more than the perceived development threat, and those other issues deserve more attention in the Plan. Among other things, there are a large number of state agencies RLO035-6

Response to comment RLO035-5

The Revised Project is the 2012 Final Draft Delta Plan, which is analyzed in the RDPEIR (see, e.g., RDPEIR, p. ES-1). The revised project description is provided in Section 2, Description of Revised Project, of the RDPEIR. The Fifth Staff Draft Delta Plan, which was the "Proposed Project" analyzed in the DPEIR, is now referred to as the Proposed Project Alternative for purposes of clarity, and is analyzed in the RDPEIR as an alternative (see, e.g., RDPEIR Section 25.3). The RDPEIR, volume 3, is an additional volume to the DPEIR. Please see Master Response 1. Regarding the enforceability and specificity of the EIR's mitigation measures, please refer to Master Response 4. The impacts on agricultural resources due to fallowing of agricultural land, construction of setback levees, and habitat restoration are discussed in Section 7, Agriculture and Forestry Resources, of this EIR. Section 22 of the EIR assesses the cumulative impacts of the Delta Plan and alternatives in combination with past projects, other current projects, and probable future projects (CEQA Guidelines § 15065(a)(3); Public Resources Code § 21083(b)(2)). This does not require the EIR to speculate about all future projects, but rather that it address those that are reasonably foreseeable. As discussed in Master Response 4, the EIR considers the impacts of, and identifies mitigation for, all of the different types of projects encouraged by the Delta Plan: water supply reliability projects, Delta ecosystem restoration projects, water quality improvement projects, flood risk reduction projects, and projects to protect and enhance the Delta as an evolving place. These impacts and mitigation, taken together, constitute the overall impacts of the Delta Plan and the appropriate mitigation.

Response to comment RLO035-6

This is a comment on the project, not on the EIR. As explained in the Recirculated Draft PEIR, the Final Draft Delta Plan includes policies and recommendations to encourage protection of existing and planned land uses, including agricultural and natural resource uses, through: 1) development of new water management facilities, habitat restoration areas, and flood management infrastructure in areas to avoid conflicts with existing or planned land uses; 2) prioritization of the use of public lands for ecosystem restoration prior to purchase of new public lands for ecosystem restoration, and, if property purchases are necessary, prioritization of the land purchase from willing sellers; and 3) support of the vitality of agricultural practices and protection of recreational resources. See e.g., RDPEIR at 3-10. These policies and recommendations include DP P1, DP P2, DP R4, DP R7, DP R8, DP R9, DP R10, and DP R14. See also Master Response 1.

with mandates in the Delta (some conflicting), resulting in less than stellar past policy related to the Delta, necessitating the incorporation of detail as to how these mandates will be streamlined and conflicts addressed. In addition, land use policies elsewhere in the State that add demand on limited water supplies must be considered in the Plan and EIR. This type of analysis is largely lacking in the Plan while land use policies of Delta Counties are highlighted and scrutinized. If the Delta Plan is truly committed to considering the entire system, a more comprehensive and fair analysis must be included. Otherwise, it represents Co-Equal Goals in name only. RLO035-6

The Delta Plan, in its background discussions, should take a broader approach and provide a full and appropriate historical setting to adequately chronicle the statewide context under which the Delta-focused Delta Plan policies have been developed. On pages 13, 14 and in Chapter One, the discussion comprises a history of sorts of California water use and infrastructure growth over the last 160 years, including the genesis of the State and Federal water projects. Where water use and growth within the watershed and just outside is adequately summarized, with San Francisco and EBMUD diversions prominently highlighted on pages 13 and 15, the history of additional areas outside of the watershed that greatly affect Delta water supply are notably absent. These distant areas exhausted water supplies closer to home and more recently have been requesting additional water from the Delta, or at the least a more reliable supply. This history is pertinent to the discussion and the policy that follows. For example, the historic Los Angeles Department of Water & Power purchase of lands and water diversions of rivers feeding Mono and Owens Lakes; the reduction of water available to Southern California from the Colorado River and subsequent court fights, have relevance on the historical context being discussed. The San Joaquin Valley's reliance on supplemental water supplies from the Delta and subsequent planting of water intensive and permanent crops are indeed relevant to policy development today, and should be reflected in any historical basis for the Plan as should reduction of supplies due to less water being available from the eastern Sierra and Colorado River to Southern CA which has put additional demands on water through the Delta.

