



**State & Federal Contractors
Water Agency**

1121 L Street, Suite 806, Sacramento, CA 95814

February 15, 2012

Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Dear Chairman Isenberg and Council Members:

I am writing to provide the perspective of the State and Federal Water Contractors Water Agency (SFCWA) regarding the Delta Protection Commission's (Commission) "Proposal to Protect, Enhance, and Sustain the Unique Cultural, Historical, Recreational, Agricultural and Economic Values of the Sacramento-San Joaquin Delta as an Evolving Place" (Proposal) dated January 26, 2012, that was the subject of the Council's deliberations on February 9 and 10 this past week. As with the Economic Sustainability Plan (ESP) prepared for the Commission, which provides the foundation for the Proposal, there is much to be supported but also much that reflects an unfortunate agenda that continues unproductive opposition to effective implementation of the Delta Plan and the Bay Delta Conservation Plan (BDCP), as well as a "fortress Delta" mentality that is unproductive and inconsistent with the Legislative intent of the Delta Reform Act (Act). Once again, as with the ESP itself, in many areas the Proposal represents a missed opportunity to move beyond obstruction and toward an active, positive relationship with the Council and other stakeholders to constructively address issues of mutual concern by developing strategies for reducing impacts while meeting the State's interest in achieving the co-equal goals and providing for an economically sustainable Delta.

Generally, we concur with your staff's review, analysis and conclusions related to the Proposal as conveyed to you in the staff report prepared for your early February meeting. Still, there are some areas where we have some disagreement so here provide further detail and elevate specific concerns for your consideration. Of overarching concern is that we do not believe that the Proposal is consistent with furthering the achievement of the coequal goals in many respects. Critiques of habitat restoration and water supply reliability infrastructure activities particularly are couched in terms that contradict the effective pursuit of the coequal goals, and are notably more appropriately raised within the BDCP EIR/EIS public process.

Another significant problem is that much of what is actually "proposed" is dependent upon a levee maintenance philosophy that perpetuates the failures of the past with regard to an absence of any prioritization or notion of a "strategic levee investment" program as called for by the Act. Simply stating that certain levees should be maintained to a higher standard than other levees misses the fundamental problem that there are insufficient resources to undertake such a universal program and that there must be a ranking of which levees are "more important" to invest in than others – not just what levee stability standard should ultimately be achieved in any given location.

Below we provide specific feedback regarding the Proposal, working from the Council staff's memo.

LEVEES AND PUBLIC SAFETY RECOMMENDATIONS

- 1. Improve and maintain all non-project levees to at least the Delta-specific PL 84-99 standard.**
We concur with the Council staff's notes regarding the lack of prioritization and add that the question of who would pay for such a sweeping and universal approach is conspicuously absent as the cost of achieving this proposal would be very high, generally beyond the capabilities of the Delta's local landowners and Reclamation Districts.
- 2. Improve most "lowland" levees and selected other levees and other levees to a higher Delta-specific standard....** We concur with the Council staff's notes regarding a lack of prioritization and uncertain costs. We also suggest it would be useful to incorporate the Council's previously developed notion that prioritization and categorization of levees should seek to match a particular level of protection with the value of what is being protected by any particular levee.
- 3. The Delta Levee Subventions and Special Projects Program should continue to be supported.**
We agree with this recommendation with a caveat. Instead of simply continuing the Subventions program, we encourage the Council to facilitate and/or undertake its own review of the program in the context of the Delta Plan and the coequal goals to ensure that it is carried out consistent with these new mandates and in a manner that most effectively furthers them.
- 4. Transfer to a regional agency with fee assessment authority on levee beneficiaries' responsibility for allocating funds** We concur with the Council staff's conclusion that "discussion needed". Much discussion will be needed, as we are generally skeptical of the value of adding *another* agency layer in the Delta. While emergency preparedness and response could certainly be appropriately within the purview of such a regional agency, issues regarding levee maintenance and investments of limited financial resources reach well beyond the Delta and the State and those other interests paying the fees would need to be involved in any prioritization and decision-making processes.
- 5. In addition to providing funding for longer-term levee improvements, provide ongoing funding for regular levee maintenance and expanded emergency preparedness, response and recovery.** We concur with the Council staff's notes and would also inquire where the funding is to come from and who is supposed to receive it? Is this separate from the "regional entity" proposed in recommendation # 4? In addition, this recommendation seems to be seeking financial support for what is and should be primarily a local responsibility.

We concur with Council staff's perspective regarding recommendations # 6, 7, and 8.

