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September 28, 2011

Phil Isenberg, Chairman
Council Members
P. Joseph Grindstaff, Executive Officer
Delta Stewardship Council
650 Capitol Mall, Fifth Floor
Sacramento, CA 95814

By E-mail

Comments to Delta Stewardship Council – Fifth Draft Delta Plan

Dear Chairman Isenberg, Council Members, and Mr. Grindstaff:

On behalf of the residents of San Joaquin County and the San Joaquin County Board of Supervisors, we would like to thank you for the opportunity to submit comments on the Delta Stewardship Council's (DSC) Fifth Draft Delta Plan. With nearly two-thirds of the Delta located within San Joaquin County, we remain very concerned about the protection of water quantity and quality available within the Delta. We are equally concerned about the potential negative effects that additional planning processes may have on the County's communities, land use, flood protection, infrastructure, agriculture, economy, recreation, wildlife, and our way of life.

The County's comments to the Fifth Draft Delta Plan are as follows:

1) <u>Preface, Page 7, Line 1:</u>
   a. "Policies" should be some other word, such as "provisions".

2) <u>Chapter 1:</u>
   a. Page 24, Lines 19-21 - Can the accuracy of this statement be verified by a citation to authority?

   b. Levee risk of failure: Page 17, Lines 26-33, Page 24, Lines 39-41, and Page 35, Lines 17-20
      If the Council recognizes adaptive management and recognizes that Project operations are still guided by presumed conditions which have changed, and therefore those presumptions and givens need to be updated (see Page 20) based on better information; shouldn't that same approach be taken with respect to levee fragility assumptions?

3) <u>Chapter 2, Science and Adaptive Management for a Changing Delta, Page 47, Beginning on Line 13:</u>
   a. A Delta Science Program grant should be made available to study the relationship between habitat acreage and flow.

4) Chapter 3, Governance, Implementation of the Delta Plan:

a. Covered Actions - Chapter 3, describes a lengthy, complicated, and potentially expensive certification and appeal process. It will be difficult for applicants to understand and follow, and may result in the need for expensive consultants to guide applicants and their projects, both large and small, through the process. It also places a significant burden on local agencies to make "Findings" and certify covered actions.

Despite the Delta Plan's statement that "the Council does not exercise direct review and approve authority over covered actions", ultimately land-use authority in the Delta is being taken from local agencies and placed in the hands of the DSC. Appendix A, states that a covered action that has been the subject of an appeal shall not be implemented unless the DSC has either denied the appeal, or the local agency has decided to proceed with the action as proposed or modified, has revised the certification, addressing each of the findings made by the DSC, and no one has appealed the revised certification. Potentially, an applicant could get into a never-ending loop of appeals, and at some point just give up. The result could be a general discouragement for anyone to seek permits for a covered action in the Delta, which may be an actual but unstated goal of the DSC.

Furthermore, the supposed limitation of the reach of the provisions regarding "covered actions" to those which have a "significant" impact on the Delta (as described in the Third Draft Delta Plan), is of little use in educating local permitting agencies and potential permit applicants regarding the coverage of the action proposed by the potential permit applicant. Without a clearer description of what is "significant," we are left to guess what the final administrative decision-maker's understanding is regarding this term. At one end of the spectrum, those governed by the Delta Plan are left to guess whether a large action or project may be deemed by the DSC to be not "significant" because the project is favored by DSC (or staff), even through by an independent, objective, rational view that action or project is indeed "significant". On the other end of the spectrum, those governed by the Delta Plan are left to guess whether a small action or project is deemed "significant" because the action or project is disfavored by the DSC (or staff), even though by any independent, objective, rational view that action or project is indeed not "significant". Dealing with the issue, caused by ambiguous, ill-defined language by saying "Trust us" does not meet reasonable standards of governance.

The significance of this is that all discretionary projects that are within the legally-defined Delta may be classified as covered actions. This begins the process of review, documentation, certification and appeal to DSC; a lengthy, complicated, and expensive process. It subjects applicants to a second or third "bite of the apple," as not just the CEQA determination and project approval may be appealed, but the certification may be appealed just when an applicant may be ready to perfect the application approval. Certification appeals may be filed as a means to delay and ultimately stop projects.

Appendix A, states that local agencies may elect to refer covered actions to the DSC early in the process for an "early consultation". The Community Development Department may decide to send all discretionary applications within the legally-defined Delta for early consultation with the DSC. By allowing the DSC to pre-screen, it will help to ensure that expensive and complicated

application materials are only required of applicants whose projects, according to the DSC, are what they consider to be covered actions, and therefore subject to the Plan.

Recommendation:
The Delta Plan should have some "bright line" indicators of what is, and what is not, a "covered actions" (beyond pointing out what the "covered actions" statutory exemptions are). Local permit applicants are numerous and they, and the County, should not have to guess at the meaning of "covered actions". It is recommended that the DSC staff be the first step in the process for certification. A potential permit seeker would submit material regarding action which could be a "covered actions" to DSC staff for a preliminary conclusion as to whether the action is a "covered actions".

The potential permit seeker would then proceed to the local permitting agency and submit the same material for consideration by the local permitting agency. The local permitting agency could then make its determination regarding the permit and certification regarding "covered actions". If the potential permit seeker submits additional or other materials in support of the sought permit, the local permitting agency could send the potential permit seeker back to the DSC staff for reconsideration of its preliminary conclusion. Failing articulation of this sort of preliminary conclusion process in the Delta Plan, the local permitting agencies, and the potential permit seekers are left to the subjective determination of DSC staff AFTER all of the local agency process has taken place, a potential waste of private and public time, effort and money.

A more suitable approach than that discussed in Chapter 3 would be to require that General Plans of the Delta Counties and Cities include language that speaks to limit certain types of activities in the Primary Zone and Delta. This approach has been used successfully by the Delta Protection Commission; there has not been inappropriate development within the Primary Zone in San Joaquin County.

The County sees this process imposed by the Draft Delta Plan as an unfunded mandate. There should be language in the Delta Plan, which specifically recognizes that the imposition of this process is an unfunded mandate.

4) <u>Chapter 4, A More Reliable Water Supply for California</u>

a. Reduced Reliance on the Delta – The Delta Plan's policy of co-equal goals and specifically Water Code Section 85021 wherein it states the policy of the State is to reduce reliance on the Delta in meeting California's future water supply needs should be supported, but an inherent conflict appears under Water Code Sections 85031 and 85032. Water suppliers within the area of origin or county of origin to the Delta or its watershed in the future may be required to reduce reliance on the very water supply they must rely on for increased supply for beneficial use. This conflict should be discussed and resolved if the Delta Plan will contain policies and recommendations that may affect area of origin or county of origin water suppliers.

b. Figure, Page 76, DP_161 – *California's Water and the Delta* – It is inappropriate to include water supply diversions from the Mokelumne and Hetch Hetchy Aqueducts with the calculation of In-Delta consumption. They should be considered independently or included in some other part of the calculation for this figure. If these diversions are to remain within the figure, then diversions

from the Madera and Friant-Kern canal systems should also be included as "In-Delta Consumption" as these diversions take water from the San Joaquin River that would normally flow to the Delta as do the diversions from the Mokelumne and Hetch Hetchy Aqueducts.

c. WR P1, Page 83, Line 28 – *Evaluation of regional water balance* - It is not clear who will be responsible to develop an assessment of the long-term regional water balance. It would seem inappropriate for a local supplier to be responsible for the assessment of a hydrologic region's water balance. This assessment should be a requirement of the Department of Water Resources (DWR) under the California Water Plan Update, and information provided to regional agencies and local suppliers.

d. WR R3, Page 84, Line 16 – No additional criteria should be applied or deadline set on the current Proposition 84 planning or implementation grant application process as developed by the DWR. Any proposed revision or establishment of an additional arbitrary deadline (December 31, 2012) to State grant and loan criteria, in particular to the IRWMP program, should only be implemented following the successful passage of the water bond in 2012. This would be an unfair and onerous burden placed on regional and local suppliers to meet this new requirement on an already established program.

e. WR R5, Page 84, Line 34 – The notion of having all Californians share in the burden of mitigating the damages of exports by the State and Federal Water Projects is completely unfair. Communities in the areas of origin are being unfairly targeted here because of their inherent location within the Delta watershed. Is it fair to require communities, who have statutory protections to future diversions of water from the area of origin, to bear the unnecessary burden of evaluating project alternatives that are not within the Delta watershed? Would it be fair to burden these communities with achieving urban water use reduction targets greater than those mandated in SBX7_7 which calls for a 20 percent reduction in per capita water use? The two examples highlight the disproportionate burden being placed on communities within the area of origin and in the Delta watersheds to mitigate the damages of the SWP and CVP. CEQA already requires that projects proponents look at other feasible alternatives. Under NEPA, the least damaging practicable alternative that meets the project's purpose and need must be selected. Additional oversight by the DSC through the Delta Plan is unwarranted and duplicative. The DSC has no place in establishing this type of mandate.

f. ER P1, Page 86 – States that the State "should" develop the flow standards. How does this comport with the idea that "Policies" are supposed to be mandatory?

g. WR R10, Page 93, Line 42 – The Eastern San Joaquin County Groundwater Basin has been designated as critically over-drafted in DWR Bulletin 118-80. Since that designation in 1980, local stakeholders have employed a consensus-based approach to develop groundwater management plans, integrated regional water management plans, and other groundwater policies to sustainable management of the underlying basin. The Eastern San Joaquin Region's adopted IRWMP seeks to divert water from Delta tributaries in years and months when water is available in order to conjunctively manage groundwater and surface water sources as part of an effort to achieve greater regional self-sufficiency. The DSC's Fifth Draft Delta Plan under WR R10 recommends that an adjudication by the State Water Resources Control Board (SWRCB) if such plans were not adequate or implemented. Current rules allow local jurisdictions and local landowners to manage

groundwater supplies. It would seem that adjudication should only be a measure of last resort and reserved for the most difficult circumstances. Stakeholder-based, consensus driven-solutions as developed in San Joaquin County under the Eastern San Joaquin Integrated Regional Water Management planning process provide incentives for better groundwater stewardship and offer a more sustainable approach to groundwater management.

5) Chapter 6, Improve Water Quality to Protect Human Health and the Environment

a. Page 133, Beginning on Line 18: Listing the order of Delta stressors such that Delta exports appear last is misleading. When looking at the decline of the health of the Delta Ecosystem in the context of the list of stressors provided, a commonsense analysis shows that the Delta, say 50 to 100-years ago, had more freshwater inflows and outflows provided in a manner that mimicked a more natural flow regime. The Delta of the past looks much like the Delta of today in terms of agriculture and maritime commerce. Channels were routinely dredged as a means of accommodating increased maritime commerce, reducing river stages in flood times, and as a source of materials for levee maintenance. The levees of the past, much of which still exists today, are maintained to a higher standard in current times. Tides, for all intents and purposes, too do not give pause as a stressor that has somehow changed the landscape of the healthy Delta of the past. Previous to highly-regulated wastewater treatment and urban storm water systems, industries of the past like tomato processing canneries and textile plants discharged freely into the Delta; today, treatment of point source discharges is the rule. Lastly, irrigation in the Delta has been and continues to be an in-Delta water use. What has changed since then to cause such a decline in the health of the Delta? To quickly characterize the issue at hand, the Delta of today has less inflows and outflows, the same general land use with the exception of urban expansions in the Secondary Zone, less dredging due to regulations, highly maintained levees striving to meet a prescribed engineering standard (PL-84-99), the same tides, has treated wastewater discharges, highly regulated non-point source discharges including urban and agricultural storm water runoff and return flows, and applies roughly the same amount of water on crops as it has in the past.

