



June 12, 2012

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Phil Isenberg, Chairman, and Council Members  
Delta Stewardship Council  
Attn: P. Joseph Grindstaff, Executive Officer  
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### **COMMENTS ON THE FINAL (6<sup>TH</sup>) STAFF DRAFT DELTA PLAN**

The San Joaquin Area Flood Control Agency (SJAFCA) appreciates the opportunity to review and comment on the Final (6<sup>th</sup>) Staff Draft Delta Plan. We appreciate the efforts of Delta Stewardship Council (DSC) and its staff to address some of the prior version's comments, though our comments were provided past the comment period. See letter dated February 1, 2012 (Attachment 1).

As stated in the letter, SJAFCA had a new mission with the passage of Senate Bill 5 (SB 5): to upgrade the flood protection system to the State-mandated 200-year standards for our "urban and urbanizing" areas. We partnered with federal, state and other local agencies to assure flood control facilities meet current and evolving standards to reach a minimum 200-year level of flood protection. We are very concerned about the scope and regulatory effect the Delta Plan will have on our ability to achieve 200-year flood protection.

SJAFCA supports the comments and recommendations from the City of Stockton, more specifically the addition of the recommended "Covered Actions" exemption regarding flood control (see Attachment 2, City of Stockton letter to DSC dated June 8, 2012, Page 4, Item #3, bullet #3), which reads:

**"Any flood control projects in the secondary zone of the Delta that are consistent with the applicable provisions of Senate Bill 5, the Central Valley Flood Protection Act ("CVFPA"), which would provide protection to an Urban or Urbanizing Area, as shown in figure 5-1 (Urban and Legacy Communities of the Delta) and as defined in Section 65007 of the Government Code, or existing public infrastructure, and which have complied with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources code) or the federal National Environmental Policy Act (42 U.S.C. Sec. 4321 et seq.), or both."**

Unless the recommended exemption is incorporated into the Final Delta Plan, the requirement that agencies file a consistency certification for any of their approved plans or projects within an existing urban and urbanizing area will add to our already complex process, and add cost and time in providing improved flood protection. It is not helpful to our communities, especially during the current economic crisis, for DSC to inject themselves into the ongoing multi-agency effort to prioritize public safety and improved flood protection.

Our comments on the Final (6<sup>th</sup>) Staff Draft Delta Plan are as follows:

1. P. 5, **What the Delta Plan Does**, 1<sup>st</sup> paragraph: First sentence is missing a word to make the statement correct. "The Delta Plan seeks to first \_\_\_\_\_ (stop/reduce/resolve?) declining water reliability and environmental conditions...".
2. P. 12, 1<sup>st</sup> paragraph: Background discussion basis of the "past 160 years" is inconsistent with the "past 150 years" on P. 13, **The Delta as a Unique and Evolving Place**, 1<sup>st</sup> paragraph.
3. P. 12, 4<sup>th</sup> paragraph: Conflicting demographics/facts: 25 million people and 2 million acres of irrigated farmland, vs. 27 million people and 3 million acres of farmland as stated on P. 78, **The Delta's Role in California's Water Supply**, 3<sup>rd</sup> paragraph.
4. P. 13, 3<sup>rd</sup> paragraph: Missing word, "The resulting configuration today causes river channels at times to run backward, and..."
5. P. 13, **The Delta as a Unique and Evolving Place**, 1<sup>st</sup> paragraph: See comment #2.
6. P. 14, 1<sup>st</sup> paragraph, last sentence: What is the basis of the statement, "Drought and changing Delta and ocean conditions, however, reduced those numbers to only 66,000 in 2008, resulting in a closure of the salmon fisheries off California and restrictions the lingered into 2010, devastating fishing economies."?
7. P. 19, **Figure 1-3, The Delta Plan**: Map should be revised to reflect the following:
  - a. Area north of Eight-Mile Road within the Stockton Sphere of Influence (SOI) is designated as Village per the city's General Plan not Agriculture as it is indicated;
  - b. Area south of French Camp Road and Bowman Road, is designated as Village per the Stockton General Plan not Agriculture;
  - c. Area south of Bowman Road to Lathrop city limits should be mapped agriculture, not SOI.
  - d. Verify that other SOI mappings are correct.
8. P. 23, 3<sup>rd</sup> paragraph, 1<sup>st</sup> sentence: Same as comment #1.
9. P. 37, **Table 2-1**: It notes that Bureau of Reclamation maintains 700 miles of Delta levees. This should be checked and if accurate, shown on a map. 700 miles of "Bureau of Reclamation" levees plus 400 miles of Corps levees equals 1,100 total miles of Delta levees. Where are the locally maintained levees? This also conflicts with statement on P. 250, that there are 1335 miles of levees.
10. P. 72, **How California's Water is Used**, 3<sup>rd</sup> paragraph: 1<sup>st</sup> sentence, "...this developed water totals approximately 80-85 MAF." conflicts with the illustration on the previous page (P. 71) which notes there is remaining 60-65 MAF of Developed Water.
11. P. 75, **Climate Change and California's Water**, 2<sup>nd</sup> paragraph: 25 million demographic conflicts with 27 million on P. 78. See comment # 3.
12. P. 78, **Delta's Role in California's Water Supply**, 3<sup>rd</sup> paragraph: 27 million people and 3 million acres of farmland conflicts with P. 12. See comment #3.