Similarly, on Page 14, water use within the Delta and watershed has not been fully chronicled. Early pre-1914 water rights held and similar post 1914 appropriative rights granted for water users within the Delta and the watershed within the area-of origin were not required to report, consistent with water rights/use throughout the state at that time. RLO035-7

On page 15, the discussion on the Delta and its ecosystem details loss of habitat in the Central Valley, the citation of the Hetch Hetchy and Mokelumne Aqueducts, needs to be coupled with additional specific impoundments, such as the Friant Dam, which held back the bulk of the San Joaquin River inflow to the Delta, to provide a more accurate reference to reverse flows cited on line 26.

On Page 16, line 39, a reference is made to the Delta and Suisun Marsh as the largest estuary on the west coast. It is very important to note here and throughout the document that the estuary extends through San Francisco Bay and out the Golden Gate. The concept of the Bay-Delta as an estuary is almost entirely absent in the documents and needs to be elaborated upon.

Response to comment RLO035-7

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

On page 17, line 7-12: context is also important here as the Plan discusses declines in fish populations. It is our understanding that science linked the increased decline in species to pumping of additional water during the early 2000's. It is also important to note that the pump restrictions, however regrettable, became necessary as a result of that over-pumping. Even with improved infrastructure, junior or contractual water rights holders dependent upon surplus water must be prepared for decreased supply on occasion, in this state, for any number of reasons and must plan (and plant) accordingly. The reality is that this has occurred during drought cycle and low flow periods in the past few decades.

On page 21, we would expect that the reference on line 21 to "immediately halt practices known to be detrimental to the sustainability of the Delta..." would include addressing export pumping as a primary stressor to the Delta. We see this as a call for real action in terms of reducing exports quickly and finally, in order to consistently and fairly address all issues contributing to the Delta's decline.

Page 21, line 34 refers to near-term actions that must move forward. We would be remiss if we did not remind the Council and request incorporation into the Plan and appurtenant documents of two truly significant opportunities to fulfill this stated goal that are currently not referenced. These two processes (the Delta Counties Coalition/San Joaquin Valley Partnership and the Coalition for Delta Projects), each comprised of a broad spectrum of Delta interests that often disagree on various issues, got together and each produced a list of specific near-term no-regrets projects that will not affect BDCP and would vastly improve the Delta, ecosystem, infrastructure and further the coal-equal goals. This constitutes meaningful progress on real projects, yet are not addressed or referenced in the Plan or PEIR. On line 40, the issue of protecting the Delta means restricting development there, which we would note has already been accomplished, for at least the last decade. That the Council chooses to focus its efforts on additional land use restrictions in this Plan, while minimalizing other areas that require oversight is truly unfortunate. Supporting the above-mentioned projects would go a long way in mitigating the existing (near-term) infrastructure constraints mentioned on page 95, line 44. The fact that these projects were endorsed by a broad spectrum of water interests cannot be overstated. We strongly suggest incorporation of these project lists into WR R14 on page 112 for a meaningful recommendation on near-term actions in the Plan. — RLO035-7

Page 22, line 6 and elsewhere in the Plan and PEIR, refers to the successful completion of the BDCP as essential. It seems inappropriate for the Council to include a de facto or direct endorsement of the BDCP in the Plan and/or PEIR at this time; as it is a substantially incomplete plan that may not ultimately be appropriate for inclusion. Please note comment above relative to the Council's mandate to provide infrastructure options to ensure reliability in the Delta Plan. — RLO035-8

Page 22, line 23 and page 77; We disagree with the Plan's assertion regarding population growth (and the subsequent water use associated with it). The Plan should make recommendations as to how new water must be developed by exporters to deal with population increases, rather than continuing to stretch existing, oversubscribed supplies.

On page 25, a chart summarizing anticipated changes affecting the Delta illustrates some interesting predictions. The probability of island flooding predictions are worthy of more — RLO035-9

Response to comment RLO035-8

The proposed BDCP is a reasonably foreseeable future project that is not part of the Delta Plan. It 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 23 of the Recirculated Draft Program EIR, if completed and approved by the California Department of Fish and Game, the BDCP must be considered by the Delta Stewardship Council and included in the Delta Plan as required by the Delta Reform Act (Water Code section 85320 et seq.). Please refer to Master Response 1.