GENERAL RECOMMENDATIONS FOR ECONOMIC SUSTAINABILITY

- 1. Designate a regional agency to implement and facilitate economic development efforts.** We concur with Council staff's perspective, although we again remain somewhat skeptical that adding another agency layer in the Delta is truly consistent with the intent of the Act, particularly when this sort of activity is within the Conservancy's mission description. Still, there is much that could be done to address the economic development needs of the Delta.

For example, consideration should be given to creating “visitor development zones” associated with the legacy communities to try to reduce investment risk and thus encourage increased investments in visitor serving facilities. In such areas there could be standard variances to otherwise applicable regulatory requirements etc. to facilitate appropriate and necessary business development.

2. **Economic impacts of habitat creation and development of facilities for export water supply should be fully mitigated.** We concur with Council staff’s perspective. Use of “fully mitigated” is well beyond the requirements of California law. The Act already requires in-lieu property tax be paid for lands impacted by the construction of and mitigation for new conveyance facilities. As written, this recommendation is inappropriate with respect to habitat restoration as restoring the Delta is part of the coequal goal. However, there is no doubt that there will be economic impacts, particularly within the Primary Zone, from implementation of the Delta Plan over the decades to come and facilitating near-term discussions amongst appropriate stakeholders as to how to ameliorate them and reduce them when practicable should be part of the Council’s implementation plan. As the Proposal concludes its description of this recommendation: “Measuring and effectively compensating communities for dispersed and indirect net economic impacts should be further explored.”
3. **Land use planning and regulation must be clear and consistent across agencies.** We concur with Council staff’s perspective. It is critical to emphasize, however, that it is the Delta Plan and the coequal goals against which local land use and planning occurring in the Delta must be compared for consistency, not the other way around. With the significant exception of the Council’s “covered action” review, the Commission’s recently updated Land Use and Resource Management Plan (LURMP) already is supposed to ensure a high level of consistency in land use planning and regulation in the Delta.

RECOMMENDATIONS FOR ECONOMIC SUSTAINABILITY OF AGRICULTURE

1. **Maintain and enhance the value of Delta agriculture.** We agree with Council staff’s assessment. While this recommendation may be aspirational, it isn’t terribly realistic or helpful. The fact that the Proposal seeks to justify it by asserting consistency with a draft “performance measure” in the 5th iteration of the Delta Plan which had been previously described as “a mistake” (and repeated as such on 2/9) is more troubling. It should be noted that the LURMP would not satisfy this recommendation. In fact, according to the ESP itself, it would be difficult to achieve this recommendation if the status quo were continued in the Delta as the trends today are downward with respect to economic activity, particularly in the Primary Zone.
2. **Limit the loss of productive farmland...to the greatest extent practicable.** We disagree with the Council staff’s determination that this recommendation is “consistent” with Delta Plan objectives. The staff notes are on point, but we believe the wording of the recommendation is “inconsistent” with the Delta Plan objectives since “greatest practical extent” begs the question of what’s “practical”. We agree that where it can be done consistent with implementation of the Delta Plan and furthering the coequal goals, including BDCP if it is incorporated consistent with the requirements of the Act, preservation of agricultural lands should be a priority, and starting habitat restoration projects on publicly owned lands is logical. The BDCP’s adaptive management approach incorporates the Proposal’s recommendation that habitat acreage goals be reassessed over time.

3. **Protect Delta water quality and water supplies for agriculture.** Based upon the ESP, we assume this recommendation is intended to apply only to “in-Delta” agriculture. Consequently, we disagree with Council staff’s assessment that this recommendation is “consistent” with the Delta Plan objectives. As with other aspects of the Proposal and the ESP, this recommendation reflects expectations of the Commission and the authors that are ultimately inconsistent and in conflict with the effective implementation of the Delta Plan and the furthering of the coequal goals. Council staff correctly points out in the notes that this issue is within the purview of the State Water Resources Control Board (SWRCB), which has the responsibility to balance all beneficial uses of water as it reviews and potentially updates its Water Quality Control Plan (WQCP) for the Delta.

We concur with Council staff’s perspective regarding recommendations # 4 and 5.

RECOMMENDATIONS FOR ECONOMIC SUSTAINABILITY OF RECREATION AND TOURISM

1. We concur with Council staff’s position.
2. We concur with Council staff’s position.
3. **Implement Economic Sustainability Plan through specific strategies.** We concur with Council staff’s notes on this recommendation but would simply add that only those portions of the Proposal and ESP that are consistent with the Delta Plan and furthering the achievement of the coequal goals are appropriate for implementation.

