

Municipal Services Agency
Robert B. Leonard, Administrator



Interim County Executive
Steven C. Szalay

County of Sacramento

January 27, 2011

Terry Macaulay
Deputy Executive Officer
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

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DELTA COUNCIL
MAILROOM
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Re: Notice of Preparation (NOP) of the Draft Environmental Impact Report (DEIR)
for the Delta Plan

Dear Ms. Macaulay:

Sacramento County appreciates the opportunity to comment on the (NOP) for the DEIR that will be prepared to evaluate the environmental impacts of the Delta Stewardship Council's (DSC) Delta Plan (DP). As you know, pursuant to the 2009 Sacramento/San Joaquin Delta Reform Act the DSC is responsible for implementing a host of near- and long-term actions. The preparation and adoption of the Delta Plan (by January 1, 2012) is clearly one the DSC's most significant action items.

This policy document will act as the roadmap for the management and enhancement of the many natural and physical resources that are unique to the Delta. It appears that this document has been devised to create a mechanism to establish regulatory control well outside the boundaries of the statutorily defined Delta. The proposed expansion of jurisdiction outside the defined scope of the DP results from the NOP's liberal use of the term "to promote" as a synonym for the term "to regulate." The DSC has authority to act within the Delta in a manner which promotes actions beyond the Delta. However, this does not equate to direct regulation beyond the Delta. Implied or direct statements that the DSC will adopt a plan which extends beyond the Delta should be eliminated.

The evaluation of the DP's potential environmental impacts is extremely important to Sacramento County. To assist the DSC (and its consultant) in its development of a comprehensive and implementable policy plan, the following comments and recommendations are provided:

Planning Area Boundaries (pgs. 11-13): Future operational changes in the Delta could potentially impact watersheds and tributaries upstream and downstream of the legal Delta, although at this point in time the specifics and degree of these operational changes is unknown. As shown on page 12 of the NOP, the boundaries of the Primary Planning Area coincide with the boundaries of the legal Delta as set forth in Water Code section 12220. However, the Secondary Planning Area (i.e., the Delta watershed) boundaries are massive, running from the California/Oregon border on the north to the California/Mexico border on the south, encompassing approximately 60 percent of the State's 163,700 square miles of land area. Granted that while the Reform Act does indicate the DP must address issues "outside" the Delta, these issues are limited to the topics described in Water Code sections stated below:

85302(b). The geographic scope of the ecosystem restoration projects and programs identified in the Delta Plan shall be the Delta, except that the Delta Plan may include recommended ecosystem projects outside the Delta that will contribute to achievement of the coequal goals.

85303. The Delta Plan shall promote statewide water conservation, water use efficiency, and sustainable water use.

85307(a). The Delta Plan may identify actions to be taken outside of the Delta, if those actions are determined to significantly reduce flood risks in the Delta.

Therefore, the Delta Plan is limited to the Delta except to the extent that it recommends, identifies or promotes matters specifically described in these sections. In addition, the proposed boundaries of the proposed Secondary Planning Area are far too expansive, both legally and practically. It is unrealistic for the DSC to effectively manage and oversee the requisite water, land use, and habitat restoration management practices necessary to achieve the coequal goals as defined in Water Code section 85054.

As a comparison, the Chesapeake Bay, "the nation's largest estuary," is more than 200 miles long with an associated 64,000 square mile watershed, covering 6 states and the District of Columbia. Similar to the challenges facing the Sacramento/San Joaquin River delta, the Chesapeake Bay and its tributaries are in poor health with polluted water, low fish and shellfish populations, and degraded ecosystem habitats and natural landscapes. Another similar dynamic is that the network of streams, creeks, and rivers hold tremendous ecological, cultural, economic, historic, and recreational value for the region and its citizens, with nearly 17 million people living and working within confines of the Bay's watershed boundaries. The key point is that while the Chesapeake Bay watershed encompasses several States, it is still smaller and seemingly more manageable from a policy and regulatory perspective than the area proposed in the Secondary Planning Area. As a result,

the DEIR must evaluate whether the DSC can realistically develop, monitor, and enforce what are tantamount to statewide land use, water, ecosystem, and flood management policies and strategies, and more importantly build and foster the requisite partnerships that will be necessary to effectively oversee such a large area.