Response to comment RLO035-9

These are comments on the project, not on the EIR.

explanation. It would be helpful to know the origin of the data. The Delta Risk Management Studies headed by DWR found very little agreement among the scientific or Delta communities, even after substantial revision.

On page 43 of the Plan, covered actions are included in a discussion of the best available science in decision-making. In addition to the previous question as to why development remains such a target, when in fact development on the Delta has been addressed for some time through local agencies and the DPC, the concept of broadening this approach to encompass any and all activities by those exporting water from the delta would be in order. Please see prior comments on covered actions and comments in the Rulemaking section of our comments. RLO035-9

The references to adaptive management on page 43 and throughout the Plan and PEIR should incorporate a timeframe in which to get it right, as well as a Plan B in the event of a protracted failure. RLO035-10

On page 44 of the Plan, Carlisle et al recognizes the impact of pumping as a primary stressor in the Delta ecosystem.

On page 51, a governance structure is outlined to implement the Delta Plan. Where there is mention of a stakeholder committee, we will again reiterate for the record that local agencies that are bearing the brunt of planning processes that significantly impact us while benefiting others in the state, need to be included at all levels of planning and implementation, from inception to completion. As the primary target of ecosystem restoration efforts, this is critical to Solano County and to a successful planning and implementation process.

Page 52 mentions monitoring processes for the co-equal goals. What is to be the monitoring process for projects that attempt to mitigate the impacts caused in the delta from past years of pumping memorialized in the Biological Opinions? It would be important to note the projects contemplated and implemented to satisfy those requirements would be a good example to illustrate success prior to wide-scale ecosystem projects contemplated as part of the ecosystem requirements contemplated by the Delta Plan/BDCP.

Performance measures mentioned on page 53 of the Plan and throughout the documents are wholly inadequate, and are so general (as a result of the problems related to lack of foundational information) as to be almost meaningless. RLO035-11

Financing of the Policies and recommendations in the Plan and PEIR should be described at some level of detail. We see only somewhat vague references to financing, a critical component, in the Plan and PEIR.

On page 73 of the plan, reference is made to reduced reliance, primarily through the California Water Plan. Is that document to be incorporated in the Delta Plan ?

Page 80 discusses reservoir systems for water supply and flood protection. This is another arena where direction in the Plan would be very useful, to promote a much more integrated and effective system in the future.

Response to comment RLO035-10

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

Response to comment RLO035-11

These are comments on the project, not on the EIR.

P 81 and 91 refer to complications caused by contracts that specify greater export quantities than could ever be delivered; this is another area in which the continuing inflated contract amounts skew planning efforts, exacerbating an already acute problem related to inflated delivery expectations of junior water rights holders. On page 91 line 15, the reference to flow reversal in the south Delta should also refer to the lack of contributing flow from the San Joaquin river as a primary cause.

Page 93 reflects on water transfers as a useful tool. Where this is true, a Plan policy or recommendation should be included so that all water transfers are subject to full oversight by the SWRCB as part and parcel of the effort to track water use described on page 22, and should be part of WR R15 on page 112, as well as WR R17 on page 113.

Page 93 looks at dysfunction and aging of the SWP. One solution is to ensure that all costs are incorporated in contract prices to reflect delivery and improvement costs, as well as costs to mitigate ecosystem impacts, something that to date, the state has failed to do. The Plan should address the inherent conflict that DWR has as a water supplier through the SWP and its mandate for conservation and resources, mentioned in the Plan.

Storage is mentioned on page 93-96 of the Plan. Since storage is not being addressed through programs such as the BDCP, it should be a specific priority of the Council and detailed in its Plan. Simply referencing DWR work over past decades is not sufficient and does not fulfill the mandate of the Council in Section 85304 of the Delta Reform Act. This is particularly important, as the BDCP, which the Plan endorses, will require additional storage to become functional as envisioned. WR R13 should include detailed storage recommendations, and should look beyond storage and conveyance to methods of integrating flood and water supply systems to maximum effect. RLO035-11

We question how DWR came up with a risk assessment that estimates a 36-month interruption of supply in the event of a catastrophic earthquake (page 101, line 14). Is the source DWR's controversial Delta Risk Management Study?