RECOMMENDATIONS FOR INFRASTRUCTURE

1. **Planning of levee investments must fully consider the economic value of infrastructure services along with all other benefits.** We concur with Council staff’s evaluation, and would specifically add the need for prioritization remains.
2. **All owners and operators of infrastructure that depend on Delta levees must contribute to levee system investment and maintenance.** We concur with the Council staff’s notes on this recommendation. Of course, the “devil will be in the details”.
3. **Protect and improve Delta water quality and supply for agricultural, municipal and industrial uses.** As with recommendation # 3 regarding sustaining Delta agriculture, we assume this recommendation is intended to apply only to “in-Delta” uses. Consequently, we disagree with Council staff’s assessment that this recommendation is “consistent” with the Delta Plan objectives. As with other aspects of the Proposal and the ESP, this recommendation reflects expectations of the Commission and the authors that are ultimately inconsistent and in conflict with the effective implementation of the Delta Plan and the furthering of the coequal goals. In addition, water quality is an important issue for ecosystem restoration, which should be identified as well. Council staff correctly points out in the notes that this issue is within the purview of the SWRCB, which has the responsibility to balance all beneficial uses of water as it reviews and potentially updates its WQCP for the Delta.
4. **Ensure that future development of infrastructure in the Delta is aligned with economic sustainability strategies.** We disagree with Council staff’s assessment of this recommendation

in that we would categorize it as “potentially consistent”. Again, we believe that the recommendation and language used imply expectations of the Commission and the authors that cannot be fulfilled consistent with the Delta Plan and furthering the achievement of the coequal goals. There is an implicit “trumping” of infrastructure development by the ESP incorporated in this recommendation. We would add “to the extent practicable” at the end of the recommendation, and even then it would remain “potentially consistent”.

5. **Support expansion and development of the ports.** As with # 4 above, we disagree somewhat with the Council staff’s determination and would instead designate it “potentially consistent”. In addition, while the staff notes call out potential environmental impacts associated with increased activity at the ports, there are also potential water supply, water quality and water supply reliability impacts due to potential channel modifications that could arise and thus both prongs of the coequal goals are implicated by this recommendation.

RECOMMENDATIONS FOR HABITAT AND ECOSYSTEM IMPROVEMENTS

1. **Emphasize strategies with little or no conflict with the Delta economy.** We disagree with the Council staff’s designation of “premature” and instead think it is important to be honest and upfront and designate this recommendation as “inconsistent” with the Delta Plan and furthering the coequal goals. As the Public Policy Institute of California pointed out as when it issued its first Delta Vision report a few years ago, the notion of “win-win” is a mirage, due to inevitable large scale changes driven by seismic vulnerability and sea level rise. This recommendation simply ignores the realities of the status quo as well as the Legislative direction to move forward with the Delta Plan (and BDCP subject to the requirements of the Act). Certainly it will be critical to try to minimize and ameliorate impacts resulting from habitat conversion, but the expectations implicit in this recommendation are simply unrealistic. We note, as well, that in the Proposal’s description of this recommendation the authors call out “increased fresh water flows” as an “example” of how to achieve it. All questions related to water quality regulation in the Delta will be appropriately before the SWRCB and are not a subject for the Delta Plan or the ESP to seek to address.

We concur with Council staff’s determinations for recommendations # 2 – 6.

RECOMMENDATIONS FOR WATER SUPPLY RELIABILITY

We concur with Council staff’s determinations for recommendations # 1 – 3, although we reiterate our view that the Council is not the proper forum to receive the Proposal’s concerns regarding the BDCP, but rather the BDCP’s EIR/EIS public process is the appropriate venue.

RECOMMENDATIONS FOR RESEARCH AND MONITORING

1. **Conduct a comprehensive and credible cost-benefit analysis to analyze Delta alternatives.** We disagree with Council staff’s determination regarding this recommendation. This is not “potentially consistent” but rather it is “inconsistent” with the Delta Plan objectives because it is not appropriately an issue for the Delta Plan to address. Council staff seems to have interpreted this as applicable to discrete projects that may become part of the Delta Plan. The reality is this is targeted at the HCP/NCCP alternatives analysis being conducted as part of the BDCP EIR/EIS

process and as such is again inappropriate to be included as a recommendation to the Council. This comment should be addressed within the BDCP EIR/EIS public process.

We concur with Council staff's determinations with regard to recommendations # 2 – 5

Thank you for the opportunity to provide these comments. There is much to promote within the Proposal but, as highlighted and called out above, there is much that is not appropriate to the legislative intent of having the ESP developed to inform the Council's deliberations. Finally, we remind the Council that it maintains complete discretion as to the incorporation of any or none of the ESP's and Proposal's recommendations as it determines consistency with the Delta Plan and furtherance of the coequal goals.

Sincerely,

A handwritten signature in cursive script, appearing to read "Byron M. Buck".

Byron M. Buck
Executive Director