The Delta of 50 to 100-years ago supported thriving populations of salmon, striped bass, and Delta smelt. Is urbanization to blame? Stockton was once a bustling waterfront port and industrial town making a name for itself in the 1920's and 30's. It is in that era where untreated wastewater discharges and unregulated storm water runoff "tainted" the waters of the Delta. The salmon, striped bass, and smelt still thrived. Commonsense leads us to the only one remaining culprit for the precipitous decline of the Delta, and that is increased water exports by the State Water Project and Central Valley Project since their development in the 1940's to the record diversions in 2004-05, which nearly destroyed the Delta ecosystem until the present day.

b. Page 134, Lines 5-7 - In "proportion" to what?

c. Page 146, Lines 34-37: What is the basis for stating that the Sacramento River is a major source of selenium in the SF Bay?

6) Chapter 7, Reduce Risk to People, Property, and State Interests in the Delta

a. Page 161, Lines 24-26 – Recommended Amendment
Risk can be reduced through **constant improvement and maintenance of the emergency preparedness, response, and recovery system,** appropriate land uses, water management changes, reservoir reoperation; and strategic levee improvements.

b. Page 163, Lines 3-5 – Recommended Amendment
Failure of ~~significant parts~~ **a portion** of the Delta's flood management system may be unavoidable **and failure of significant parts is possible.** Additionally, potential levee failures resulting from an earthquake in the region are possible.

c. Page 163, Lines 39-40 and Page 164, Line 1 – Recommended Amendment
It is important to note that **while** the Central Valley Flood Protection Plan and FloodSAFE include many concepts relevant to the Delta Plan; however, they largely focus on issues outside of the Delta**, whereas the Sacramento-San Joaquin Delta Multi-Hazard Coordination Taskforce Report is specific to the Delta**.

d. Page 164, Line 13
Typographical error; should read "Conceptual Diagram of a Floodway within a Floodplain".

e. RR P1, Page 165, Lines10-13
This references "encroached" to DWR's Interim Levee Design Criteria. Be advised that this document is now referred to as "Urban Levee Design Criteria (ULDC)." Also, the term "significantly" as used herein should be defined. As a reference, the draft Urban Level of Flood Protection (ULOP), prepared by DWR and to be used in conjunction with the ULDC for implementation of SB 5, defines significantly as a reduction of 20 percent or greater in flood protection recurrence interval (e.g. from 200-year to 160-year recurrence interval).

f. RR P2, Beginning on Line 14
"Significantly" as used herein should be defined. Suggest consistency with the ULOP.

g. Page 166, Line 19-25 – Recommended Amendment
Although levees were constructed in the Delta to reduce the risk of flooding, the historical performance of ~~many~~ levees in the Delta has been mixed. **While a large number of levee failures from the beginning of levee construction is often cited, a review of past levee failures shows improvement in reducing, but not eliminating, the number of failures over the last century.** Many levee failures ~~have been attributed to~~ **occur during** high flood flows, and some levees have failed in the absence of ~~any type of flood~~ **high water events**. If a significant earthquake does occur on faults in or near the west Delta, one or more levees could fail (DWR 2009a). Figure 7-3 illustrates a ~~potential~~ **hypothetical** flood scenario in which a 6.5-magnitude earthquake causes a 20-island failure.

h. Page 167, Figure 7-3
What is the probability of a 20 island failure?

i. Page 170, Lines 23-29
Insert the following language: **Efforts to attain PL 84-99 levee standards, at a minimum, shall be considered consistent with the Delta Plan unless lesser levels of levee protection have been established previously by the purchase of flood easements or similar binding commitments.**

j. Page 173, Problem Statement, Lines 8-10 – Recommended Amendment
Existing standards, ~~and~~ law**, and funding** are not sufficient to reduce flood risk to lives, property, and State interests in the Delta **to acceptable long-term levels reflected in new State levee standards, and emergency response standards for threats to levee stability - standards yet to be developed,** particularly for residential, commercial, and industrial development outside of urban areas and for above-ground infrastructure.

j RR P3, Page 173, Line 12
Covered actions in the Delta must be consistent with Table 7-1."
It should be noted that some of the required levels of protection identified in Table 7-1 are inconsistent with those required by SB 5. Specifically, "development of subdivisions of more than four parcels in non-urbanized areas not within Legacy Towns" is only required to achieve a 100-year level of protection, not 200-year as shown in Table 7-1. Also, SB 5 makes no distinction of flood protection requirements for Legacy Towns, but distinguishes between "urban" and "urbanizing" areas.

k. RR P4, Page 178, Lines 14-23
This proposes tying the approval of State funding for levee improvement projects to consistency with the Delta Plan. This is potentially subjecting projects that would provide increased public safety to an appeal process, thus jeopardizing them or at least delaying them.

l. Page 179, Line 30 – Recommended Amendment
Despite the vital importance of adequate preparation, no Delta-wide ~~emergency response plan~~ **regional emergency response system with consistent component plans** exists.

m. Page 179, Line 42 – Recommended Amendment
Currently, no coordinated Delta-wide ~~emergency response plan~~ **regional emergency response system with consistent component plans** exists to address the potential for levee failures and flooding.

n. RR R6, Page 180, Line 24 – Recommended Amendment
In consultation with local agencies, the Department of Water Resources **and all other public agencies maintaining local emergency stockpiles** should expand ~~its~~ **their** emergency stockpiles to make them regional in nature and useable by a larger number of agencies. ~~in accordance with Department of Water Resources plans and procedures~~ A **Delta multi-agency logistics system within the new Delta regional response system should be developed to ensure all resources are efficiently managed to ensure the closest, available, needed resource is sent to problem areas regardless of jurisdiction**. The Department of Water Resources, as a part of this ~~plan~~ **emergency logistics planning**, should evaluate the potential of creating stored material sites by "over-reinforcing" west Delta levees.

o. RR R7, Page 180, Lines 33-37
This is confusing and duplicative. Is that DSC going to write emergency response procedures? The DSC may want to review the work of the SB27 Task Force and the new Sacramento-San Joaquin Regional Flood Response Project being initiated through the Delta Protection Commission. We need to be consistent. The SB27 Task Force consisting of the actual Emergency Managers of the Delta counties, the DWR Flood Operations Branch, and CalEMA should remain the body that develops response plans and recommendations and the DSC and DPC can review those products if they want.

p. RR R9, Page 181, Line 35
Is this intended to be in addition to flood insurance requirements currently imposed by the Federal government, or would a community's participation in the National Flood Insurance Program satisfy this?

Agriculture:
The co-equal goals of water reliability and ecosystem restoration must be done in a manner that protects and enhances the agricultural values of the Delta as an evolving place. Unfortunately, the Fifth Draft Delta Plan fails to protect or enhance agriculture in the Delta.

Agriculture is the dominant land use of the Delta, comprising three-quarters of the region's landscape. A preponderance of agricultural land in the Delta-- 75 percent -- is classified as Prime Farmland, land with the best physical and chemical characteristics and reliable irrigation water. By comparison, only 18 percent of the State's agricultural land is classified as Prime Farmland. Because of the fertile peat soils and the moderating marine influence, Delta agriculture's per acre yields are almost 50 percent higher than the State's average.

San Joaquin County makes up the largest portion of the total Delta's agricultural land base, at 55 percent. The Delta comprises approximately 1/3 of San Joaquin County's total land. Approximately 87% of the existing land in the Primary Zone of the Delta is devoted to agriculture. There are 254,261 acres of crop land in San Joaquin County's Delta producing a total farm gate value of $547,517,000 (2009 figures). Using the DWR economic multiplier of 3, San Joaquin County's Delta agriculture contributes $1.64 billion to the regional and state economy on an annual basis.

To protect and enhance agriculture in the Delta and to allow it to remain viable into the future, the plan must address the issues that presently threaten agriculture in the Delta. These include water quality, levee maintenance, channel capacity, incompatible non-agricultural uses, critical mass (infrastructure and support industries), certainty, and regulatory costs.

<u>Water Quality</u>
Two water quality needs for Delta agriculture are: (1) to maintain sufficient flows to prevent seawater from intruding into the agricultural areas of the Delta that rely on fresh water for irrigation; and, (2) sufficient flows in the San Joaquin to improve irrigation water quality in the South Delta.

The Delta Plan addresses water quality and reliability requirements for the environment and public health but does not address agriculture's water reliability or quality needs. Management of the Plan's water quality standards must not be at the expense of agriculture. The Plan's water quality standards should

consider the requirements for agriculture as well as ecosystems. The Plan must explain how it intends to manage the Delta's water in a manner that protects and enhances the agricultural values of the Delta.

Levees, Channel Capacity, Dredging

Levees, channel capacity and dredging are top priorities for Delta agriculture. Large contributions made by Delta growers, individually and through their reclamation districts, include levee monitoring, improvements and maintenance. However, this local investment is clearly not enough and a significant and sustained State and Federal investment is needed.

The Delta Plan states that "the cost of maintaining, improving, or repairing these levees in some cases may be more than the assessed value of the use of the land they protect (Sumner et al. 2011). This creates an uncertain future for Delta agriculture and for the associated Delta economy and those residents who depend upon it." Using only the assessed value to determine the value of the agricultural lands protected by levees is incomplete. Over the life of a levee the agricultural lands that are protected by that levee will likely have produced tens of millions of dollars in crop value. The value of agricultural production, as well as the assessed values must be considered when calculating the value of agricultural land protected by levees. Consequently, the plan should give levees protecting agricultural lands a much higher priority and allow for much greater resources.

The Delta Plan only provides for dredging the Deep Water channel for shipping. Much more dredging of canals needs to be done in the Delta to improve water delivery for agriculture. The Delta Plan should consider an expansion of dredging for the benefit of agriculture.

Incompatible Non-agricultural Uses

Regarding wildlife and wetland uses in the Delta, adequate buffer lands between agricultural and wildlife areas are needed to mitigate depredation, seepage, and pest and weed problems. Buffers are also important for allowing farmers to conduct normal farming operations, such as spraying, without infringement.

One of the primary goals of the Delta Plan is ecosystem restoration. However, how will agricultural lands located next to the newly developed ecosystems be protected from possible negative impacts caused by the expanding ecosystems? Natural lands often harbor pests and diseases that are harmful to neighboring crops. Endangered species on adjacent habitats could alter farming practices. Ecosystem requirements may prohibit certain farming practices that are necessary for cost-effective food production. Additionally, natural habitats could serve as a reservoir for weeds, insects, diseases and rodents at levels that would make farming in the area impossible. Serious invasive weeds detrimental to agriculture that are presently aggressively controlled in the Delta could quickly become once again very troublesome and costly if left unchecked in natural ecosystems. The Plan should indemnify growers who incur larger regulatory costs or are otherwise are harmed by the ecosystem expansion in the Delta.