Policy WR P1 on page 108 outlines regional self-sufficiency and reduced reliance on the delta. This is a very important component of the Delta Plan and one of relatively few policies that rely on the contributions of out-of-the-watershed beneficiaries. We question why the exact same policy would apply to junior water-rights or contractual water exporters for which the Delta is a secondary or tertiary supplementary source of water, and those for which Delta water is a sole, or primary source of supply (such as in-Delta users). Where the elements of conservation, and other efficiencies for example, are common to both, we believe some exception and/or flexibility should be provided for those in-Delta area-of-origin and primary users that do not have the flexibility to turn to other sources of water supply, and are not in a position to implement desalination or recycled water options (agricultural users, for example, or legacy communities). Finally, the caveat relative to cost-effectiveness of programs and projects that reduce self-reliance, as outlined on line 34 needs further definition and/or qualification. Documents detailing performance measures (summarized on page 116 of the Plan) should include exporter contingency plans in the event of much-reduced supply in below-average water years. Please not our comments on Rulemaking in our comments below.

No comments

- n/a -

The final draft Plan now contains less protection of agriculture and ecosystem attributes as the PEIR 'revised plan' (page 2-3) by reducing attention to levee restoration activities. This is troubling, and inconsistent with the Delta Reform Act. It is important to note that flooded islands do not protect agriculture, nor do they aid the ecosystem in any way, and can put stress on adjacent areas, exacerbating the problem. Please note additional comments below as we discuss Chapter 5 of the Plan. RLO035-12

The revised plan calls for naturally variable water flows as described on page 127 and more natural functional flows on page 128, throughout Chapter 4, page 221 and other parts of the Plan as well as the PEIR. The documents state that variation in flows and conditions will improve native species and discourage invasive species. Because of controversy over what variable flows are, and whether historic flows were in fact more 'variable' or not, we strongly believe this concept to be ill defined, potentially flawed and should be subject to significantly more and broader peer review and agreement before inclusion in the Plan and PEIR, and particularly prior to implementation. We question the premise that more variation in flows will discourage invasive species. It is our understanding that water would have to become very saline over time to annoy invasive species, while natives would be greatly affected. The assertion on page 128 that the Delta will provide more reliable water supplies with a restored ecosystem may be true, to a point.... but must be balanced with the overwhelming scientific evidence demonstrating the correlation between fish abundance and flow. The assertion that native species are adapted to a naturally dynamic Delta ecosystem (page 135, Principle 5) begs further definition as well. The same controversy relative to historic conditions applies to the assertion here that actions must mimic historical natural variability. Where this may be true, agreement on interpretation is paramount. The discussion beginning on page 139 would seem to make the case that today, dams on rivers (and perhaps pumping), may have created more variability rather than less. The discussion on page 141 regarding more natural functional flow should address export pumping in the discussion, a significant omission here. Finally, recommendation ER R6 on page 162 and outcome performance measures on page 165 should reflect the above-mentioned issues. RLO035-13

It is hard to imagine (page 137) how BDCP could "contribute to the restoration of the health of the Delta's ecological systems by contributing to a more natural flow pattern than existing conditions within the Delta..." while removing up to 9,000 cfs from the north Delta, and for the reasons described above. RLO035-14

On page 138, line 40, the discussion of net Delta outflows also references outflow variability, but perhaps without the context mentioned above, and should perhaps refer to the Delta as part of the larger Bay-Delta estuary, in this context.

The discussion of ecosystem stressors beginning on page 132 of the Plan needs to include export pumping, and recognize export pumping in the south Delta as a primary cause of ecosystem collapse. It is somewhat disingenuous to disguise pumping as altered flows or leave it out altogether in the discussion here, on page 134, other parts of the Plan and the draft PEIR. Page 144 references "passive" ecosystem restoration on Liberty Island. Generally, passive methods take a number of years to attain any wetland function and value, and may create problems for neighboring areas. On page 146, the concept of adaptive management is RLO035-15

Response to comment RLO035-12

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

Response to comment RLO035-13

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

Response to comment RLO035-14

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

Response to comment RLO035-15

These are comments on the project, not on the EIR.

summarized, noting that a pilot-scale restoration is suggested for the Cache Slough area, which is of great interest to Solano County. We respectfully request to be included in the project from inception to completion. The discussions on adaptive management leave out a key detail, and that is the timeframe. What would be the general time-frame from project definition to success? Are there examples that illustrate this process and time-frame? RLO035-15

Page 149 references the San Joaquin River Restoration Agreement and recognizes planned attributes, but there seems to be little incorporation of this agreement in the Plan, and no recommendations that speak to it.