Water Resources Improvements (pgs. 16-18): Reducing reliance on the Delta and creating the policy framework for a long-term sustainable Delta are key tenets of the Delta Reform Act. In order for the Delta to be sustainable and manageable over both the short- and long-term, the Delta Plan must contain effective and implementable water resource management strategies. Moreover, it is critical the Delta Plan include a policy framework that supports improved public safety and protects existing water management infrastructure. Therefore, the DP's DEIR must describe and evaluate water system strategies that will promote reduced reliance on the Delta while at the same time protect existing area of origin rights for upstream users. Other examples of water supply policies and strategies that must be considered and evaluated in the DEIR include:

1. Consideration and support of upstream flow standards and related work. For example, the Sacramento Water Forum's efforts to develop a science-based, regionally-supported flow standard for the American River. These efforts should be considered as part of the greater Delta solution.
2. Conservation is clearly an important part of reduced reliance on the Delta, but consideration needs to be given to California's widely varying climate. For example, landscape water needs for coastal areas are very different than those of the drier valley areas.
3. A description of efforts to protection of area of origin water rights.
4. An analysis of potential impacts to local community facilities, such as wastewater treatment and surface water intakes. For example, what steps and specific policies will be included to ensure critical water management infrastructure/facilities in the Delta are protected?
5. A description of the range of variables associated with global climate change and presumed sea level rise and possible long-range management measures.
6. A description of those policies that commit the DSC to being proactive in seeking and securing funding for water management infrastructure improvements and maintenance.
7. A description of policies that will foster increased public engagement in the water management planning process.

Conveyance and Storage (pgs. 18-19): The Reform Act allows for the Bay Delta Conservation Plan (BDCP) to be included in the DP, subject to a specific list of findings set forth in Water Code section 85320(b). However, using the DP to establish a policy framework that would support the notion that a 15,000 cubic feet per second (cfs) isolated water conveyance facility (e.g., canal or tunnel) and its accompanying infrastructure (five 3,000 cfs pump stations, all in Sacramento

County) is the solution for providing a reliable, long-term water supply (one of the coequal goals) is both premature and problematic.

To mitigate the anticipated social and economic impacts to many areas of southern Sacramento County that could result from this approach, the DEIR must define the parameters of a "reliable supply" and include an analysis of the amount of water that can be realistically diverted from the system (by season) while maintaining year-round flows sufficient to maintain and enhance the Delta's fragile ecosystem. In addition, further degradation of many stretches of the existing "project" and "non-project" levee system could result once an isolated conveyance facility is in place, as there will likely be less emphasis and fiscal resources devoted to protecting the existing levee system from failure and resulting saltwater intrusion.

The DEIR must analyze the socioeconomic impacts of a variety of large and small scale water conveyance and delivery alternatives and must describe how the future impacts to Sacramento County and specifically to the legacy communities, will be addressed and fully mitigated under each of these alternatives. In addition, it must provide an analysis of various structural alternatives to increase water storage statewide in accordance with the policy objectives in California Water Code sections 85020 (f) and 85307.

Delta as a Place (pgs. 20-21): One of the fundamental legislative principles in the Reform Act is that the Sacramento/San Joaquin River Delta is not a blank slate and much more than a municipal and agricultural water delivery system. Leadership of the five Delta counties (the Delta Counties Coalition (DCC)) carried this message loud and clear during the crafting of the Act and continues to strongly advocate for the long-term protection of the Delta's unique environs and resources. As a result, the DEIR must describe whether the DP will include collaborative and incentive-based economic development strategies (with quantifiable performance standards) that will protect and enhance existing communities, infrastructure (e.g., roadways, utilities, and levees), existing small- and large-scale agricultural operations, and the recreational and natural resources in perpetuity.

Reduce Risks to People, Property and State Interests (pgs. 21-23): Protecting residents, businesses, and key infrastructure from the flood risks are critical to the economic sustainability and vitality of the Delta, particularly the legacy communities. Developing collaborative partnerships with the local Reclamation Districts (RDs) and identifying (and securing) funding (in addition to the State's levee subvention program) are critical to the long-term operation and maintenance of the Delta's levee system. Therefore, the DP's DEIR must include the following:

1. A description and analysis of the policies and strategies that commit the DSC to seeking out and securing funding, specifically for maintenance and improvements to the Delta levee system.