ER P3 requires consultation with Fish and Game before actions that might have an adverse impact on habitat restoration in certain areas of the Delta can be done. This requirement could have a detrimental impact for farming because farming operations may not be able to change to meet changing market demands. The legality of requiring this is questionable

The plan should provide some assurances and protections for agricultural lands next to newly developed ecosystems in a manner that protects and enhances the unique agricultural values of the Delta as an evolving place.

Critical Mass

The loss of agricultural services and service providers from the Delta threatens agricultural sustainability. Such services include transportation, processing, and agricultural suppliers. Related to the critical mass question is the loss of agricultural land to non-agricultural public acquisitions.

Farming requires a certain presence of agricultural services, service providers, roads, and neighboring agriculture to remain economically viable. All these factors are threatened by the Plans covered action requirements and its substantial ecosystem restoration efforts. The buildings, packing facilities, supply houses, etc., required to support agricultural production are covered actions that would need to go through a lengthy and costly regulatory process to be built. Even after going through the process their applications could be denied. This sort of process would be a disincentive to locate these vital services and structures in the Delta. Additionally, agriculture does best in areas that are agriculture. When agriculture is encroached upon by different land uses, the cost of farming quickly increases as growers must alter farming practices to accommodate the different land uses. If costs become too prohibitive, then farming ceases. Converting 140,000 acres of the Delta into non-agricultural land uses is a serious threat to agriculture's long-term viability in the Delta.

Certainty

A fundamental need of Delta agriculture is increased certainty about the Delta's future with respect to conveyance, in-Delta flows, water quality, land ownership, and levees. For agriculture, the Plan's goal for each of these factors is unknown and questionable. Without certainty in these areas, agriculture's long term investment in the Delta is threatened.

A significant factor in the Plan that strongly contributes to uncertainty for agriculture is the adaptive management process. Because agriculture production is typically a long-term investment for farmers, to the extent possible, they require a degree of certainty and predictability. If the ecosystem and water management rules for agriculture are continually changing through an adaptive management process, how can farmers plan for the future? When investing into crops that may not give a return for 4 or 5 years, it is difficult enough forecasting markets and weather conditions. Throwing into this mix changing ecosystem and water management requirements and it may become too difficult for farmers to survive. Farmers may not have the resources or technical ability to readily adapt to the DSC's adaptive management practices. To the extent possible, farmers require an environment that is stable and predictable when making long-term investments. Adaptive management planning has the potential of creating an environment that is inconsistent with the Plan's mandate to achieve the co-equal goals in a manner that protects and enhances the agricultural values of the Delta.

During the evaluation phase of the adaptive management process, there is no analysis or consideration of how a program or project impacted other land uses or industries such as agriculture. A thorough analysis of projects or programs impacts on surrounding land uses and/or unintended consequences should be fully evaluated and part of the report presented to the DSC.

The Plan's lack of clarity regarding how, when, and where land will be obtained for ecosystem conversion and who will own it adds to the uncertainty factor for agriculture. To convert 140,000 acres of tidal marshes, flood plain and other natural habitats will require a large amount of agricultural land to be taken out of production. What will be the process of obtaining agricultural land for ecosystem conversion? Will the land by obtained through easements, fee title purchases, eminent domain, or all of these methods? If multiple methods are used, what percentages are planned for each acquisition method? The Delta Plan

must outline an acquisition process and plan for ecosystem land acquisition for natural ecosystems. These important matters should not be left to be decided in future plans.

Regulatory Costs

The cost of regulatory compliance for farmers is already high. The Plan's regulations, restrictions, and policies could ultimately increase this cost to the degree of making Delta farming unviable. Additionally, a heavy regulated farming environment in the Delta will ultimately lower farm property values because of the risks involved in investing into farms where the return on the investment may not overcome the regulatory costs; especially when the regulatory cost may change over time in an adaptive management environment.

Covered Actions

How covered actions pertain to agricultural operations is very unclear. It appears that normal agricultural practices such as cultivating, irrigating, spraying, and crop rotation are not "covered actions." However, the definition of covered actions is unclear regarding this matter and, over time, different interpretations of "covered actions" may prevail. As stated, "the Delta Plan may exclude specified actions; therefore, those actions would not be covered by one or more provisions of the Delta Plan." For clarity sake, the Plan should exclude normal farming practices and changes in cropping patterns from the provisions of the plan.

However, Table 7-1 lists agriculture-related on-farm structures as covered actions. Outbuildings and storage facilities are critical to farming. Subjecting these to the requirements of covered actions is contrary to the Plan's mandate to achieve the co-equal goals in a manner that protects and enhances the agricultural values of the Delta. The Plan should also exclude farm buildings from the covered actions requirements.

Additionally, the United States Department of Agriculture's Environmental Quality Incentives Program (EQUIP) appears to be a "covered actions" as defined by the Plan. This program provides grower incentives to put into operation projects that will benefit the environment. When the Delta Plan is implemented growers, will need to show that their proposed EQUIP project is consistent with the Delta Plan. Adding another bureaucratic layer for Delta farmers to go through before receiving EQUIP approval will certainly be a disincentive to participating in these and maybe other environmentally friendly programs. Consideration should be given to exempting such programs from DSC review and approval.

FP R6 User Fees/Stressors Fees to support the coequal goals and the Delta Plan

"The Legislature should grant the Council the authority to develop reasonable fees for beneficiary, and reasonable fees for those who stress the Delta ecosystem …." Many times throughout the document, the Delta Plan concludes that agriculture and agricultural activities stress the Delta's natural ecosystems. Consequently, it is reasonable to assume that one of the "stressors" that will be assessed a fee is agriculture. How will this stressor fee be assessed? Will it take the form of a farming fee? Irrigation fee? Pesticide application fee? Fertilizer fee? All the above? Does the Delta Plan intend on assessing stressor fees on farmers throughout the Central Valley? Will farmers now have to obtain a permit and pay a fee to farm? What if Delta farmers are both beneficiaries and stressors? Do they pay two fees? Going through the fee structure of the Delta Plan, Delta farmers could very conceivably pay the following fees:

1. Stressor Fee
2. Beneficiary Fee
3. Delta Utility Surcharge (on the utility bill)

Delta and Central Valley farmers should not shoulder the financial burden for ecosystem and water reliability programs in the Delta.

Delta Plan's Scope of Authority

The scope of the plan is far too broad. Claiming jurisdiction in all watersheds stretching from the Upper Trinity to the San Joaquin River at Fresno and in all the areas where Delta water is exported takes in most of California. Additionally, most of California's agriculture is within this jurisdictional boundary. In the future will farming practices throughout the state need to show consistency with the Delta Plan? Also, in addition to complying with regional water board requirements, will growers also need to comply with an extra layer of discharge regulation in the form of the Delta Plan? What if they conflict? Additionally, requiring urban and agricultural water suppliers to comply with DSC mandates for water conservation, reporting, metering, and pricing is too intrusive and will add substantially to the cost of water. As a result many of the Plan's provisions regarding water quality, conveyance, and reliability exceeds the authority of the DSC. These statewide policies are best served by those statewide agencies that have appropriate authority. The Plan should narrow its scope of authority.

On June 24, 2011, the San Joaquin County Board of Supervisors submitted comments specific to agriculture to the Fourth Draft Delta Plan. Nearly all of the comments are applicable to the Fifth Draft Delta Plan; therefore, the County's comment letters regarding the Fourth Draft Delta Plan are being submitted as an attachment to this letter.

Thank you for your attention and consideration on this critical matter. San Joaquin County looks forward to working with you and submitting additional comments to the DSC in the future.

If you have any questions regarding this matter, please contact Tom Gau, Public Works Director at (209) 468-3101.

Sincerely,

Frank L. Ruhstaller, Chairman
Board of Supervisors
San Joaquin County

Attachment

FLR:ER

c: San Joaquin County State Delegation
Paul Yoder, State Advocate
Karen Lange, State Advocate
Mark Limbaugh, Federal Advocate
Roger Gwinn, Federal Advocate
Delta Counties Coaltion
Manuel Lopez, SJC County Administrator

David Wooten, SJC County Counsel
Tom Gau, SJC Public Works Department
Kerry Sullivan, SJC Community Development Department
Scott Hudson, SJC Agricultural Commissioner
Gabe Karam, SJC Office of Emergency Services

BOS09-01

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May 6, 2011

Phil Isenberg, Chairman
Council Members
P. Joseph Grindstaff, Executive Officer By E-mail
Delta Stewardship Council
650 Capitol Mall, Fifth Floor
Sacramento, CA 95814

Comments to Delta Stewardship Council – Third Draft Delta Plan

Dear Chairman Isenberg, Council Members, and Mr. Grindstaff:

On behalf of the residents of San Joaquin County and the San Joaquin County Board of Supervisors, we would like to thank you for the opportunity to submit comments on the Delta Stewardship Council's (DSC) Third Draft Delta Plan. With nearly two-thirds of the Delta located within San Joaquin County, we remain very concerned about the protection of water quantity and quality available within the Delta. We are equally concerned about the potential negative effects that additional planning processes may have, as evidenced by the Delta Vision and the continuing Bay Delta Conservation Plan (BDCP) process on the County's communities, land use, flood protection, infrastructure, agriculture, economy, recreation, wildlife, and our way of life.

The County's comments are as follows:

1. Delta Plan vs. Delta Edict

The County, and as it appears other agencies, that rely on the Delta and its tributaries is greatly concerned with the overall planning approach of the Third Draft Delta Plan as being developed by the DSC's contract consultants. The final product of this effort should be a new comprehensive plan that has developed adequate project and program alternatives to set a new future for a sustainable Delta as described in the Delta Reform Act of 2009, and not a regulatory edict full of proposed policies, acts, and recommendations of which the DSC may have little of no true regulatory authority.

The Delta Plan should have goals, not specific processes, at least not until the other Plans and processes (such as the Delta Protection Commission's Economic Sustainability Plan, the Delta Conservancy's Strategic Plan, the Bay Delta Conservation Plan, etc), have been completed. A Delta Plan with goals can later be amended, even before the required 5-year review, to include processes which are consistent with the Delta Plan's goals and the goals and processes set forth in the other Plans and processes. Furthermore, any language in the Delta Plan dealing with "beneficiary pays" and/or "stressor pays" concepts should await completion of the legislative process on such bills as SB 34 (Simitian) and AB 576 (Dickenson).

In addition, the Delta Plan should provide more specific language regarding the Plan's goals regarding reduced reliance on the Delta for future water needs. There is presently some confusion regarding the meaning and reach of the language in Water Code Section 85201. Delta Plan articulation of the understanding of the DSC on this point would be helpful.

2. Coequality of Goals in Conflict

The Third Draft Delta Plan has not addressed a fundamental conflict concerning the co-equality of goals. This conflict hinges on the fact that the reality of coequality does not exist as written into the Delta Reform Act of 2009. In fact, the state of this policy is as affirmed by letter dated 18 August 2009 in which Antonio Rossman, Lecturer of Water Resources Law, Boalt Hall wrote in regard to then SB1, "the bill seeks to maintain the Blue Ribbon Task Force policy of pursuing environmental protection and supply reliability as "co-equal goals." Conforming that aspiration to both legal and ecological mandates requires refinement of the Blue Ribbon policy. The California Supreme Court's latest definition of the State's Bay-Delta responsibilities clearly provides that "water exports from the Bay-Delta ultimately must be subordinated to environmental considerations." (*In re Bay-Delta Programmatic EIR Coordinated Proceedings (2008) 43 Cal.4th 1143, 1168*). He continued, "Stated differently, the goal of securing a reliable supply must in the end be realized by meeting the paramount needs of the environment." In the continued development of the Delta Plan centered on the co-equal goals, the Council must resolve how the Delta Plan will address this conflict of co-equal goals and also how the plan will abide by other laws established to protect the Delta such as the Delta Protection Statute (*Wat. Code* §§ 12200 et seq.), the Watershed Protection Statute (*Wat.* Code §§ 11460 et seq.) and the Area of Origin Statute (*Wat. Code* §§ 10500 et seq.).