The management of salinity to manage invasive species (page 151 of the Plan) should be thoroughly vetted from a scientific perspective as noted in our above-mentioned comments. We see no recent citations in the description of invasive species on page 152.

Policy ER P2 on page 156 of the Plan discusses restoration of habitat at appropriate elevations. Where we agree that some level of habitat restoration is necessary for a healthy Delta, it appears as though most of the appropriate elevations exist in Solano County, and we suspect the state is planning to err on the side of too much rather than not enough in an attempt to compensate for lack of flow in the north and west Delta with the BDCP as currently proposed. Therefore we insist on involvement from inception to completion, minimization of impacts and full (direct and indirect), including mitigation of economic impacts. We believe that Solano County should benefit, rather than just avoid harm, as others will be benefitting from a reliable water supply and restored ecosystem, as described in the Plan. We also strongly encourage the state to engage in pilot projects to gauge success prior to large-scale restoration.

Policy ER P3, the protection of opportunities to restore habitats, is problematic in that it is over-reaching and unnecessary. In addition, it has the effect of diminishing land value in mapped areas, creating potential for inverse condemnation of land, as would Policy ER P4, regarding the expansion of floodplains. Encouragement of ecosystem restoration and floodplain expansion should be directed at identification of funding opportunities and a streamlined permit process as incentives and to cover costs, rather than at heavy-handed punitive regulatory schemes. RLO035-16

Under ER R1, prioritize and implement habitat projects, we reiterate the need to engage in smaller-scale pilot projects such as the Cache Slough example on page 146 to ensure success prior to large-scale restoration. Suisun Marsh projects referred to on page 157, 161, 189, 230 in the Plan, and elsewhere in the Plan and PEIR must be consistent with the Suisun Marsh Habitat Management, Preservation and Restoration Plan endorsed by the fish and wildlife agencies and run through the Suisun Resource Conservation District.

Recommendation ER R3 combating the Corps' levee vegetation policy has no teeth. We would recommend a much stronger, more detailed strategy to deal with the Army Corps Levee Vegetation Policy which requires removal of vegetation, creating a much larger ecosystem problem in the Delta, and has questionable merit in terms of levee protection in this circumstance. The Council has a real opportunity to negotiate this via strong policy, as it strives to gain incorporation of full Federal participation through the Coastal Zone Management Act and other means.

Response to comment RLO035-16

These are comments on the project, not on the EIR.

Chapter 5 discusses protecting and enhancing the Delta as an evolving place, with a vision on page 178 that articulates laudable goals to protect agriculture and engage stakeholders in shaping the future of the region. We question how this is possible given the lack of funding and lack of state will to provide for necessary levels of flood protection. The PEIR acknowledges on page 2-3 that fewer levee improvement projects could be constructed, given the de-emphasis on protection of agricultural, recreational and ecosystem habitat areas in the revised Plan. We find this inconsistent with the co-equal goals definition, which states that "The co-equal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place." RLO035-17

New policy DP P1 on page 273 is flawed, as discussed in our earlier comments and should be removed from the Plan for the reasons described above.

Page 180, beginning on line 10, the Plan discusses in-Delta water users. As mentioned above in our comments related to regional self-sufficiency, options for in-Delta users are more limited when it comes to development of alternative sources of supply and supply through recycling, and conjunctive use. Individual and small community users as well as agriculture in the Delta have fewer options than large exporters with other sources of supply. The Delta community uses funds for levee protection, which also benefits the export community's water supply. One could make the case that in-Delta users are already self-sufficient in many ways, and provide a service to the export community in this regard. RLO035-18

The Plan, on page 195, line 11, acknowledges that ecosystem restoration efforts (and infrastructure development, flood control) will result in the unavoidable negative impacts on productive agricultural lands. We would like to see more mitigation developed to reduce these impacts. This would like working collaboratively with and respecting local land use plans adopted by Delta Counties. The Delta Plan continues to fall short in acknowledging the true impact on Delta agriculture, or to commit to definitive language that would assure that the full range of impacts are mitigated.