2. A description and analysis of how the DSC will address the need for strong (and implementable) policies and strategies that will protect the historic legacy communities and critical infrastructure from deepwater flood risks.
3. As part of the flood-proofing strategies for the legacy communities, the DEIR must discuss and analyze the feasibility (i.e., engineering-wise and fiscally) of the constructing ring levees certified to the (44CFR65.10) 100-year standard.
4. Identify and analyze specific policy actions that will minimize loss of life due to flood disasters in the Delta along with any policies that commit the DSC to developing a post-disaster recovery plan.
5. An analysis of the impacts associated with lost farming and recreational opportunities resulting from a catastrophic flood event and/or a failed levee.
6. A description and analysis of policies that will help minimize the occurrence of flooding by establishing the following levels of protection: (1) 100-year (44CFR65.10) protection for small communities in the Delta, and (2) provide rural agricultural areas with protection that is consistent with PL84-99 accreditation.
7. A description and analysis of policies that commit the DSC to preparing flood disaster preparedness plans that include identification of evacuation routes and places of refuge for flood emergency evacuees. The DEIR must also describe any Delta levees that may be abandoned or islands that might not be recovered in the aftermath of a catastrophic flood event and the ramifications of such action (or non-action).
8. Include an implementation action that commits the DSC to coordinating with the State Housing and Community Development (HCD) Department's Division of Codes and Standards to amend the California Building Standards Code to include improved building code requirements for new development proposed in "deep flood hazard areas."
9. A description and analysis of short- and long-term policies and programs which will focus on structural improvements/investments to levees protecting existing Delta communities in keeping with the goals stated in the policy objectives and findings in California Water Code sections 85020 (g), 85305 and 85307.
10. An analysis of impacts to existing levee facilities protecting Delta communities and structural mitigation measures needs to ensure flood protection to Delta communities is not compromised.

Land Use (pgs. 27-28): In order to efficiently and effectively manage the Delta's land use resources, the DP's near- and long-term development policies and strategies should be transparent, predictable, and measurable. Therefore, the DEIR must describe the DSC's specific statutory role in local land planning and approval processes for projects defined as "covered actions" in Water Code section 85057.5 and evaluate the potential impact of the DSC's role on the local land use planning process.

More specifically, the draft DEIR must explain the DSC's project consistency certification process for both private and public entitlement requests (not subject to the appellate process described in Water Code section 85225.10) and analyze the fiscal impacts of any added layer to the local land use planning and approval process. In addition, the DEIR must analyze how the DSC's specific land use oversight role will foster efforts to meet the coequal goals as defined in Water Code section 85054.

It is critical that the Delta Plan ultimately include specific, clear, and measurable criteria local governments can rely on for determining project consistency (i.e., in the form of a checklist). Therefore, the DEIR's analysis of the DSC's land use authority could include a menu of land use entitlements that meet the "covered actions" definition.

Lastly, the DEIR must discuss and analyze the DP's relationship to local general plans and local Capital Improvement Plans (CIPs) in terms of the consistency certification process.

Hydrology and Water Quality (pg. 27): All hydrologic analyses must include the potential impacts of climate change on flow patterns, volume, flood risks, and changes in geomorphology.

Recreation (pg. 29): Sacramento County Regional Parks Department oversees and implements several programs and services in the Delta (County Service Area 4C) including, but not limited to, recreational areas/facilities such as Hogback Island, Cliffhouse, Sherman Island, and the Cosumnes River Preserve. Existing facilities found in the Delta focus on water-based recreation opportunities, such as fishing, boating, waterskiing, windsurfing, clamming, and kite boarding. The Cosumnes River Preserve includes more land-based recreational opportunities, such as hiking and birdwatching, but also includes canoeing and kayaking. While natural resources contribute significantly to the value of recreational opportunities in the Delta, Sacramento County's comments center on how to best promote and enhance existing recreational opportunities rather than how to protect the Delta's unique natural setting.