3. Water Rights, Area of Origin, and Regional Self-Reliance

The Third Draft Delta Plan, Chapter 4, focuses on the ideas of improving regional self-reliance, which is a topic the County has supported in our "Better Way Approach" to improving regional water supplies. This fundamental approach has great promise as it is currently being developed under the Integrated Regional Water Management planning process supported by the Department of Water Resources (DWR) and a host of regional entities throughout the State. Unfortunately, as considered under the Draft Delta Plan no mention has been made regarding the protection and observance of the State water right priority system. A vast number of water users within the Delta and its tributaries beneficially use water pursuant to riparian, appropriative and/or overlying rights, which are among the most senior of water rights in the State, and are duly protected from export operations and more *junior* appropriative water rights. California water law is based on the priority system of State water rights. Shortages are addressed by implementation of the water right priority system. The most senior water rights are protected while junior water rights suffer. Competing demands for water in and from the Bay-Delta are properly resolved by applying the priority system, not by "balancing." If there is insufficient water in a stream system to support all appropriators, then diversions diminish starting with the most junior appropriators. (*Pleasant Valley Canal Company v. Borror* (1998) 61 Cal.App.4th 742, 770.) The Delta Plan must recognize that shortages of water within the Bay-Delta are resolved by applying the law and not by the use of a regulatory process where in covered actions form the basis of water rights priority.

In addition, the Watershed Protection Act (Wat. Code, § 11460, et seq.) and the Delta Protection Act (Wat. Code, § 12200, et seq.) impose fundamental limitations on the State Water Project and federal Central Valley Project's ("Projects") ability to transfer "surplus" water from the Delta watershed to water-deficient areas to the south and west of the Delta. These acts contain the core protections and assurances including the Delta "common pool doctrine", which the Legislature afforded such water users when the Projects

were initially authorized that the Projects will indeed be limited to the transfer of water that is truly surplus to their needs. Situated within the Delta watershed, and with a substantial portion of its lands within the boundaries of the "legal Delta" (see Wat. Code, § 12220), the proper interpretation of these acts is of paramount importance to San Joaquin County and its many water users, both human and environmental, that depend on water from that watershed and must be integrated into any discussion or plan regarding reliable water supplies.

Furthermore, in the Draft Delta Plan, Chapter 4, the relationship by which the DSC would interact with State Water Resources Control Board (SWRCB) under Water Resources Policy (page 4) is unclear. The concept of covered actions for projects that seek to divert water either from the Delta or from its tributaries and the water rights process as administered by the SWRCB is not well defined. Does the legislation empower the DSC to make any determination with regards to water rights? Will the DSC have the authority to make a water right determination based solely on stipulations regarding a "covered action?" Will the current water rights system still be relevant when the Delta Plan is implemented? These are questions that could reflect the concerns of the most senior riparian and pre-1914 water rights holders in the County.

Future projects contemplated in the Eastern San Joaquin Region and defined by our Community's adopted Integrated Regional Water Management Plan (IRWMP) will seek to divert water from Delta tributaries in years and months when water is available in order to conjunctively manage groundwater and surface water sources as part of our effort to achieve greater regional self-sufficiency. The Delta Plan should state explicitly that tributaries outside the Delta are not considered covered actions. Diversion and beneficial use of water within the Delta and its tributaries must be a priority over exports as established in existing law defining area of origin protections that place Northern California community's needs ahead of Delta exporters in terms of water rights. The Draft Delta Plan makes no mention of honoring existing water rights or area of origin protections as part of greater regional self-reliance.

4. Water Quality Standards and Salinity Control

The enforcement of existing water quality standards in the Delta is missing from the Third Draft Delta Plan, Chapter 6. Through the Fish and Game Code, California Water Code and other laws and decisions, it would seem that both the California Department of Fish and Game and the State Board have more than adequate enforcement authority to address violations of water quality standards in the Delta and its tributaries, especially in the San Joaquin River. Water quality standards are established to protect beneficial uses including agriculture, fish and wildlife, recreation, as well as assimilative capacity for discharges. Perhaps if existing water quality standards and other codified restrictions on Central Valley Project (CVP) and State Water Project (SWP) operations were truly enforced as intended, then maybe the Delta would not be in such a crisis necessitating the reforms proposed in the Delta Plan. This issue of inconsistent enforcement continues to concern the County and should be addressed in the Delta Plan before new policies, restrictions, or alternative conveyance can be implemented.

To avoid the detrimental impacts of salinity in the Delta, the CVP and SWP were originally planned to release stored water for salinity control. California Water Code section 11207 added by Statutes of 1943 specified "Salinity control in the Sacramento-San Joaquin Delta" as one of the primary purposes of Shasta Dam. Salinity control is currently achieved by allowing unregulated river flow supplemented by releases of water from upstream reservoirs to flow into and out of the Delta in sufficient quantities to constitute a hydraulic barrier to Bay salinity. Upstream diversions to areas outside the watershed and the lack of a

drainage solution for the hundreds of thousands of acres of irrigated land and wetlands along the west side of the San Joaquin Valley are the principal causes of the poor San Joaquin River water quality. The need for a solution to drain saline water emanating from water applied to the west side of the San Joaquin Valley has long been recognized and should be incorporated into the overall Delta solution. Salinity control is a key element in protecting Delta water quality. Salinity intrusion from the Bay is a major contributor to water quality degradation adversely affecting all beneficial uses of Delta water, including fisheries. The Delta Plan, Chapter 6, must address this issue and incorporate protections for adequate Delta outflow and use.

5. State Water Project (SWP) and Central Valley Project (CVP) Operations and Impacts

The Third Draft Delta Plan, Chapter 3, states that operation of the SWP and CVP is listed as an action not covered by the Delta Plan. Regulating export operations and changes in export operations are paramount to protecting threatened and endangered species, maintaining water quality and adequate flow in the Delta. Therefore the Delta Plan must include the CVP and SWP as covered actions. In the spirit of a healthy Delta ecosystem as one of the co-equal goals, reductions in exports from current levels to sustainable levels must also to be evaluated as part of the Delta Plan.

6. Covered Actions and Land-Use

The Third Draft Delta Plan, Chapter 3, describes a lengthy, complicated, and potentially expensive certification and appeal process. It will be difficult for applicants to understand and follow, and may result in the need for expensive consultants to guide applicants and their projects, both large and small, through the process. It also places a significant burden on local agencies to make "Findings" and certify covered actions.

Ultimate land-use authority in the Delta is being taken from local agencies and placed in the hands of the DSC. Appendix A, No. 15 a) and b) states that a covered action that has been the subject of an appeal shall not be implemented unless the DSC has either denied the appeal, or the local agency has decided to proceed with the action as proposed or modified, has revised the certification, addressing each of the findings made by the DSC, and no one has appealed the revised certification. Potentially an applicant could get into a never ending loop of appeals, and at some point just give up. The result could be a general discouragement for anyone to seek permits for a covered action in the Delta, which may be an actual but unstated goal of the DSC.

A more suitable approach than that discussed in Chapter 3 would be to require that General Plans of the Delta Counties and Cities include language that speaks to limit certain types of activities in the Primary Zone and the Delta. This approach has been used successfully by the Delta Protection Zone; there has not been inappropriate development within the Primary Zone in San Joaquin County.

Furthermore, the Third Draft Delta Plan (page 35, line 17), states that, "only certain activities qualify as covered actions, and the Act establishes both criteria and exclusion." Whether an activity meets the definition of "covered action" is important as it determines whether or not the activity is subject to the Delta Plan and the subsequent certification by the local agency that the activity is consistent with the Delta Plan, and whether or not the certification can ultimately be appealed to the DSC. After reviewing the discussion in Chapter 3 regarding covered actions, it appears that all discretionary and potentially all ministerial permit applications within the Secondary and Primary Zones of the Delta may be considered to be covered actions. On page 36, lines 36-38, the Delta Plan states that although CEQA exempts ministerial

projects (Public Resources Code Section 21080(b)(10) ministerial projects are in fact included in the definition of covered action. According to Policy No. 1, p. 39, lines 34-35, some type of CEQA-like environmental review will be required of ministerial projects subject to the Plan, as all potentially significant adverse environmental impacts and mitigation measures must be disclosed in order to certify consistency with the Plan. The Community Development Department will be required to certify that the covered action is consistent with the Plan prior to the applicant "initiating implementation." In order to certify the covered action, the County will be required to make detailed findings. These findings will be based on information that the applicants will be required to submit, and are specified in Policy No. 3, page 39, lines 38-41. The applicant will be required to demonstrate management and financial capacity to implement the covered action over the long term. This includes ownership, water rights, budgeting, capital improvement planning, and a financing plan.

The certification will occur at the end of the typical local permitting process. The certification is then subject to appeal by anyone, including the DSC. The appeal process may take 150 days from start to finish. Additionally, appeals that are granted by the DSC may go back to the local agency and be appealed again, taking more time.

Furthermore, the supposed limitation of the reach of the provisions regarding "covered actions" to those which have a "significant" impact on the Delta (as described in the Third Draft Delta Plan), is of little use in educating local permitting agencies and potential permit applicants regarding the coverage of the action proposed by the potential permit applicant. Without a clearer description of what is "significant," we are left to guess what the final administrative decision-maker's understanding is regarding this term. At one end of the spectrum, those governed by the Delta Plan are left to guess whether a large action or project may be deemed by the DSC to be not "significant" because the project is favored by DSC (or staff), even though by any independent, objective, rational view that action or project is indeed "significant". On the other end of the spectrum, those governed by the Delta Plan are left to guess whether a small action or project is deemed "significant" because the action or project is disfavored by the DSC (or staff), even though by any independent, objective, rational view that action or project is indeed not "significant". Dealing with this issue, caused by ambiguous, ill-defined language by saying "Trust us" does not meet reasonable standards of governance.

What is the significance of this? All discretionary and most ministerial projects, including Building Permits that are within the legally defined Delta may be classified as covered actions. This begins the process of review, documentation, certification and appeal to the DSC; an expensive, complicated and lengthy process. It subjects applicants to a second or third "bite of the apple," as not just the CEQA determination and project approval may be appealed, but the certification may be appealed just when an applicant may be ready to perfect the application approval. Certification appeals may be filed as a means to delay and ultimately stop projects.

Appendix A, paragraph 2 and page 37, lines 24-28 state that local agencies may elect to refer covered actions to the DSC early in the process for an "early consultation." The Community Development Department may decide to send all ministerial and discretionary applications within the legally defined Delta for early consultation with the DSC. By allowing the DSC to pre-screen, it will help to ensure that expensive and complicated application materials are only required of applicants whose projects, according to the DSC, are what they consider to be covered actions, and therefore subject to the Plan.