We were able to find some discussion on the conversion of farmland to non-agricultural use found on PEIR page 7-3. How is this to be mitigated and what are the impacts, mitigation of large-scale mitigation? We find some language on PEIR page 9-23 and 24-14 relative to irretrievable loss of agricultural land, with an attempt at mitigation references to short term impacts and mention of land purchase elsewhere. This is inadequate for an impact of this kind that will remain signification after mitigation. Purchase of land would need to be fully vetted, in the area, with same attributes. RLO035-19

We find the emphasis on wildlife-friendly agriculture, and agritourism beginning on page 197 of the Plan (and in the recommendations section) a bit ambitious if not unrealistic. While there is a place for these activities, they are clearly limited and should not be viewed as an offset for large scale reductions in agricultural areas related to habitat restoration. There are no policies that support agricultural preservation other than promotion of value-added crop processing, and other restrictions in the plan on development make infrastructure that would support this type of crop development difficult if not impossible. We would suggest striking the sentence on page 212 line 3, regarding the siting of recreation facilities in new ecosystem restoration projects. RLO035-20

Response to comment RLO035-17

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

Response to comment RLO035-18

These are comments on the project, not on the EIR. Please see Master Response 4 regarding mitigation measures.

Response to comment RLO035-19

Section 7 of the EIR explains that the Delta Plan could result in conversion of farmlands to non-agricultural use, which would constitute a significant impact. As explained in the Recirculated Draft PEIR, the Final Draft Delta Plan includes policies and recommendations to encourage protection of existing and planned land uses, including agricultural uses. These measures include: 1) development of new water management facilities, habitat restoration areas, and flood management infrastructure in areas to avoid conflicts with existing or planned land uses; 2) prioritization of the use of public lands for ecosystem restoration prior to purchase of new public lands for ecosystem restoration, and, if property purchases are necessary, prioritization of the land purchase from willing sellers; and 3) support of the vitality of agricultural practices and protection of recreational resources. See e.g., RDPEIR at 3-10. These policies and recommendations include DP P1, DP P2, DP R3, DP R4, DP R7, DP R8, DP R9, DP R10, and DP R14. Please also see Master Response 1.

Response to comment RLO035-20

These are comments on the project, not on the EIR. Please see Master Response 4 regarding mitigation measures.

On page 229, the Delta is referred to as an estuary. While we are pleased to see a reference to it, we suggest referring to the estuary as the Bay-Delta Estuary, or refer to the delta as forming part of an estuary. We also acknowledge the reference to the Delta as a historically freshwater system on line 30-32.

On page 241, line 39, recognition that delta water quality and flow affect San Francisco Bay would be appropriate in the context of this discussion.

RLO035-20

Page 263 of the Plan's calculation of earthquake risk refers to the Delta Risk Management Strategy conducted by DWR. We question whether the assumptions in that report were reconciled with the scientific and experts in the community, as the report was quite controversial , and was not well regarded from a scientific standpoint upon release; a revised report was not issued until a year or two later. A more collaborative approach is recommended so that experts can agree on assumptions and other aspects of reports to save time and funding and so that scientific findings are universally trusted and accepted, and we can then act on these reports. For the same reasons, where we understand the flood risks in the Delta, we question the veracity of the data behind assuming a 20-island failure resulting from a 6.5 earthquake in the Delta, in figure 7-1 on page 265.

Page 268 discusses agencies involved in flood protection and their roles. It is important to note that the US Army Corps of Engineers has recently revoked an agreement with DWR that suspended Corps actions to issue permit compliance reports and revoke Corps maintenance and response capabilities on project levees that do not comply with Corps regulations.

RLO035-21

Recommendation RR R2 on page 286 of the Plan speaks to the creation of a Flood Assessment District. We would request language specifying the District to be collaboratively defined and governed and that significant state funding be a component, in continuance of state interests in the Delta. Liability would also be a potential impediment here.

Policy RR P3 and P4 on page 290 requiring flood protection of floodways and floodplains would not appear to be consistent with existing state law (SB 5) and unnecessary, given the protections from development in other areas of the Plan, such as covered actions, the DPC Resource Management Plan and County General Plans.

Rulemaking: Comments on Proposed Delta Plan Regulations

Thank you for the opportunity to review and comment on the proposed regulations associated with the Delta Plan, dated November 16, 2012 ("Regulations"). Although we appreciate the effort that has gone into drafting these Regulations, we have some concerns. We urge the Delta Stewardship Council to seriously consider them in finalizing the Regulations.