As indicated on page 29 of the NOP, the DEIR will evaluate potential effects on recreational activities within the Delta and on reservoirs and waterways that could be affected by changes in Delta water management, such as those that could occur through programs that support or enhance recreational activities, Delta communities, ecosystem restoration, flood management, water supplies, or water quality. As result, the DEIR must describe and analyze any proposed water-based program actions that will promote, facilitate and enhance boating, water skiing, fishing, and clamming. In addition, the DEIR must also describe and analyze any proposed program actions that will promote land-based activities such as cycling, hiking, bird watching, and tourism opportunities in the Delta region. Lastly, the

DEIR must describe how the DP will facilitate habitat restoration efforts, including restoration of native fish populations, riparian and wetland restoration, and will promote a comprehensive tourism program for the Delta. An example of the possible program action would include identifying (and earmarking) specific fiscal resources that would fund additional interpretive kiosks and brochures, scenic routes, and visitor enhancement projects to educate and interpret the Delta.

Transportation and Traffic (pg. 29): As indicated in the NOP, the Delta Plan DEIR will analyze certain environmental impacts and effects on transportation and traffic within the plan. However, the DEIR must also describe and analyze the effects the DP will have on access into and out of the Delta. For example: (1) how will levee failures and mean sea level rise affect circulation, (2) will all roads remain passable for vehicles (e.g.; for farm to market roads, evacuation roads, etc.), (3) will there be any roads that will have to be realigned, and if so what is the required right-of-way, and (4) what will be the source of funding for future roadway realignments and/or right-of-way acquisition?

In addition, to these potential impacts to circulation, there are also potential impacts to roadway maintenance. As a result, the DEIR must address any and all maintenance issues related to the Delta Plan as well. At a minimum, this analysis must include the impacts to roadways by any heavy equipment used to do work on the levees for the Delta Plan. For instance, how will heavy equipment affect and accelerate the degradation of the existing roadways in the Delta?

Utilities and Public Services (pg. 29): The DEIR must describe and analyze potential impacts the achievement of coequal goals will have on any and all public infrastructure facilities located within the Delta (e.g., water delivery systems, electrical, communication, energy, and natural gas). The DEIR should also describe the DSC's commitment and policy actions to establish and to maintain long-term collaborative partnerships with all local utility providers.

Identified Responsible Agencies (attachment 1): The NOP lists many local agencies located outside the Delta as responsible agencies under the California Environmental Quality Act (CEQA). This appears to conflict with the intent and/or provisions set forth in CEQA. As indicated on page 4 of the NOP, "Responsible Agency" is defined as a public agency, other than a lead agency, that has responsibility for implementing or approving the Delta Plan or aspects of the Delta Plan. This definition, however, is somewhat different than that of CEQA, which defines a responsible agency to include all public agencies other than the lead agency which have discretionary approval power over the project (Public Resources Code section 21069). Pursuant to CEQA Guidelines sections 15041(b) and 15042, a responsible agency only has authority over "that part of the project which the responsible agency would be called on to carry out or approve." Given the definition of Responsible Agency as provided in CEQA and its guidelines, it

appears that identification of many local agencies located wholly outside of the Delta is improper. The DEIR should clarify/explain this apparent conflict.

In conclusion, as stated in the NOP's introduction, the Delta Plan is intended to be a legally enforceable, comprehensive, long-term management plan with the overarching objective of meeting the coequal goals as described in the Reform Act. It appears that this document has been devised to create a mechanism to establish regulatory control well outside the boundaries of the statutorily defined Delta and beyond the direct regulatory control of the DSC.

We greatly appreciate the opportunity to share our comments on the Delta Plan's DEIR and look forward to its formal release (along with Plan itself). As stated many times over the past few months, Sacramento County is committed to maintaining and fostering a working partnership with you and the Council membership to address and successfully resolve the many challenges associated with this unique and valued region of California.

Should you require additional information please contact Mr. Don Thomas, Senior Planner at 916-874-5140.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Leonard', written over the word 'Sincerely,'.

Robert B. Leonard, Administrator
Municipal Services Agency

RL:DT/smh