Recommendation: The Delta Plan should have some "bright line" indicators of what is, and what is not, a "covered action" (beyond pointing out what the "covered action" statutory exemptions are). Local permit applicants are numerous and they, and the County, should not have to guess at the meaning of "covered action". It is recommended that the DSC staff be the first step in the process for certification. A potential permit seeker would submit material regarding action which could be a "covered action" to DSC staff for a preliminary conclusion as to whether the action is a "covered action".

The potential permit seeker would then proceed to the local permitting agency and submit the same material for consideration by the local permitting agency. The local permitting agency could then make its determination regarding the permit and certification regarding "covered action". If the potential permit seeker submits additional or other materials in support of the sought permit, the local permitting agency could send the potential permit seeker back to the DSC staff for reconsideration of its preliminary conclusion.

Failing articulation of this sort of preliminary conclusion process in the Delta Plan, the local permitting agencies, and the potential permit seekers are left to the subjective determination of DSC staff AFTER all of the local agency process has taken place, a potential waste of private and public time, effort and money.

The County sees this process imposed by the Draft Delta Plan as unfunded mandates. There should be language in the Delta Plan, which specifically recognizes that the imposition of this process is an unfunded mandate.

7. Reducing Flood Risk

The Third Draft Delta Plan, Chapter 7, offers policies and recommendations for reducing the risk from flooding within the Delta. Unfortunately much of Chapter 7 is duplicative of existing regulatory requirements and standards, and in some cases in direct contradiction to existing regulatory requirements and standards. Much work has been done since the passage of SB 5 (2007) to develop new standards for levees and floodplain management in order to reduce flood risk. This work has involved extensive collaboration between the DWR, the Central Valley Flood Protection Board (CVFPB), the U.S. Army Corps of Engineers (USACE), local flood control agencies, and engineering and geotechnical experts and professionals. This exhaustive collaborative effort will be incorporated into the Central Valley Flood Protection Plan (CVFPP) and Title 23 of California Code of Regulations. The Delta Plan should not attempt to "reinvent the wheel" regarding levee standards and floodplain management, but should instead incorporate by reference the standards and requirements of the CVFPP and Title 23.

Chapter 7 also proposes formation of a regional flood control agency for the Delta. It's important to remember that local reclamation districts and local flood control agencies know Delta levees the best. Any regional organization must be locally based. There are already many state and federal agencies with roles and responsibilities for flood control within the Delta. These layers of State and federal government overlap and are not always well defined. This can cause confusion and delay when trying to implement flood control improvements. Therefore, it is critical that the formation of any new regional flood control organization does not add another layer of oversight/review/bureaucracy. If a new regional flood control agency is to be created, State and federal agencies should delegate some of their roles and responsibilities to the new agency. Also any new flood control agency must have a sustainable and long term funding source so it can be effective in planning and implementing long term flood control and flood management solutions.

Following are more specific comments and questions on the Third Draft Delta Plan regarding flood risk and emergency response.

1. Page 37, Lines 17 through 23 - This provides examples of covered actions that are "statutorily excluded" from the Plan. Line 23 states: "routine maintenance of levees by a reclamation district (Water Code section 85057(b))." Does this include other local levee maintaining agencies as well? If not, the statute should be amended to include other Local Maintaining Agencies (LMA) or the Plan should acknowledge this.

2. Page 38, Figure 3.1 - How is significance criteria established? Can it be done by the agency making the decision/finding for the covered action similar to CEQA? Also, if an agency is unable to certify consistency with the Plan, then the agency must revise the plan, program or project to achieve consistency. If this isn't feasible, can the agency make a statement of overriding considerations, similar to that allowed by CEQA?

3. Page 39, Lines 13 and 14 - This states that a covered action must not only be found consistent with the Plan at the time of certification, but must also be found consistent when implemented. Does this mean that a finding of consistency must also be made when an action is implemented? (Are two findings required?)

4. Page 39, Lines 38 through 41 - There appears to be an attempt to parallel CEQA, for example in the definition of Covered Action (same as "project" in CEQA), yet P3 far exceeds that required by CEQA by requiring that financial capacity to implement a covered action be included in the certification. Is this appropriate?

5. Page 87, Line 25: Reservoir re-operations should be added to the list of items to reduce risk.

6. Page 87, Line 32: Delete the statement "Failure of significant parts of the Delta's flood management system will be unavoidable" as no science is provided to substantiate the statement, and Water Code section 85308(a) requires the DSC to base the Delta Plan on the best available science and the independent scientific advice of the Independent Science Board (ISB).

7. Page 88, Line 8: The USACE's Lower San Joaquin River Feasibility Study needs to be noted here along with the other important projects that are collaborations between federal, State, and local agencies to study flood management.

8. Page 88, Line 36: Title 23 and FEMA regulations already provide standards and regulations for floodplain encroachment. The Delta Plan should not attempt to duplicate these standards.

9. Page 89, Line 6: "RR P3," this policy overrides local planning authority of at least four jurisdictions within San Joaquin County. It appears that much more coordination is needed to better define these floodplains' purposes, especially since urban or urbanizing areas are included and would need accommodation.

10. Page 89, Line 14: This description of the San Joaquin River/South Delta Floodplain is internally inconsistent, and not capable of being clearly plotted on a map. It also includes parts of

three incorporated cities. It is inappropriate for the Delta Plan to attempt to define a potential floodplain or floodway without conducting the necessary hydrologic, hydraulic, geomorphic, and engineering studies. P3 should be replaced with "DWR, USACE, CVFPB, and San Joaquin County local flood control agencies should complete the Lower San Joaquin River Feasibility Study and determine the feasibility of a San Joaquin River/South Delta Floodplain that would be used as floodway to convey flood flows."

11. Page 90, Line 1: Delete the statement "...the historical performance of many levees in the Delta is poor." as no science is provided to substantiate the statement, and Water Code Section 85308(a) requires the DSC to base the Delta Plan on the best available science and the independent scientific advice of the ISB.

12. Page 90, Line 27: the phrase "...and is often used with established USACE criteria to meet certain ...requirements" should be deleted. The Code of Federal Regulations that defines FEMA 100-year Flood Protection is a comprehensive, stand-alone regulation and not dependent upon USACE certification rules.

13. Page 90, Lines 30-31: "Very few levees in the central Delta meet this standard." Define "central Delta." This appears to be another overly-broad sweeping statement. This should be substantiated with scientific statistics.

14. Page 90, Line 32: It would be more accurate if this sentence read as follows: "DWR 200-year Urban Levee Protection: This [is a] standard [that is still being developed, and] is similar to the FEMA standard..." It is incorrect to treat this standard as complete and in effect as designed when this is not the case.

15. Page 90, Line 40: This is an opinion, not a fact. This whole paragraph omits considerations of future improvements to a levee's design, and states the opinion that it is better to fit the land-use to the existing levee, leaving no option for future alterations to levee design criteria.

16. Page 90, Lines 36 through 39 - This states that levees in Stockton do not meet 200-year protection standard. What is your source for this statement? Most levees protecting Stockton are FEMA accredited. That is, they have been determined to provide at least 100-year protection with the freeboard requirements of FEMA. Not until the completion of the CVFPP will there be a document that identifies whether Central Valley levees provide 200-year protection. This document has not yet been released. Recommend that this statement be corrected.

17. Page 91, Table 7-1 is problematical because of its assumptions. The class rankings imply that there is a hierarchical relationship between all of these classifications and that is not the case (for example, a levee may provide 100-year protection while at the same time not being eligible for PL84-99 support). The Delta Plan should defer to the CVFPP and Title 23 standards.

18. Page 92, Lines 1 through 4 - This policy proposes that a covered action involving a project adjacent to the land side of the levee include adequate area (i.e. dedication of land) to allow for the possible future construction of a setback levee until such time DWR adopts criteria to define location for future setback levees. This is potentially a very onerous condition, and one that may not be necessary in many cases were existing levees are structurally adequate. Recommend that this policy be amended to include that, in the absence of a DWR adopted criteria, that a licensed

Civil Engineer can certify that additional setback is not required. In addition, the CVFPP will contain requirements for providing adequate areas adjacent to levees to allow for future modifications.

19. Page 92, Line 31 - This Policy states that State investments for levee improvements shall "Not result in an increase in the number of people at risk." This is an extremely vague statement. This needs to be better defined. As currently written, it could be interpreted that this would prevent funding for levee improvements that would allow one home or business to be built. Also this is in direct contradiction with SB5 which called for State investment to improve levees to a 200-year standard for urban areas. Improvement of levees to a 200-Year standard will reduce risk, but not eliminate it.

20. Page 92, Line 36 - "RR P6" bullet #3 - add to this list of things that need to be considered "consequences to private real property improvements."

21. Page 94 - The limitation of liability discussion needs to include local agencies' concerns, equally.

22. Page 94, Financing Problems - An in-depth analysis and audit is required to understand why DWR has not provided this function successfully. The DSC should be cautious about how it intends to add another layer of administration onto the funding process.

23. Page 95, Lines 1 through 19 - This is a recommendation for the creation of a Delta Flood Management Assessment District for the purposes of providing financing for Delta levee improvements. This is discussed elsewhere in the Plan, and is referred elsewhere as a "Regional" Flood Management Agency (See page 112, lines 10 through 13). The Plan does not discuss structure or the authority of this agency, or whether it would replace or augment current flood management agencies (i.e. reclamation districts, other local maintaining agencies, etc.). The Plan should address these issues. Also, many of these current agencies already have assessment authority. What purpose then would this agency serve?

24. Page 96 - There needs to be a more comprehensive discussion of reservoir re-operations and the obstacles to remove in order to achieve better federal, State, and local collaboration on this issue.

25. Page 111, Lines 24 through 29 (and lines 1 and 2 of subsequent page) - This recommends that the CPUC establish fees on regulated private utilities that cross the Delta, and that these fees be allocated to the State and local LMA's. Inadequate funding exists for LMA's, and additional funding such as this would provide much needed resources.

26. Page 112, Lines 10 through 13 - This again recommends the creation of a "regional flood management agency." As previously indicated, more detail should be provided on the structure and authority of this proposed agency. Also, this recommendation indicates that a total of $110 million would be provided to this agency, $100 million of which would be designated for "implementation." The recommendation does not describe what is to be implemented with these funds (can funding be used for flood protection improvements as outlined in the Delta Plan, or for levee maintenance functions, etc?).

27. The Delta Plan does not include data of areas that do not meet 200-year protection and what improvements would be required to achieve this level of protection for those areas. If the Delta Plan presumes that the source for this information will be the CVFPP, that document will not be adopted until July 2012, and it is currently uncertain whether sufficient information will be available in this regard until the first update of the CVFPP in 2017. Clarification of this issue should be included in the Plan.

28. Pages 93, third paragraph, revise as follows: Despite the vital importance of adequate preparation, no comprehensive, integrated, Delta-wide emergency response system exists. The California Emergency Management Agency, DWR, and several local agencies are preparing, or have prepared, individual emergency response plans for the Delta, but the development of these should be coordinated, tested, and practiced. Regional coordination systems involving all Delta response agencies should be put in place in accordance with the SB27 Task Force recommendations. Strategies being prepared as directed by SB27 will address these issues. SB27 Task Force recommendations will be the basis for the creation of this enhanced regional flood response system.