As a general matter, there are three primary concerns with the Regulations. First, in many instances the Regulations would appear to go beyond the scope of the Sacramento-San Joaquin Delta Reform Act of 2009 (Water Code § 85000 *et seq.*; "Delta Reform Act") and other state laws, in conflict with the "consistency" requirement of Government Code section 11349(d). Second, in many instances they are duplicative of existing law, confusing or unclear. Lastly, the

RLO035-22

Response to comment RLO035-21

These are comments on the project, not on the EIR.

Response to comment RLO035-22

These are comments on the project, not on the EIR.

Regulations do not provide much in the way of guiding principles and/or mitigation for actions that conflict with existing in-Delta uses. More concern should be given to effects on in-Delta uses and communities, the protection and enhancement of which, after all, are a key component of the "coequal goals" (Water Code § 85054).

More specific comments are as follows:

§ 5001. General Definitions.

- Subsection (e)(3) would appear to contradict the clear legislative mandate in Water Code section 85054 that the "coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place" (emphasis added). Inserting the word "shall" for "can" in the fifth line would at least help in this regard. Moreover, referring to the Delta as always-changing would appear to go above and beyond both this statute and the intent to create a sustainable Delta. "Evolving" should not necessarily be equated with "indefinitely changing."
- The definition of the term "encroachment" in subsection (i) is overly broad (see comments on sections 5016-5017 below).
- Section 5001(l)'s definition of "floodplain" is overly broad. In reading it, it's hard to imagine what part of California would not be considered part of a "floodplain."
- Section 5001(s) does not provide a definition for "baseline conditions," so it's not clear what this section means, precisely. Furthermore, it is our reading and expectation that such conditions/impacts go beyond physical conditions/impacts and encompass social and economic conditions/impacts. RLO035-22

§ 5003. Covered Action Defined.

- Subsection (b)(2)(D) should refer to section 5001(s), not section 5001(n).
- Subsection 5003(c) requires that a public agency's covered action determination must, among other things, be "reasonable [and] made in good faith." However, the key measure is not whether an agency acts reasonably or in good faith in making a covered action determination; consistency with the Delta Reform Act and its Regulations is what's key. This part of the subsection should therefore be deleted.
- The Delta Reform Act requires that only actions identified as "covered actions" pursuant to Water Code section 85057.5 must be consistent with the Delta Plan. (Water Code § 85022.) However, as detailed elsewhere in these comments, many of the provisions in Article 3 of the Regulations would appear to encompass some non-covered actions. This (or another) section should clarify that the Regulations only affect "covered actions."

§ 5004. Contents of Certifications of Consistency.

- In subsection 5004(a), "proposed action" does not need to be in quotation marks.
- Subsection (b)(5)'s insistence that an agency's "certification of consistency must also include a certification from that agency that the covered action complies with all

No comments

- n/a -

applicable laws pertaining to water resources, biological resources, flood risk, and land use and planning," goes well beyond the scope of Water Code section 85225.

§ 5005. Reduce Reliance on the Delta Through Improved Regional Water Self-Reliance.

In carrying out this section and Water Code section 85021, it would behoove the Delta Stewardship Council to recognize the unique circumstances of in-Delta users. In terms of the ability to reduce reliance on the Delta in meeting future water needs, there is a marked difference between the export community and riparian in-Delta users, both in terms of the ability to use other water sources and the feasibility of investing in water-saving measures.

§ 5008. Restore Habitats at Appropriate Elevations.

Habitat restoration must be accomplished in a way that minimally impacts existing in-Delta uses and provides for full mitigation, including economic mitigation, for any direct or indirect effects. Further, any such restoration should focus on public lands and on lands provided from willing sellers. Such guiding principles should be stated here (and elsewhere).

§ 5009. Protect Opportunities to Restore Habitat.

This section is problematic, for two reasons. First, it is not clear. Subsection 5009(a) refers to "the opportunity to restore habitat at the elevations shown in Appendix 4," but Appendix 4 does not contain a demarcation of restoration opportunity areas. Second, it raises the specter of inverse condemnation/taking for those areas deemed restoration opportunity areas due to depressed property values. RLO035-22

§ 5010. Expand Floodplains and Riparian Habitats in Levee Projects.

What is the reason to mandate the evaluation of alternatives, and who pays for that? Furthermore, it's not clear the Delta Stewardship Council has the authority to mandate this.

§ 5012. Locate New Development Wisely.