13. P. 89, **Applying Adaptive Management to Water Management Decisions**: This approach should also be applied to the conveyance facility.
14. P. 147, **Figure 4-3**: Verify that the Sphere of Influence mapping is correct.
15. P. 173, **Figure 5-1**: See comment #7 for suggested mapping revisions.
16. P. 177, 2<sup>nd</sup> paragraph, 4<sup>th</sup> sentence: Almost 8,000 residences are below mean higher high water, mostly on Bethel, Brannan-Andrus islands and Wright-Elmwood Tract. How many houses are on Wright-Elmwood?
17. P.178, **The Delta's Economy**, 1<sup>st</sup> paragraph, 2<sup>nd</sup> sentence: "...the Delta's economy is primarily urban and service oriented." Include agriculture.
18. P. 180, **Agriculture in the Delta**: 2<sup>nd</sup> and 3<sup>rd</sup> paragraph: Cannot correlate the figures stated. 2<sup>nd</sup> paragraph mentions 400,600 acres of prime farmlands and another 101,670 acres of unique farmland. Then 3<sup>rd</sup> paragraph states, that "Of the approximately 460,000 acres of farmland..." Is this a typo error or are facts missing?
19. P. 186, **Figure 5-3**: Include City of Lathrop on the map.
20. P. 187, **Figure 5-4**: Include City of Lathrop on the map; Legend: What is "Urban Interface Zone"? Why only in the Stockton area?
21. P. 85, **Figure 6-1**: Illustration shows how Delta salinity varies with inflow and outflow, though on P. 85 the Delta is referred to as a "saltwater estuary".
22. P. 218, **Drinking Water Quality**, 1<sup>st</sup> paragraph: 25 million conflicts with 27 million on P. 78. See comment # 3.
23. P. 246, **Flood Risk in the Delta**, 4<sup>th</sup> paragraph, 2<sup>nd</sup> sentence: Add City of Stockton to the list of cities and agencies depending on the Delta for reliable water supply.
24. P. 247, **Figure 7-1**: It is accurate that risks can increase after flood control improvements, if development increases. But the facts should be corrected. To meet NFIP regulations, the urban development must be protected from the 100-year flood event (1% event). Therefore, a 1% event would be contained within the leveed channel and would not cause \$1 million/year in damages.
25. P. 250, **Planning for Flood Management**, 2<sup>nd</sup> paragraph: "The Delta includes more than 1,335 miles of levees." This conflicts with P. 37, Table 2-1 which state only 1,100 miles. 3<sup>rd</sup> Sentence states, "Most of these "non-project" levees are maintained by local reclamation districts..." What about the levees maintained by the Bureau of Reclamation as noted on P. 37, Table 2-1?
26. P. 251, 1<sup>st</sup> Paragraph, 3<sup>rd</sup> Sentence: Include Lathrop and Manteca to the list of Delta cities with storm drainage facilities.
27. P. 253, **Central Valley Flood Protection Plan**, 3<sup>rd</sup> paragraph: "The geographic scope of the CVFPP includes only the portions of the Delta covered by the SPFC..." This is incorrect. For example, the CVFPP includes 65 miles of non-project Delta Levees within the Stockton Area.
28. P. 255, **FEMA 100-year (Base Flood) Protection**, last sentence: In communities where levees provide this level of flood protection, new developments are not

required to meet federal floodproofing standards and can obtain federally guaranteed mortgages without purchasing flood insurance. Floodproofing is not allowed for residential development.

29. P. 263, **Figure 7-6**: See comment #7 for suggested mapping revisions.
30. P. 265, **Figure 7-7**: Illustration references should be changed to left and right instead of top and bottom.
31. P. 276, **Recommendations, RR R8, Require Flood Insurance**: "The legislature should require an adequate level of flood insurance for residences, businesses and industries in floodprone areas". Define floodprone areas? For instance, would areas protected by FEMA-accredited levees be considered floodprone? An area that has upgraded to 200-year flood protection, would that be considered floodprone? This proposed requirement would be a great disincentive for property owners to improve flood control facilities. Our communities have been effective in raising monies through property owner assessments to fund flood control projects based largely on the prospect of being able to avoid mandatory insurance purchase. This proposal will significantly hinder our communities' ability to raise monies in the future for construction of flood control improvements.