29. Page 93, first bullet under "Recommendations", revise as follows: The Department of Water Resources and local flood management agencies should implement the SB27 Task Force recommendations and participate in emergency response exercises, mass evacuation exercises, and emergency preparedness public training, notification, and outreach programs.

30. Page 93, second bullet under "Recommendations", revise as follows: As part of implementation of the SB27 Task Force recommendations, all emergency stockpiles should be made regional in nature and usable by a larger number of agencies as part of an integrated Delta stockpile system. The potential of creating stored material sites by "over- reinforcing" western delta levees should be explored.

31. Pages 93, third bullet under "Recommendations", revise as follows: State and local agencies and regulated utilities that own and/or operate infrastructure within the Delta should prepare emergency response plans to protect the infrastructure from long-term outages resulting from failures of the Delta levees. The emergency procedures should consider methods that would also protect Delta land use and ecosystem. This planning should be performed in conjunction with regional implementation of the SB27 Task Force recommendations. Presence of critical infrastructure and reference to vulnerabilities and plans to maintain the infrastructure will be referenced on flood contingency maps called for in the SB27 report.

32. Page 95, fifth bullet under "Recommendations" revise as follows: Fund staff within the Delta Protection Commission who would assist jurisdictions with emergency response authority and responsibilities under Standardized Emergency Management Systems to implement and maintain the regional response system and emergency response enhancements called for in the SB27 Task Force report and recommendations.

33. Page 95, new bullet under "Recommendations": Provide funds to maintain a separate levee emergency response fund maintained by regional flood preparedness staff that can be accessed by unified flood fight commands established in accordance with the SB 27 Task Force recommendations. Also provide funds for the maintenance of the components of the regional response system established in accordance with the SB27 Task Force report.

Thank you for your attention and consideration on this critical matter. San Joaquin County looks forward to working with you and submitting additional comments to the DSC in the future.

If you have any questions regarding this matter, please contact Tom Gau, Interim Public Works Director at (209) 468-3101.

Sincerely,

Larry Ruhstaller

Frank L. Ruhstaller, Chairman
Board of Supervisors
San Joaquin County

Attachment

FLR:ER

c: San Joaquin County State Delegation
Paul Yoder, State Advocate
Karen Lange, State Advocate
Mark Limbaugh, Federal Advocate
Roger Gwinn, Federal Advocate
Delta Counties Coaltion
Manuel Lopez, SJC County Administrator
David Wooten, SJC County Counsel
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June 24, 2011

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By E-mail

Comments to Delta Stewardship Council – Fourth Draft Delta Plan

Dear Chairman Isenberg, Council Members, and Mr. Grindstaff:

On behalf of the residents of San Joaquin County and the San Joaquin County Board of Supervisors, we would like to thank you for the opportunity to submit comments on the Delta Stewardship Council's (DSC) Fourth Draft Delta Plan. With nearly two-thirds of the Delta located within San Joaquin County, we remain very concerned about the protection of water quantity and quality available within the Delta. We are equally concerned about the potential negative effects that additional planning processes may have, as evidenced by the Delta Vision and the continuing Bay Delta Conservation Plan (BDCP) process on the County's communities, land use, flood protection, infrastructure, agriculture, economy, recreation, wildlife, and our way of life.

The County's comments to the Fouth Draft Delta Plan are as follows:

1) Reduced Reliance on the Delta

The Delta Plan's policy of coequal goals and specifically Water Code Section 85021, wherein it states the policy of the State is to reduce reliance on the Delta in meeting California's future water supply needs, should be supported. However, an inherent conflict seems to appear because of Water Code Sections 85031 and 85032. Water suppliers within the area of origin or county of origin to the Delta or its watershed in future years may be required to reduce reliance on the very water supply they currently must rely on for an increased supply for beneficial use. This apparent conflict should be discussed and resolved if the Delta Plan will contain policies and recommendations that may affect area of origin or county-of-origin water suppliers.

An example of this is found with the "covered actions" framework remaining in the Fourth Draft Plan. That will only complicate, and further politicize, the needs of San Joaquin County in its future reliance on the local watershed to recharge and ensure a sustainable groundwater supply. The County restates its concerns regarding the Third Draft that future diversions contemplated in the Delta and its tributaries for use in the Delta watershed must be given a priority over exports as established in existing laws defining area of origin protections that place Northern California community's needs ahead of

Delta exporters in terms of water rights. The Fourth Draft Delta Plan needs to explicitly recognize and promise to honor area-of-origin protections which ensure that when the water is needed in the area of origin, that the junior water right holders, namely the Department of Water Resources (DWR) and the Bureau of Reclamation, must relinquish that water. A more reliable water supply from the Bay-Delta through the application of the coequal goals doesn't mean more water supply. Increasing the area of origin's reliance on the Delta and its tributaries in the future is exactly how San Joaquin County intends to locally mitigate the critically over-drafted underlying groundwater basin. It would seem that certain recommendations in the Fourth Draft Delta Plan would hinder that objective.

2) Sustainable Groundwater Management

In a more thorough review of the Delta Plan, the issue of groundwater management has become a major concern for San Joaquin County. The Eastern San Joaquin County Groundwater Basin has been designated as critically over-drafted in DWR Bulletin 118-80. Since that designation in 1980, local stakeholders have employed a consensus-based approach to develop groundwater management plans, integrated regional water management plans, and other groundwater policies to sustainable management of the underlying basin. The Eastern San Joaquin Region's adopted Integrated Regional Water Management Plan (IRWMP) seeks to divert water from Delta tributaries in the years and months when water is available in order to conjunctively manage groundwater and surface water sources as part of an effort to achieve greater regional self-sufficiency. The Council's Fourth Draft Delta Plan, under WR R8 (pg. 72), recommends an adjudication by the State Water Resources Control Board if such plans were not adequate or implemented. Current rules allow local jurisdictions and local landowners to manage groundwater supplies. Such an adjudication should only be an action of last resort and reserved for the most difficult circumstances. Consensus-based solutions as developed in the County that provide incentives for better groundwater stewardship are the preferred approach to sustainability.

3) Chapter 1, The Delta Plan

The following statement is misleading (Page 10, Lines 41-43): "The cost of maintaining, improving, or repairing these levees in some cases may be more than the assessed value of the use of the land they protect (Sumner et al. 2011). "This creates an uncertain future for Delta agriculture and for the associated Delta economy and those residents who depend upon it (lines 43-44). While this uncertainty may be true, assessed value may not be the best indicator of the value of the lands that levees protect, especially when referring to agricultural lands. Over the life of a levee, the agricultural lands that are protected by that levee will likely have produced tens of millions of dollars in crop value. Crop production values over time should be considered when assessing the value of lands that levees protect.

4) Chapter 3, Governance: Implementation of the Delta Plan

a. Page 47, Line 13 Add : "GP2 When the Council, or a local agency acting under its local land use authority, makes a finding regarding a covered action or a determination of consistency, the same standards of review of the Council's and the local agency's findings or determinations shall apply when an appeal is taken therefrom."

b. Page 47, Line 13 Add: "GP3 The Council, or a local agency acting under its local land use authority, may determine that a covered action is consistent with the co-equal goals if the covered action does not impede attainment of the co-equal goals and furthers the public good. Any such determination shall be made in writing and shall be based upon substantial evidence in the record before the Council or the local agency."

c. It is not clear what land use activities fall under the definition of "covered action". According to the Fourth Draft Delta Plan, both ministerial (such as a building permit) and discretionary (such as a Use Permit) permits may be "covered actions."

If an activity is determined to be a "covered action", the proposed project will be subject to the Delta Plan. The process contained in the Delta Plan for review, certification and appeal is confusing, expensive, and unnecessarily burdensome to both the local permitting agency and the applicant.

Recommendations:

1. Provide clarity of what is, and what is not, a "covered action".
2. Exempt ministerial actions from being subject to the Delta Plan.
3. Application process should start at the DSC, where applications can be pre-screened to determine whether the proposed application is a "covered action." The applicant would then initiate an application process with the local land use agency after the preliminary determination by the DSC.

d. Determination of "significant" impact (Page 44, Line 1): For a proposed land use activity to be a "covered action," it must have a "significant" impact on the Delta. The Fourth Draft Delta Plan, however, does not contain a clear description of what "significant" means in this context. Without clear guidelines, the determination of "significance" could become arbitrary and capricious by those who make the final determination of "significance" on behalf of the DSC.

Recommendation:

1. Establish clear, defined, and measureable thresholds of "significance" for local agencies and applicants.

e. The Delta Protection Act has been successfully implemented at the local level by requiring consistency between the County and City General Plans and the Delta Protection Commission's Land Use and Resource Management Plan. The Act also focuses protection on the Primary Zone of the Delta.

Recommendation:

1. Implement the land use component of the Delta Plan by requiring policies consistent with the Delta Plan to be included in the General Plans of all of the Delta Counties and Cities. An appeal process, like that of the Delta Protection Commission, could be used to ensure Delta Plan compliance.

f. Page 41, Lines 6-7 states: "The Council does not exercise direct review and approval authority over proposed actions for consistency with the Delta Plan." While this is true, the DSC may appeal

the local Agency's certification of consistency for any covered action, which could be any ministerial or discretionary application that has a "significant impact" under Water Code Section 85057.5 (a) (4). Therefore, while the local Agency will still have direct review and approval authority, the Council will have the final say, based on the appeal process for covered actions.

g. Page 41, Lines 17 and 19 states: "This Delta Plan further clarifies what is and is not a covered action… an addition to a house in the Delta would likely not be a covered action because it would not appear to meet the criteria." Stating that a building permit for a residential addition would not "likely" be a covered action because it would not "appear" to meet the criteria is ambiguous and vague.

h. Pages 43-46: With reference to the definition of what is a "covered action" the United States Department of Agriculture's Environmental Quality Incentives Program (EQUIP) appears to be a "covered action" as defined by the Fourth Draft Delta Plan. This program provides grower incentives to put into operation projects that will benefit the environment. When the Delta Plan is implemented, growers may need to show that their proposed EQUIP projects are consistent with the Delta Plan. Adding another bureaucratic layer for Delta farmers to go through before receiving EQUIP approval will certainly be a disincentive to participating in these and maybe other environmentally friendly programs. Consideration should be given to exempting such programs from DSC/Delta Plan review and approval.

i. Page 44, Footnote 7, states that although CEQA exempts ministerial projects, the Delta Plan does not.

At the top of Page 45, in a discussion of covered actions exemptions, there is a statement that the Council has determined that ministerial projects are not covered actions, <u>only</u> if a certification of consistency has already been filed with the Council for that ordinance or other legal or regulatory provision. As a point of information, no ordinance contained in the San Joaquin County Development Title has had a certificate of consistency filed. This provision of the Fourth Draft Delta Plan usurps local land use authority and is inconsistent with prevailing law.

San Joaquin County Community Development is in the process of preparing a comprehensive update of the General Plan, which is tentatively scheduled to be considered for adoption in spring 2012. The Community Development Department will then follow with an update of the Development Title. Both updates and their adoption by the Board of Supervisors may be considered covered actions under the Fourth Draft Delta Plan and will be subject to appeal by the DSC through the process described in the Plan for appealing consistency certification. This would usurp local land use authority and is inconsistent with prevailing law.