- This limitation on new development is well beyond the scope of the Delta Reform Act and state law. The Legislature has not called for the cessation of new development as provided in this regulation.
- Section 5015 appears to contemplate new residential development, in conflict with this section.
- Lastly, this section would appear to conflict with the responsibilities of the Delta Protection Commission regarding development in the Delta, and as such is wholly "duplicative," counter to the requirement at Government Code section 11349(f).

§ 5013. Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats.

- We agree that the siting of water or flood facilities or habitat restoration must be accomplished in a manner that avoids conflicts with existing or planned uses. This regulation permits such conflicts when it is not "feasible" to avoid them. What is

No comments

- n/a -

"feasible" should be strictly interpreted so as to not weaken what is a fundamental principle for Delta communities, including our own.

- However, some clarification is necessary regarding the term by "planned uses." Whose plan? And what level of planning is required to meet that definition?
- The only thing stated about mitigation for existing uses is the following: "Measures to mitigate conflicts with adjacent uses may include, but are not limited to, buffers to prevent adverse effects on adjacent farmland." This is insufficient, if only because it is concerned with "adjacent uses." Full mitigation, including economic mitigation, should be required for any disruption to existing uses as well as adjacent uses. (See comments on section 5008.)
- Privately-owned sites do not have to be "purchased," necessarily. The language should be changed to "utilized" or the like.

§ 5014. Prioritization of State Investments in Delta Levees and Risk Reduction.

Water Code section 85306 requires the Delta Stewardship Council to consult with the Central Valley Flood Protection Board regarding the prioritization of state investments in Delta levees. However, subsection (a) enlarges that conversation to a number of other parties, including the Department of Water Resources. This will only complicate the discussion.

§ 5015. Require Flood Protection for Residential Development in Rural Areas.

This section would appear to be inconsistent with existing state law (namely, SB 5), and, as a result, would appear, on its face, to be a virtual prohibition of new residential development, at or above the 5 unit development threshold, in the Delta outside of the exempted areas. It was not the intention of the Legislature with the Delta Reform Act to overturn the existing state law in this area. (See also comments on section 5012.) RLO035-22

§ 5016. Floodway Protection.

- This section is vague and ambiguous. What does "appropriate analysis" mean? How is "unduly impede" to be interpreted?
- Considering the broad definition of "encroachment" in section 5001, this section would appear overly broad and beyond the scope of the Delta Reform Act. Furthermore, it would appear to intrude on the authority of the Central Valley Flood Protection Board, including with federal flood control projects.

§ 5017. Floodplain Protection.

- This section is vague and ambiguous. Again, what does "appropriate analysis" mean? What does "significant impact on floodplain values and functions" mean?
- In its application to geographical areas outside of the legal Delta (e.g., the entire Yolo Bypass), this section would appear to be beyond the authority of the Delta Stewardship Council. (*See* Water Code § 85058.)
- There is an errant "\" in subsection (a)(1).

No comments

- n/a -

- Regarding subsection (a)(1), where, specifically, is the confluence of Putah Creek into the Yolo Bypass? There is no clear definition or line of demarcation identifying this boundary.
- Considering the broad definition of "encroachment" in section 5001, this section would appear overly broad and beyond the scope of the Delta Reform Act.
- Lastly, as with section 5016, this section would appear to establish a form of concurrent regulatory authority with the Central Valley Flood Protection Board.

§ 5018. Just Compensation. RLO035-22

This section should be extended to public property, in addition to private property. After all, public property is also subject to condemnation (*see* Code of Civil Procedure §§ 1240.510, 1240.610), with the public entity-owner entitled to just compensation.

§ 5019. Property Owner Rights.

Our reading of this section is that this section applies to both public and private property owners and encompasses water rights (including area of origin, watershed of origin, county of origin, or any other water rights protections), consistent with the Delta Reform Act and other provisions of law. (*See, e.g.,* Water Code §§ 85031(a), 85032(i).) Providing such clarification in the regulation would reduce any potential confusion on these points.

Thank you again for the opportunity to comment. We urge the council to not approve the current version of the plan. Further revision is needed, and the plan would benefit from further information and analysis currently being developed by the BDCP. RLO035-23

Sincerely,

Bill Emlen
Director of Resource Management
Solano County

cc: Solano County Board of Supervisors
Birgitta Corsello, County Administrator
State Senator Lois Wolk
Doug Brown, Delta Counties Coalition
Steve Pierce, CAO Analyst
Assemblymember Mariko Yamada

Response to comment RLO035-23

Comment noted.