Again, we appreciate the opportunity to review the Final (6<sup>th</sup>) Staff Draft Delta Plan, and we look forward to providing input on the next version of the Draft Program Environmental Impact Report. If you have any comments or would like to discuss further I can be contacted at (209) 937-8339 or by email at jim.giottonini@stocktongov.org.



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Attachments

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February 1, 2012

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**COMMENTS ON THE DRAFT PROGRAM ENVIRONMENTAL IMPACT REPORT FOR  
THE FIFTH STAFF DRAFT DELTA PLAN**

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The San Joaquin Area Flood Control Agency (SJAFCA) appreciates the opportunity to review and comment on the Draft Program Environmental Impact Report (Draft EIR) for the Draft Delta Plan. In addition, following the comments on the Draft EIR are our comments on the fifth staff draft Delta Plan. We understand that the review and comment period for the fifth staff draft Delta Plan has past, however, we still wanted to take this opportunity to provide comments in hopes that they can be incorporated in future drafts.

For your information, SJAFCA was formed in the mid-1990s as a Joint Power Authority with member agencies of the City of Stockton, San Joaquin County, and San Joaquin County Flood Control and Water Conservation District. SJAFCA was successful in completing a \$70 million flood improvement project from design through construction in just over three years that assured our community would continue to be afforded a minimum of 100-year level of flood protection.

With the passage of SB 5, we had a new mission: to upgrade the flood protection system to the State mandated 200-year standard for our "urban and urbanizing" areas. As a result, in 2009, we partnered with the Corps of Engineers, the Central Valley Flood Protection Board, DWR, local reclamation districts, cities, and San Joaquin County on the Lower San Joaquin River Feasibility Study. This multi-agency, multi-year, multi-million dollar study will provide us with a plan to achieve a minimum 200-year level of flood protection for our area.

Similar to other communities in the Central Valley, it will be difficult for us to achieve 200-year flood protection by the State mandated 2025 deadline. In addition, since much of our "urban and urbanizing" areas are located within the secondary zone of the Delta, we are very concerned about the scope and regulatory effect the Delta Plan will have on our ability to achieve 200-year flood protection. The Delta Plan will increase an already complex process and add cost and time in providing improved flood protection with the involvement of the Council. It is not helpful to our communities for the Council to inject themselves into an ongoing multi-agency effort to improve our flood protection.

Our comments on the Draft EIR are as follows:

**Draft EIR**

1. P. 2A-30, **Dredging**: Where is “the specific area within Stockton?”
2. P. 2A-34, **Lower San Joaquin River Flood Bypass Proposal**: It should discuss that there is an existing bypass at the location that has not been adequately maintained.
3. P. 2A-37, line 35: What is “overbite?”
4. P. 2A-46, line 29: Why are the Sacramento Deep Water Ship Channel Maintenance and Stockton Deep Water Ship Channel Maintenance listed under potential projects for Flood Risk Reduction?
5. P. 2A-47, line 8: Define “major development.”
6. P. 2A-47, line 30: Define “flood-prone areas.”
7. P. 2A-50, line 22: Unclear why levees that protect existing floodplains and provide net enhancement of floodplains is a lower priority.
8. P. 2A-51, line 37: How can the EIR assume all agencies will implement these “types” of programs when the programs are so vague/general?
9. P. 2A-53, lines 6 & 7: Why transfer the responsibility to a regional agency? Which agency?
10. P. 2A-55, lines 6 & 7: 1300 acre site on Wright-Elmwood Tract? What Stockton stakeholders?
11. P. 2A-62, line 8: Should discuss that there is an existing bypass at Paradise Cut.
12. P. 2A-88, line 28: Should include Stockton, the largest municipality in the Delta.
13. P. 2A-94, line 31: What is the basis of “Prevention of further development in areas with flood risks”? There are areas in the Central Valley, outside the secondary zone of the Delta (ie. Natomas), that have far greater flood depth should a levee breach and extensively more “urbanizing” acreage than any community within the secondary zone of the Delta. Also, if urban areas must have 200-year protection, why is it necessary to prevent further development?
14. P. 2A-101, lines 11 & 12: What is the rationale for 6 feet? Our area pales by comparison with other areas in the Central Valley (ie. Natomas, West Sacramento) that have much greater flood depth should a levee breach and significantly more extensive “urban and urbanizing” acreage. Also, since the Conveyance Facility is a development, would it also be prevented?
15. P. 2A-101, lines 13 & 24: Should define “floodplain” (i.e. 100-year, 500-year, etc.)
16. P. 5-3, line 26: Which “two federal flood control projects?”
17. P. 5-8, lines 22, 23 & 24: If each year USACE conducts the inventory, why does the EIR use the December 2008 inventory?