5) <u>Chapter 4, A More Reliable Water Supply for California</u>

a. WR P2, Page 63, Line 27: "A plan for possible interruption of Delta water supply. . ." as proposed with 6, 18, and 36 month scenarios, is based on erroneous information contained in the Delta Risk Management Study, which failed adequate peer-review with specific regard to the assessment of seismic risk in the Delta. It would be more appropriate for water suppliers to plan for supply interruptions based on historic droughts. Of late, drought contingency planning has incorporated two to three year scenarios that may be short-sighted based on the

traditional drought planning scenario of six years. With the recent drought in the Colorado River watershed, a 10-year drought planning scenario may be a more opportune planning tool especially with the possibility of various climate change influences.

b. WR P2, Page 64, Line 15: "Evaluation of regional water balance . . . " It is not clear who will be responsible to develop an assessment of the long-term regional water balance. It is inappropriate for a local supplier to be responsible for the assessment of a hydrologic region's water balance. This assessment should be a requirement of the DWR under the California Water Plan Update with the assessment information provided to regional agencies and local suppliers.

c. WR R2, Page 65, Line 3: Any proposed revision or establishment of an additional arbitrary deadline (December 31, 2012) to State grant and loan criteria, in particular to the IRWMP program, should only be implemented following the successful passage of the Water Bond presently scheduled for the ballot in 2012. No additional criteria should be applied or deadline set on the current Proposition 84 planning or implementation grant application process as developed by the DWR. It would be an unfair and onerous burden placed on regional and local suppliers to meet such a requirement.

6) Chapter 5, Restore the Delta Ecosystem

a. ER R3, Page 92, Line 26: "As part of its Strategic Plan, the Delta Conservancy should: . . . " Recommend adding the following statement: "Mitigate potential ecosystem restoration impacts to existing land uses."

7) Chapter 7, Reduce Risk to People, Property, and State Interests in the Delta

a. RR P1, Page 136, Line 18: The term "encroached" is referenced in Footnote 33 regarding DWR's Interim Levee Design Criteria (ILDC) document. The ILDC document is still in the developmental stage by DWR. The Delta Plan should recognize that any risk assessments associated with encroachments is subject to change until this document is finalized.

b. RR P2, Page 137, Line 1: This specifically lists the Lower San Joaquin River Flood Bypass as an area not to be encroached upon. Although San Joaquin County recognizes the potential flood management benefits associated with this improvement, the Bypass is still conceptual. The Plan should acknowledge this Bypass as a concept and not impose encroachment restrictions until such time that this or a similar project is approved and incorporated in an official flood control plan such as the Central Valley Flood Protection Plan (CVFPP).

c. RR R1, Page 137, Line 12: Recommends that DWR and the Central Valley Flood Protection Board (CVFPB) complete their investigations of the Bypass. It should be noted that the CVFPB is scheduled for an informational briefing on this project on June 24, 2011, but no action by the Board is proposed.

d. Page 137, Line 35: This paragraph discusses the inherent dangers of permitting development within the Delta, and implies that the levees that protect the area are substandard. It should be specifically stated in the Delta Plan that many of the levees protecting the urban areas of San

Joaquin County, particularly those in the vicinity of the City of Stockton, are certified by the U.S. Army Corps of Engineers and accredited by Federal Emergency Management Agency (FEMA).

e. Page 138, Line 32: This language states that essentially no levees within the Central Delta meet a 200-year protection standard established by DWR. The levees standards associated with meeting 200-year protection are still in the developmental stage by DWR, and will not be officially adopted until approval of the CVFPP in 2012. Therefore, this statement is unfounded.

f. Page 141, Table 7-1, Levee Classifications for Protection of Land Uses: This table is inconsistent with the requirements of SB5 (2007-Machado), and the requirements currently proposed to be incorporated in the CVFPP. For example, under Levee Classification 4, development of four or fewer parcels would be permitted corresponding to a 100-year FEMA protection. This would not be permitted under SB5 for urban and urbanizing areas. SB5 requires, under these circumstances, that 200-year protection be provided.

g. Page 142, Figure 7-3, Levee Classifications and Land Uses: This makes reference to the DWR ILDC. It should be noted that these standards are still being developed. Also, the standards now are being referred to as Urban Levee Design Criteria.

h. RR P4, Page 143, Line 2: Recommends that DWR develop a "Framework" document to guide investments for levee improvements. It should be noted that this document should be developed in close association with local maintaining agencies.

i. RR R4, Pages 144-145: <u>The following amendments should be made to language relating to promoting emergency preparedness in the Delta</u>:

1. Line 23: "Responsible ~~Emergency Management Authorities~~ **local, state, and federal agencies with emergency response authority** should implement the recommendations of the Delta Multi-Hazard Coordination Task Force (Water Code section 12994.5). Such actions should support the development of a regional response system for the Delta."

2. Line 27: "The Department of Water Resources, the California Emergency Management Agency, and local flood management agencies should prepare and regularly update Delta-wide emergency response ~~plan and the Inland Region Mass Evacuation Plan~~ **and evacuation procedures and systems comprising the regional response system established in accordance with the Delta Multi-Hazard Coordination Task Force recommendations.** These agencies should participate in emergency response exercises for both periodic and catastrophic flood events, inland mass evacuation exercises, and emergency preparedness public training., notification, and flood risk education and outreach programs. The U.S. Army Corps of Engineers should be a part of all emergency preparedness activities."

3. Line 38: "In consultation **together** ~~with local agencies,~~ the Department of Water Resources **and all other public agencies maintaining local emergency stockpiles** should expand ~~its~~ **their** emergency stockpiles to make them regional in nature and usable by a larger number of agencies in accordance with ~~Department of Water Resources plans and procedures~~ a **Delta**

multi-agency logistics system within the new Delta regional response system. The Department of Water Resources, as a part of this ~~plan~~ **emergency logistics planning**, should evaluate the potential of creating stored material sites by "over-reinforcing" west Delta levees."

j. Page 146, Lines 8-12: Amend this language as follows: No regional authority currently exists to facilitate the assessment and disbursement of funds for Delta levee operations, maintenance, and improvements, or to collect and provide timely data and reporting on levee conditions. Such an authority could act to consolidate activities relating to levees conditions assessment, data collection efforts, ~~emergency preparedness~~ **maintenance of regional emergency response systems and procedures on behalf of, and coordination with, implementing SEMS jurisdictions**, public notification, and fee authority. This could provide for a more centralized and responsive entity managed on a local basis for Delta interests.

k. RR R7, Page 146, Line 34 states: "A Delta Risk Management Assessment District should be created with fee assessment authority . . . to provide funding for levee maintenance and improvement, and emergency response." Although San Joaquin County supports the concept of providing increased funding for these efforts, the proposed District should not replace or conflict with the current government structure dedicated to flood control.

1. Page 147, Lines 17-18: Amend this language as follows: Notify residents and landowners of flood risk ~~and emergency preparedness~~ **personal safety information, and available systems for obtaining emergency information before and during a disaster** on an annual basis; and

2. Page 147, Lines 19-20: Amend this language as follows: Potentially implement the recommendations of the Delta Multi-Hazard Coordination Task Force (Water Code section 12994.5) **in conjunction with local, State, and federal agencies and maintain the resulting regional response system components and procedures on behalf of SEMS jurisdictions (reclamation district, city, county, and State) that would jointly implement the regional system in response to a disaster event.**

3. Page 147, Lines 19-20: Amend this language as follows: Potentially implement the recommendations of the Delta Multi-Hazard Coordination Task Force (Water Code section 12994.5, **by providing training and briefings to local, state, and federal response personnel who would implement the new regional response system in order to ensure familiarity with regional multi-agency procedures and systems.**

San Joaquin County is the seventh largest agricultural County in the State, and the seventh largest in the nation. In San Joaquin County, the Delta comprises approximately one-third of the County's total land. San Joaquin County makes up the largest portion of the total Delta's agricultural land base at 55%. There are 234,775 acres of crop land in the County's Delta, and more than 70 different plant and animal products are produced in County. Using the DWR economic multiplier of 3 to estimate the total economic value of Delta agriculture, San Joaquin County contributes $1.36 billion to the regional and state economy. Therefore, how the Delta Plan would potentially impact the County's agricultural industry is of vital importance to the County. On May 26, 2011, the San Joaquin County Board of Supervisors submitted comments specific to agriculture to the Third Draft Delta Plan, in addition to the County's comment letter dated May 26, 2011 to the Third Draft Delta Plan. Nearly all of the comments are applicable to the

Fourth Draft Delta Plan; therefore, the County's comment letters regarding the Third Draft Delta Plan are being submitted as an attachment to this letter.

Thank you for your attention and consideration on this critical matter. San Joaquin County looks forward to working with you and submitting additional comments to the DSC in the future.

If you have any questions regarding this matter, please contact Tom Gau, Public Works Director at (209) 468-3101.

Sincerely,

Frank L. Ruhstaller, Chairman
Board of Supervisors
San Joaquin County

Attachment

FLR:ER

c: San Joaquin County State Delegation
Paul Yoder, State Advocate
Karen Lange, State Advocate
Mark Limbaugh, Federal Advocate
Roger Gwinn, Federal Advocate
Delta Counties Coaltion
Manuel Lopez, SJC County Administrator
David Wooten, SJC County Counsel
Tom Gau, SJC Public Works Department
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May 26, 2011

Phil Isenberg, Chairman
Council Members
P. Joseph Grindstaff, Executive Officer
Delta Stewardship Council
650 Capitol Mall, Fifth Floor
Sacramento, CA 95814

By E-mail

Agricultural Comments on the Third Draft Delta Plan

Dear Chairman Isenberg, Council Members, and Mr. Grindstaff:

On behalf of the residents of San Joaquin County and the San Joaquin County Board of Supervisors, we would like to thank you for the opportunity to submit the County's comments, specific to agriculture, on the Delta Stewardship Council's (DSC) Third Draft Delta Plan.

Agriculture is the dominant land use of the Delta, comprising three-quarters of the region's landscape. Because of the fertile peat soils and the moderating marine influence, Delta agriculture's per acre yields are almost 50% higher than the State's average. A preponderance of Delta agricultural land, approximately 75%, is classified as Prime Farmland. By comparison, only 18% of the State's agricultural land is classified as Prime Farmland. Approximately 87% of the existing land in the Primary Zone of the Delta is devoted to agriculture. Between 1998 - 2004, the average gross agricultural output from the six Delta Counties (Contra Costa, Sacramento, San Joaquin, Solano, Yolo) was calculated by the Department of Water Resources (DWR) to be approximately $655 million. Using DWRs economic multiplier of 3, the economic impact of Delta's agriculture is $1.96 billion.

In San Joaquin County, the Delta comprises approximately one-third of the County's total land. San Joaquin County makes up the largest portion of the total Delta's agricultural land base at 55%. Sacramento County follows with 20%. Solano and Yolo Counties contribute 8-10%, respectively, and Contra Costa County rounds out the Delta agricultural land base at 7%. There are 234,775 acres of crop land in San Joaquin County's Delta, and more than 70 different plant and animal products are produced in the County. San Joaquin County's Delta agriculture contributes $1.36 billion to the regional and state economy, using DWRs economic multiplier.