18. P. 5-8, line 33: Should Mormon Slough be on the Lower San Joaquin River Control Project?
19. P. 5-8, line 38+: Should also include existing Paradise Cut bypass.
20. P. 5-9, **Figure 5-3**: Not the San Joaquin River Flood Control Project.
21. P. 5-10, lines 17-23: Should be rewritten. The Flood Protection Restoration Project is not a "recently initiated non-project flood protection facilities in the Delta." The Project was completed in the late 1990s and consisted of raising existing project levees upstream of I-5 to correct freeboard deficiencies. It also did not include any new levees. The design and construction of the Project was approved/certified by USACE. As a result of the Project, FEMA did not place the greater Stockton metro area into the 100-year floodplain.
22. P. 5-13, line 3: FEMA accepted the certification submitted by RD 17. This area no longer has a PAL designation.
23. P. 5-13, line 39: Same as #22.
24. P. 5-14, line 6: Same as #22. Also, typo "Weston Ranch."
25. P. 5-14, lines 33-38: Certification documentation for all the PAL levees in San Joaquin County were submitted to and approved by FEMA with two exceptions: i) south levee of Bear Creek west of I-5 adjacent to Twin Creeks; and ii) east levee of San Joaquin River from French Camp Slough to Stockton Deep Water Ship Channel and north levee of French Camp Slough from I-5 to San Joaquin River.
26. P. 5-15, line 16: FEMA has approved the levee certifications for the Stockton, Mossdale areas with the exceptions noted in #25.
27. P. 5-20, line 8: Should be revised. If you have 100-year flood protection, there is a 26% chance of a 100-year event (not flooding because of the 100-year protection) over the life of a 30-year mortgage.
28. P. 5-20, line 23: It should mention that strong ground motions will not only affect existing levees but also any new water conveyance within the Delta.
29. P. 5-24, line 30: Should also include commercial/industrial structures.
30. P. 5-24, line 43: Need to certify after 2015 that 200-year protection is available or adequate progress.
31. P. 5-35, line 44: Define "major development."
32. P. 5-42, lines 1-11: See comment #13 in Delta Plan.
33. P. 5-69, lines 17 & 18: See comment #13 in Delta Plan. Also, why is a conveyance facility failure "unlikely" and a levee failure around development in the Secondary Zone too risky?
34. P. 23-2, **23.2 Relationship of Delta Plan to BDCP**: This entire section is very confusing. Should be rewritten.
35. P. 23-24, **Table 23-1**, Alternative 4A increases Delta outflow up to 1.5 million acre-feet/year. All the alternatives, including the existing, should have this information.

36. P. 23-25, line 1: Define "non-habitat restoration."
37. P. 23-29, line 40: Define "Fall X2."
38. PP. 23-31, **23.6.3 Delta Flood Risk**: See comment #33.
39. P. 23-31, lines 39-41: How can conveyance facilities not have a permanent impact to agriculture?
40. P. 23-33, **23.6.9 Geology and Soils**: See comment #33. It discusses "reduce" the risk where previous descriptions said failure was "unlikely."
41. P. 23-34, line 42: Displaced residents are to be "accommodated within the Delta area." How can this be done if development is not allowed in the Delta?
42. Page 8-44: Section 8.4.3.6.1 Mitigation Measure 8-1, Bullet # 7 should read: Proposed planting vegetation on slopes of canal levees shall conform to existing and proposed Vegetation Policy.

The following comments on the 5<sup>th</sup> Draft of the Delta Plan are provided in hopes that they can be incorporated in future drafts:

**Fifth draft --- DELTA PLAN:**

1. P. 6, **Reduce Risk**, 2<sup>nd</sup> paragraph: It notes that ..."it is unlikely that much new large-scale development outside of the existing urban areas will occur in the Secondary Zone of the Delta." If "existing urban areas" means the General Plan or Urban Service Area, then the statement is okay. The plan needs to be more specific on this matter.
2. P. 22, **Table 1-1**: It notes that Bureau of Reclamation maintains 700 miles of Delta levees. This should be checked and if accurate, shown on a map. 700 miles of "Bureau of Reclamation" levees plus 400 miles of Corps levees equals 1,100 total miles of Delta levees. Where are the locally maintained levees?
3. P. 23, 6<sup>th</sup> paragraph: If precipitation ranges from 100 MAF in dry years and 200 MAF in wet years, how can the average be 200?
4. P. 38, **A Nine-step Adaptive Management Framework**: Will the Conveyance Facility be required to follow this framework for adaptive management?
5. P. 59, **Figure 3-2**: Is the Conveyance Facility a "covered action"? If so, P. 60 requires that it be "...fully transparent, disclosing potential environmental impacts, and identifying how best available science will be used in decision-making and *adaptive management*."
6. P. 69, 6<sup>th</sup> paragraph: 300 MAF in a wet year conflicts with P. 23.
7. P. 70, 1<sup>st</sup> paragraph and P. 71, 2<sup>nd</sup> paragraph: States that over half evaporates. P. 23 adds "flowing out to sea."
8. P. 82, footnotes 20 and 21 should be 22 and 23. Typo in footnote 22 Urban water supplier---"annually."

9. P. 87, 3<sup>rd</sup> paragraph: States that "BDCP will include a scientifically based adaptive management program to ensure incorporation of new scientific information into decisions on water management and conservation measures." Does that mean that it will be used on the Conveyance Facility?
10. P. 88, 3<sup>rd</sup> paragraph: States that "The SWP, which owns and operates the dams in the state's lowest-elevation watersheds." This is inconsistent with the Central Valley Flood Protection Plan.
11. P. 162, Figure 7-1: It is accurate that risks can increase after flood control improvements, if development increases. But the facts should be corrected. To meet NFIP regulations, the urban development must be protected from the 100-year flood event (1% event). Therefore, a 1% event would be contained within the leveed channel and would not cause \$1 million/year in damages.
12. P. 165, RR P1: There should be no exceptions for encroachments in the floodway (i.e. ecosystem restoration) that decrease the existing level of flood protection.
13. P. 166, **Levee Classifications for Protection of Land and Resources Uses**, 4<sup>th</sup> paragraph: States that "...flood hazards in the Delta cannot be eliminated... Therefore, to be assured consistency with the Delta plan, future land use decisions should not permit or encourage construction of significant numbers of new residences in the Delta in the face of the flood hazards." This conflicts with the EIR, PP. 23-30 & 23-31, which states that BDCP-related ecosystem restoration and enhancement and Delta conveyance "are not likely to expose people or structures to flood hazards....because the design of levee modifications....would be required by federal and State law to be completed in accordance with the requirements and or guidelines of the U.S. Army Corps of Engineers,...Federal Emergency Management Agency,...Central Valley Flood Protection Board, DWR and local flood management agencies." Why are these levees "not likely to expose people to flood hazards", but levees built to the same standards to protect residences should not be permitted?
14. P. 172, 1<sup>st</sup> paragraph after the bullets: The "200-year design standard" must be in place by 2015 and the improvements completed by 2025.
15. P. 173, RR R4: What authority would allow a local agency to prohibit the "siting of future permanent structures...to accommodate future setback levees?"
16. P. 182, RR R10: There are too many unknowns/questions on the role and responsibilities of the Delta-wide benefit assessment district for flood management.
17. P. 191, 1<sup>st</sup> paragraph: Should be clarified to state that much of Stockton is a Delta community.
18. P. 193, **Figure 8-1**, Legend: What is "Urban Interface Zone"? Why only in the Stockton area?
19. P. 196, **Economic Sustainability**: Is Stockton a "legacy community"?
20. P. 211, **FP R4**, What is the funding source for the non-General Fund and non-general obligation bonds?

Phil Isenberg, Chairman, and Council Members  
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21. P. 211, **FP R6**, 3<sup>rd</sup> bullet: Should discuss the role/responsibilities of the "fiscal partner."

We look forward to providing input on any revisions to the EIR or Delta Plan. If you have any comments or would like to discuss further I can be contacted at (209) 937-8339 or by email at [jim.giottonini@stocktongov.org](mailto:jim.giottonini@stocktongov.org).



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June 8, 2012

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### **CITY OF STOCKTON COMMENTS ON FINAL (6TH) STAFF DRAFT DELTA PLAN**

The City of Stockton (City) appreciates the opportunity to review and comment on the Final (6th) Staff Draft Delta Plan (Final Plan), which will serve as the revised project to be analyzed in a Supplemental Draft Program Environmental Impact Report (SPEIR) for the adoption of the Final Delta Plan. The City will provide more specific comments regarding the potential environmental impacts of the Delta Plan as part of our review of the subsequently circulated Supplemental Draft Program EIR, in accordance with the provisions of the California Environmental Quality Act (CEQA) process.