San Joaquin County is the seventh largest agricultural county in the State, and the seventh largest in the nation. As a result, agriculture is a major factor in San Joaquin County's economy and way of life. Therefore, how the Delta Plan would potentially impact the County's agricultural industry is of vital importance to the County.

Following are comments, questions, and recommendations on the Third Draft Delta, specific to agriculture.

1) Water Rights and Contracts, Page 11, Lines 23-25
The statement; "Water rights decisions or water contracts that directly or indirectly impact the Delta are made without consideration of the coequal goals" is too broad and should be either narrowed or deleted. Most of California's major watersheds, at least indirectly, impact the Delta. A person's or entity's water rights should not be subject to the DSC's coequal goals. Rather, the co-equal goals should be required to harmonize with existing water rights.

2) Conversion of the Delta's Agroecosystem to Estuary Ecosystems, Page 12, Lines 19 – 2
"Large areas of the Delta have been restored in support of a healthy estuary. A diverse mosaic of
20 interconnected habitats— areas of open water, tidal marshes, floodplains, riparian, and upland
21 areas—is re-established within the Delta and its watershed." A "large area" of the Delta is envisioned to be converted to estuaries. How will this conversion occur? To gain an understanding of the scope of the Delta Plan's goal of converting the agroecosystem to an estuary ecosystem, more specifics must be provided.

3) Adaptive Management Planning, Chapter 2
Because agriculture production is typically a long term investment for farmers, to the extent possible, farmers require a degree of certainty and predictability. If the ecosystem and water management rules for agriculture are continually changing through an adaptive management process, how can farmers plan for the future? When investing into crops that may not give a return for four or five years, it is difficult enough forecasting markets and weather conditions. Throwing into this mix changing ecosystem and water management requirements, it may become too difficult for farmers to survive. Farmers may not have the resources or technical ability to readily adapt to the DSC's adaptive management practices. To the extent possible, farmers require an environment that is stable and predictable when making long term investments. Adaptive management planning has the potential of creating an environment that is inconsistent with the Plan's mandate to achieve the coequal goals "in a manner that protects and enhances the unique cultural, recreational, natural resources, and agricultural values of the Delta as an evolving place."

4) Analyze, Synthesize, and Evaluate, Page 25
During the evaluation phase of the adaptive management process, there is no analysis or consideration of how a program or project impacted other land uses or industries such as agriculture. A thorough analysis of project or program impacts on surrounding land uses and/or unintended consequences should be fully evaluated, and part of the report presented to the DSC.

5) Best Available Science, Page 27, Line 10
The use of "best available science" when making decisions can lead to unintended results if the science is unsound. Using poorly developed or untested science, even though it is the "best available," can lead to disastrous decisions. When evaluating the science, careful consideration should be given regarding whether it is adequate and appropriate to use in the situation under consideration. At times, delaying decisions to wait for improved scientific understanding is not only appropriate, but also critical to the success of the project.

6) Eminent Domain, Page 36
"Delta Plan policy is not intended and shall not be construed as authorizing the Council or any entity acting pursuant to this section to exercise their power in a manner which will take or damage private property for public use without the payment of just compensation." This statement sounds like eminent domain. Ecosystem restoration should not be done through eminent domain. There are voluntary methods that are effective.

7) Covered Actions, Page 37, Lines 8 – 10
It appears that normal agricultural practices such as cultivating, irrigating, spraying, and crop rotation are not "covered actions." However, the definition of covered actions is somewhat unclear regarding this matter and, over time, different interpretations of "covered actions" may prevail. As stated; "the Delta Plan may exclude specified actions; therefore, those actions would not be covered by one or more provisions of the Delta Plan." It is recommended, for purpose of clarity, that a statement be added into the Delta Plan excluding normal farming practices and changes in cropping patterns from the provisions of the Plan.

8) Flow Objectives, Page 50, Line 13-14
It is recommended that the following statement be added regarding flow objectives (underlined): "By June 2, 2014, adopt and implement flow objectives for the Delta that are necessary to achieve the coequal goals <u>in a manner that protects and enhances the unique cultural, recreational, natural resources, and agricultural values of the Delta as an evolving place.</u>" The coequal goals (reliable water supply and ecosystem restoration) should not be the only criteria used to determine flow objectives. The needs of agriculture, recreation, and people should also be considered when determining flow objectives.

9) ER R2 "As part of its Strategic Plan, the Delta Conservancy should:"
It is recommended that the following bullet point be added to this section: "Mitigate impacts to existing land uses."

10) FP R7 User Fees/Stressors Fees to support the coequal goals and the Delta Plan
"The Legislature should grant the Council the authority to develop reasonable fees for beneficiary, and reasonable fees for those who stress the Delta ecosystem …." Many times throughout the document, the Delta Plan concludes that agriculture and agricultural activities stress the Delta's natural ecosystems. Consequently, it is reasonable to assume that one of the "stressors" that will be assessed a fee is agriculture. How will this stressor fee be assessed? Will it take the form of a farming fee? Irrigation fee? Pesticide application fee? Fertilizer fee? All the above? Moreover, the program that the Delta Plan uses as an example of a stressor fee structure is the Bay Delta stamp for fishing licenses (the use of this stamp has been discontinued). Possession of this stamp was required when fishing in the Delta or any of its tributaries. Therefore, persons fishing on the Lower Sacramento River in Redding were required to posses the Bay Delta stamp even though they were hundreds of miles away from the Delta. If this is the example, does the Delta Plan intend on assessing a stressor fee on farmers throughout the Central Valley? Will farmers now have to obtain a permit and pay a fee to farm? Farmers should not shoulder the financial burden for ecosystem restoration in the Delta.

In conclusion, the County' concerns with the Delta Plan are not only what it contains but also what it does not address. The Plan sometimes reads more like a textbook than a plan. The Plan is robust in generalities and concepts and seriously lacks in specifics. The 600 pound gorilla in the room, agriculture, is virtually ignored in the Plan. As far as agriculture is concerned, the Plan raises more questions than answers.

One of the coequal goals is ecosystem restoration. However, the Plan actually is about ecosystem conversion. An example of ecosystem restoration is East Bay Municipal Utility District's (EBMUD) recent restoration efforts on the Mokelumne River. In the Mokelumne River restoration project, EBMUD improved spawning beds in the river; improved water quality releases from Comanche Dam; cleaned debris from the river, and established measures to protect stream banks. The key is that there existed an established riparian ecosystem that was in disrepair and then restored to a healthier riparian ecosystem. The restoration model outlined in the Delta Plan is much different. Presently, the overwhelmingly predominant ecosystem type in the Delta is the agroecosystem. The Plan proposes to convert (the Plan says "restore") an undetermined "large" amount of the existing agroecosystem to estuary, wetland, and riparian ecosystems. The conversion of the Delta's agroecosystem to other ecosystem types has huge ramifications for Delta's agricultural future that are not addressed in the Plan. Some of the major issues not addressed are as follows:

- The plan states that a "large" amount of the Delta will be converted to natural ecosystems. How much agricultural land does the Plan intend to convert to estuaries, wetlands, and riparian ecosystems? The plan needs to clearly communicate how much and where these conversions are considered before an adequate response to the Plan can be given by agricultural interests.

- How and where will the land be obtained for ecosystem conversion? To convert a large amount of land to natural ecosystems in the Delta will require a large amount of agricultural land. What will be the process of obtaining agricultural land for ecosystem conversion. Will the land be obtained through easements, fee title purchases, eminent domain, or all of these methods? If multiple methods are used, what percentages are planned for each acquisition method? The Delta Plan must outline an acquisition process and plan for ecosystem land acquisition for natural ecosystems. Furthermore, the plan must delineate where in the Delta these acquisitions are envisioned.

- How will agricultural lands located next to the newly developed ecosystems be protected from possible negative impacts caused by the ecosystems? For example, natural lands could harbor pests and diseases that are harmful to neighboring crops. Endangered species on adjacent habitats could alter farming practices. Ecosystem requirements may prohibit certain farming practices that are necessary for cost effective food production. Salt intrusion from newly created salt marshes may damage crops in adjacent agricultural land. How will conflicts between farming practices and the "ecosystem" be assessed, evaluated, and resolved? The Plan should provide some assurances and protections for agricultural lands next to newly developed ecosystems "in a manner that protects and enhances the unique cultural, recreational, natural resources, and agricultural values of the Delta as an evolving place."

- The Delta Plan assures water quantity and quality standards for ecosystems but will the standards be managed at the expense of agriculture? Will the Plan's water quality standards consider the requirements for agriculture as well as ecosystems? Will the Plan maintain agriculture's water needs or will they be sacrificed to benefit ecosystem restoration? Does the plan intend to honor existing water rights? How does the plan intend to manage the Delta's water "in a manner that protects and enhances the unique cultural, recreational, natural resources, and agricultural values of the Delta as an evolving place."

- How will the plan help protect the long term viability of agriculture in the Delta? The Plan's regulations, restrictions, and policies could ultimately increase the cost of farming in the Delta to the degree of making Delta farming unviable. Additionally, a heavy regulated farming environment in the Delta will ultimately lower farm property values because of the risks involved in investing into farms where the return on the investment may not overcome the regulatory costs; especially when the regulatory cost may change over time in an adaptive management environment.

Some of the needs of Delta agriculture include:

Water Quality - Two water quality needs are: (1) to maintain sufficient flows to prevent seawater from intruding into the agricultural areas of the Delta that rely on fresh water for irrigation; and, (2) sufficient flows in the San Joaquin, coupled with reduced pumping at the state and federal water projects, to improve irrigation water quality in the South Delta.

Levees, Channel Capacity, Dredging - Levees, channel capacity and dredging are top priorities. Large contributions made by Delta growers, individually and through their reclamation districts, include levee monitoring, improvements and maintenance. However, this local investment is clearly not enough and a significant and sustained State and Federal investment is needed.

Incompatible Non-agricultural Uses - Urban sprawl in the Secondary Zone and development of wetland habitat and other wildlife areas impact agriculture's ability to remain viable. Regarding wildlife and wetland uses in the Delta, adequate buffer lands between agricultural and wildlife areas are needed to mitigate depredation, seepage, and pest and weed problems. Buffers are also important for allowing farmers to conduct normal farming operations, such as spraying, without infringement. An additional need is regulatory assurance for neighboring agricultural landowners in the event that listed species migrate onto their farms and ranches.

Critical Mass - The loss of agricultural services and service providers from the Delta threatens agricultural sustainability. Such services include transportation, processing, and agricultural suppliers. Related to the critical mass question is the loss of agricultural land to non-agricultural public acquisitions.

Certainty - A fundamental need of Delta agriculture is increased certainty about the Delta's future with respect to conveyance, in-Delta flows, water quality, land ownership, and levees. Without certainty in these areas, agriculture's long term investment in the Delta is threatened

Thank you for your attention and consideration on this critical matter for San Joaquin County. If you have any questions regarding this matter, please contact Scott Hudson, Agricultural Commissioiner at (209) 463-6007.

Sincerely,

Frank L. Ruhstaller, Chairman
Board of Supervisors
San Joaquin County

FLR:SH:ER

c: San Joaquin County State Delegation
Paul Yoder, State Advocate
Karen Lange, State Advocate
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