The City also appreciates the Delta Stewardship Council's (DSC) and DSC staff's acknowledgment of some of the City's concerns and the amendments incorporated into the Final Plan that address some of the City's comments expressed in our September 29, 2011 comment letter on the 5<sup>th</sup> Staff Draft Delta Plan (attached as Exhibit 1) and our February 2, 2012 comment letter on the Draft Program EIR for the 5<sup>th</sup> Staff Draft Delta Plan. Overall, the City believes that the Final Plan is significantly improved over prior versions in several sections of the document. However, the City respectfully believes that additional modifications and clarifications are necessary to provide clear policy and administrative procedural direction for implementation of the Final Plan, as discussed below.

As the largest urban area in the Delta, the governance provisions as well as the economic and fiscal impacts of the Draft Plan are of critical concern to the City. The City's comments on the Final Plan include both general and specific concerns, with a focus on how the Final Plan impacts the Delta as an evolving place and a few specific concerns arising from the policies and recommendations contained in the Final Plan.

The following comments summarize the City's general and specific concerns with the existing content of the Final Plan and lists key recommendations:

1. In Chapter 2, Page 56, Policy G P1, Detailed Findings to Establish Consistency with the Delta Plan, the third bullet point states as follows:

"Covered actions not exempt from CEQA must include applicable mitigation measures identified in the Delta Plan's Program EIR, or substitute mitigation measures that the proposing agency finds are equally or more effective."

The City is concerned that this language is too vague and open ended and may potentially commit the City to requiring mitigation measures that may be unenforceable or beyond the City's jurisdiction to require and enforce. The City would suggest the following alternative language (shown in **bold**):

- **Covered actions not exempt from CEQA must include applicable mitigation measures identified in the Delta Plan's Program EIR, or substitute mitigation measures that the proposing agency finds are equally or more effective, and over which that agency has enforcement authority or for which that agency can require compliance in accordance with the provisions of the California Environmental Quality Act (CEQA).**
2. Consistent with Policy DP P1 in Chapter 5 (page 192), the Final Plan should more clearly acknowledge that new urban development within "Urban" and "Urbanizing Areas" within the Secondary Zone of the Delta and designated on and consistent with adopted city or county General Plans as of the effective date of the Delta Plan, which is proposed within cities, their spheres of influence or other urban areas (e.g., Mountain House General Plan Community Boundary and Contra Costa County Urban Limit Line) approved by a Local Agency Formation Commission (LAFCO) (as shown on Figure 5-1, attached as Exhibit 2), or Legacy Communities (as shown in Appendix K), shall be administratively excluded or exempt from being considered "covered actions" and from the related certification process.

This intent is stated in Chapter 5, page 171, in the first paragraph of the section entitled "The Delta's Urban Communities", as shown below (emphasis added in **bold**):

"The region's urban communities, including Sacramento, West Sacramento, Stockton, Lathrop, Tracy, Oakley, Brentwood, Antioch, and Pittsburg, are located entirely or partially in the Delta's Secondary Zone. The general plans of Delta cities and counties describe where development of these communities may occur. These plans or actions by the respective local area formation commission describe "spheres of influence" for each expanding jurisdiction and often identify an urban limit line beyond which intense development cannot occur without amendment of the plan. About 26,000 acres of the Delta within these spheres of influence are expected to undergo urbanization, about the same area as was

developed in the Delta between 1984 and 2008 (DPC 2012b). (See Figure 5-1.) To encourage the location of new development within these spheres of influence, rather than in rural areas, and within portions of the Legacy Communities already planned for urban uses, the policies of Chapter 4 and Chapter 7 exempt development there from policies to protect ecosystem restoration opportunities or increase flood protection standards. **The Delta Plan includes no policies or recommendations to control land use or density in these urban and urbanizing areas.**"

Furthermore, the Final Plan's proposed Policy DP P1, Locate New Development Wisely (Chapter 5, page 192), states that new urban development shall be limited to defined urban or urbanizing areas and their spheres of influence, consistent with the urban designations on city or county General Plans (as shown on Figure 5-1) and/or to Legacy Communities (as shown in Appendix K).

Accordingly, the narrative in Chapter 5, page 171, and the language of Policy DP P1 on page 192 imply that new urban development that is appropriately designated on the applicable city or county General Plan and will be located within a city, their sphere of influence or other LAFCO-approved urban areas, or Legacy Community (as shown on Figure 5-1), will not be considered a covered action and will be exempt from the related certification provisions. However, that intent is not specifically stated or confirmed in the policies or elsewhere in the Final Plan.

Consistent with Policy DP P1, the City respectfully recommends that the Final Plan be amended to specifically exclude or exempt new urban development within existing urban or urbanizing areas (as shown on Figure 5-1) from being considered a covered action and from the provisions for consistency determinations. This exclusion/exemption may be addressed under the "Administrative Exemptions" section in Chapter 2, pages 53 – 54. In addition, the City recommends that the following revised language be adopted for Policy DP P1, Locate New Development Wisely (Chapter 5, page 192) (additions shown in **bold**):

"New urban development, including residential, commercial, and industrial uses (other than commercial recreational visitor-serving uses or facilities for processing of local crops or that provide essential services to local farms) must be limited to areas that city or county general plans, as of the effective date of this policy, designate for development in cities, their spheres of influence **or other LAFCO-approved urban areas (e.g., Mountain House General Plan Community Boundary and Contra Costa County Urban Limit Line)** (as shown in Figure 5-1), or Legacy Communities (as shown in Appendix K). **Such new urban development shall not be covered actions and shall not be subject to the consistency certification provisions under the Delta Plan.**

This policy covers proposed actions that involve new urban development, including residential, commercial, and industrial uses, that is located outside of cities, their spheres of influence, **other LAFCO-approved urban areas (as shown in Figure 5-1)**, or Legacy Communities **(as shown in Appendix K)**. It

does not cover visitor serving uses, or industrial or commercial uses to process local crops or that provide essential services to local farms.”

3. In addition to the “Covered Actions” exemptions listed under the “Administrative Exemptions” section in Chapter 2, pages 53 – 54, the City recommends that the Final Plan include the following exemptions as new bullet points (new text in **bold**):

- **Any project , and/or portion thereof, as defined pursuant to Section 21065 of the Public Resources Code, including subsequent entitlements and supporting infrastructure improvements required for implementation of such project, within an “Urban Area or Urbanizing Area” in the secondary zone or Legacy Communities, as shown in Figure 5-1 (Urban and Legacy Communities of the Delta), that is contained within, covered by, and substantially conforms with a General Plan, Sphere of Influence, Specific or Master Plan, Community Plan, and/or a Development Agreement adopted by the applicable local land use authority(ies) within said Urban or Urbanizing Area or Legacy Community.**
- **Any upgrades to existing drinking water, stormwater, or wastewater treatment, storage, or conveyance facilities, within the existing physical footprint and/or legal property boundaries, as applicable, of that facility to meet a state and/or federal water quality compliance order; consistent with state standards or federal standards, or both, and which have complied with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) or the federal National Environmental Policy Act (42 U.S.C. Sec. 4321 et seq.), or both.**
- **Any flood control projects in the secondary zone of the Delta that are consistent with the applicable provisions of Senate Bill 5, the Central Valley Flood Protection Act (“CVFPA”), which would provide protection to an Urban or Urbanizing Area, as shown in Figure 5-1 (Urban and Legacy Communities of the Delta) and as defined in Section 65007 of the Government Code, or existing public infrastructure, and which have complied with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) or the federal National Environmental Policy Act (42 U.S.C. Sec. 4321 et seq.), or both.**

In order to provide additional statutory support for the above-note exemptions, the Delta Coalition, including the City of Stockton, is also promoting new legislation proposing that the same or similar covered actions exemption language be added to Section 85057.5 (b) of the California Water Code (Delta Reform Act of 2009).

4. Unless the above-noted exemption language is incorporated into the Final Plan, the requirement that agencies file a consistency certification for any of their approved plans or projects within an existing urban or urbanizing area places a massive financial and administrative burden on local governments, especially during the current fiscal crisis and with significantly reduced resources, to prepare such consistency findings. In addition, and even though previously approved/certified plans are not covered actions, yet-to-be-approved projects that are consistent with these previously approved plans could still be held inconsistent with the Delta Plan. For example, projects that are in the pipeline and that are consistent with the City's 2007 General Plan could now be invalidated through the covered action consistency certification process.

The development and implementation of the Final Plan, including determining the consistency of covered actions must be done in a way that does not adversely affect the "Delta as an evolving place." Indeed, the entire exercise of preparing the Delta Plan is geared towards achieving the "coequal goals". Meeting the coequal goals, while recognizing the values of the Delta as an evolving place, applies equally throughout the Delta – not just to sparsely populated areas. Potential conflict exists where local governments continue to engage in activities and approve projects essential to the economic and social well-being of the people of the Delta. Those activities may potentially be at risk, unless the Final Plan is amended as recommended in Comments 2 and 3 above. As the economy improves, a significant number of development proposals are anticipated to be filed consistent with locally-adopted General Plans within existing urban and urbanizing areas in the Secondary Zone. The development review process for such conforming development proposals must be streamlined to facilitate the economic recovery. Should these proposals be considered "covered actions" subject to the Delta Plan's certification of consistency requirements, the DSC and DSC staff may be inundated with the review of said certification documents and related appeals which will only delay, if not prevent, the implementation of such conforming projects within existing urban and urbanizing areas.

Furthermore, unless amended as recommended in Comments 2 and 3 above, the consistency certification provisions for covered actions within urban and urbanizing areas will provide new obstacles not only to new development, but also potentially to improvements and upgrades of existing infrastructure, redevelopment projects, and other necessary projects within said urban areas that protect and enhance the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

5. To the extent the Final Plan seeks to ensure adequate flood protection for urban development and consistent with the discussion, policies, and recommendations in Chapter 7 (pages 261-262 and 272-273), the recommended exemption for flood control projects within urban and urbanizing areas is included in Comment 3, third bullet, because state law already requires that the specified levels of flood protection

be provided (i.e., Central Valley Flood Protection Act (CVFPA) and Local Flood Protection Planning Act.).<sup>1</sup> Moreover, requiring a consistency determination for such flood control projects in urban areas would make all urban development within those areas subject to a consistency finding (and associated appeal process and litigation), even if such development is proposed pursuant to previously approved plans. The result is to create a type of "double jeopardy," whereby local agencies' prior planning efforts are subject to a cumbersome, lengthy, and uncertain as to outcome, layer of new administrative and potential judicial review, even if the associated flood control measures are consistent with the applicable provisions of Senate Bill 5, the CVFPA.

6. The Final Delta Plan must not be developed, adopted, or implemented in a way that would undermine the current protections for the areas of origin, as codified in California Water Code, Section 11460. The Delta Plan cannot be used to prohibit water users within the areas of origin from continuing to put water to reasonable and beneficial use. The Delta Stewardship Council does not have authority over the diversion and use of water, and the determination of whether existing or future diversion and/or use of water complies with state law currently rests with the State Water Resources Control Board. The Final Plan must not alter this regulatory framework.

In closing, the City looks forward to the continued opportunity to work with the DSC and DSC staff in making the Final Delta Plan a success in achieving the coequal goals in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. Should you have any questions or wish to discuss these comments, please contact City Attorney John Luebberke at (209) 937-8934 or planning consultant Michael M. Niblock at (209) 662-4784.



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ANN JOHNSTON  
MAYOR

AJ/JL/MMN:jl

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<sup>1</sup> For example, the CVFPA already requires general plans to incorporate information from CVFPP and agencies to conform their general plan and zoning ordinances upon completion of the next Housing Element update, accordingly, and/or following such amendments or by July 1, 2015, whichever occurs first, impose conditions on development to ensure adequate levels of flood protection (200 years in urban areas, 100 in nonurban areas). In order to enter into a development agreement, or issue a permit to construct a residence, or approve a parcel map within a flood hazard zone, a city or county must find that existing facilities protect urban and urbanizing areas to a 1-in-200 chance of flooding (or lower) in any given year, or the FEMA standard of flood protection in nonurbanized areas, or impose conditions on the development that will provide the required level of protection, or find that the local flood management agency has made adequate progress on construction of the flood protection system to provide the required level of protection.

Attachments (Exhibits 1 and 2)

emc: Stockton City Council w/attachments  
The Honorable Joan Buchanan, Member of the Assembly w/attachments  
Tina Cannon Leahy, Consultant, Assembly Water, Parks and Wildlife Committee w/attachments  
Delta Coalition c/o Julie Lalonde w/attachments  
San Joaquin County Board of Supervisors w/attachments  
Port of Stockton w/attachments  
Stockton Planning Commission w/attachments  
Stockton Development Oversight Commission w/attachments  
Bob Deis, City Manager w/attachments  
John Luebberke, City Attorney w/attachments  
Mel Lytle, Director of Municipal Utilities w/attachments  
Jeff Willett, Deputy Director Municipal Utilities w/attachments  
David Stagnaro, Planning Manager, CDD/Planning and Engineering Services w/attachments  
Manuel Lopez, San Joaquin County Administrator w/attachments  
David Wooten, San Joaquin County Counsel w/attachments  
Terry Dermody, San Joaquin County Special Water Counsel w/attachments  
Elena Reyes, San Joaquin County Deputy County Administrator w/attachments  
Tom Gau, San Joaquin County Public Works Director w/attachments  
Kerry Sullivan, San Joaquin County Community Development Director w/attachments  
Barry Brokaw and Donne Brownsey, Sacramento Advocates, Inc. w/attachments  
Paul Simmons, Attorney, Somach Simmons & Dunn w/attachments  
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