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June 2, 2014

Mr. Robert Kidd
Public Affairs Specialist
U.S. Army Corps of Engineers Sacramento District
1325 J Street
Sacramento, CA 95814

RE: Delta Islands and Levees Feasibility Study, California, Draft Feasibility Report and Environmental Impact Statement (Draft FR/EIS)

Dear Mr. Kidd:

Thank you for the opportunity to comment on the *Delta Islands and Levees Feasibility Study, California, Draft Feasibility Report and Environmental Impact Statement* (Draft FR/EIS), released on April 11, 2014. In addition, we would like to acknowledge and thank Ms. Alicia Kirchner and her staff of the U.S. Army Corps of Engineers (USACE) Sacramento District for informing the Council about this study and providing an internal briefing for Council staff on the study on May 16, 2014.

California's Delta is the largest estuary on the West Coast and is the hub of the state's major water supply systems. We commend USACE's effort for identifying the federal interest in this ecosystem of national significance, and planning a project to restore tidal marsh habitat. As noted in the Delta Plan, much of the original habitat for the Delta's native fish, wildlife, and plants has been urbanized or converted to agriculture over the past 160 years. This habitat loss is one of the largest legacy stressors to the Delta ecosystem. Implementation of the USACE's project will contribute to restoring this critical habitat.

As you may know, the Council is a state agency that was created by the California Legislature in 2009 to develop and implement a legally enforceable long-term management plan for the Delta. The Delta Plan, adopted on May 16, 2013, coordinates state and local actions to achieve the coequal goals of protecting and enhancing the Delta ecosystem and providing for a more reliable water supply for California. The coequal goals are to be achieved in a manner that protects and enhances the Delta as an evolving place by reducing flood risk and promoting a healthy economy that includes a mix of agriculture, tourism, recreation, and vital components of state and regional infrastructure.

Comments

The comments provided in this letter are based on the Delta Reform Act and the Delta Plan.

- **Delta Stewardship Council and Delta Plan.** The Council is the successor of the CALFED Bay-Delta Program. On page 5, Subsection 1.5.1, we suggest replacing the "CALFED Bay-Delta Program" with "Delta Stewardship Council and Delta Plan". We propose inserting the following language: "The Delta Reform Act (California Water Code Section 85212) created the Council as an independent agency of the State and charged the Council 'to develop, adopt, and commence implementation of the Delta Plan.' The Delta Plan is a comprehensive, long-term management plan for the Delta. It creates legally enforceable regulatory policies as well as nonbinding recommendations to further the state's coequal goals for the Delta: improve statewide water supply reliability, and protect and restore a vibrant and healthy Delta ecosystem, all in a manner that preserves, protects and enhances the unique agricultural, cultural, and recreational characteristics of the Delta. The Delta Plan was adopted on May 16, 2013 and its regulatory policies became effective on September 1, 2013. The Plan can be found on the Council's web site at http://deltacouncil.ca.gov/."

- **Bay Delta Conservation Plan (BDCP) and the Delta Plan.** The Draft FR/EIS (page 16) states that "ecological problems exist that will be resolved through the implementation of the BDCP/Delta Plan." We suggest explaining the differences and connections between the Delta Plan and the BDCP to avoid confusion. It is important to note that the Delta Plan was adopted in 2013, while the BDCP is still under development. The Delta Stewardship Council's Delta Plan is a comprehensive management plan authorized by the Delta Reform Act, as described above. The Delta Plan contains numerous goals, objectives, recommendations and policies that are largely implemented through coordination of actions by other agencies including the USACE. The BDCP is being developed as a 50-year Natural Community Conservation Plan (NCCP) with the goal of recovering endangered or threatened species in the Delta. It is comprised of 22 conservation measures, including improved conveyance of water to the pumps of the Central Valley Project and State Water Project, parameters for operating those projects, and restoration of large portions of the Delta to provide functional habitat and reduce stressors such as invasive species and pollutants. When complete, the BDCP will provide the basis for the issuance of endangered species permits for the operation of the state and federal water projects. It is being developed by a group of local water agencies, environmental and conservation organizations, state and federal agencies, and other interest groups. The Delta Reform Act requires that the BDCP, when completed and successfully permitted and if it meets certain statutory incorporation requirements, shall be fully incorporated into the Delta Plan (Water Code Section 85320 (a)). It is anticipated this will occur in 2015 at the earliest. It is then that the two plans intersect.

  Therefore, we suggest revising the statement on page 16 to read, "Implementation of the Delta Plan is advancing the state's coequal goals of statewide water supply reliability, and a vibrant and healthy Delta ecosystem, done in a way that preserves, protects and enhances the rural,

agricultural and recreational characteristics of the Delta. The Delta Reform Act requires that the BDCP, when completed and successfully permitted and if it meets certain statutory incorporation requirements, shall be fully incorporated into the Delta Plan." Based on the differences between the two plans, described above, we also suggest revising the term "BDCP/Delta Plan" on page 19 to read "BDCP."

Based on our discussions, we understand that USACE is constrained in its authority to analyze problems and likely solutions under consideration by other federal agencies, such as the habitat restoration areas and measures proposed in the Draft BDCP. The Draft FR/EIS (page 19) states that, "Formulated alternatives and the recommended plan must [neither] impede…[nor] be dependent on the BDCP/Delta Plan". We do suggest that the "No Project Alternative" should not include BDCP, as it has not been approved and if approved most of the habitat restoration may not have an identified fund source.

- **Consistency with the Delta Plan.** Though federal agencies are not subject to the Council's jurisdiction, any state or local agency serving as USACE's local sponsor that determines that a proposed activity done in partnership with USACE is a covered action under the Delta Plan would need to certify consistency with the Delta Plan's regulatory policies. In addition, it is our understanding that the USACE may use the Delta Plan as a guide because it is now complete and approved by the Council. We suggest the USACE staff review several key Delta Plan recommendations and policies related to ecosystem restoration activities for consistency. These are:

    - **Priority Habitat Restoration Areas.** We encourage USACE to consider the priority habitat restoration areas designated in the Delta Plan (Figure 4-8, Recommended Areas for Prioritization and Implementation of Habitat Restoration Projects, Delta Plan, p. 151), as well as **Delta Plan Recommendation ER R2**, Prioritize and Implement Projects that Restore Delta Habitat. This recommendation, combined with the ecosystem restoration policies described below, represent the widely accepted framework for habitat restoration in the Delta. We believe that using the Delta Plan as a guide to restoration priorities would not conflict with the constraints identified in the Draft FR/EIS, i.e., that formulated alternatives and the recommended plan must neither impede nor be dependent on the BDCP. We are aware that USACE has recently provided sediment to the Montezuma Wetland Restoration Project in the Suisun Marsh, one of the priority habitat restoration areas identified in the Delta Plan. Additional USACE support for this project and similar efforts in the Delta is welcome and encouraged.

    - **Restore Habitats at Appropriate Elevations.** Given the current focus of the Draft FR/EIS on areas outside the priority habitat restoration areas, including subtidal areas, we suggest considering the guidance provided by **Delta Plan Policy ER P2** (23 California Code of Regulations [CCR] Section 5006). This policy calls for habitat restoration to be carried out consistent with Appendix 3 of the Delta Plan regulations. In Appendix 3, the section on subsided Delta lands and deep open water areas, which are defined as below

approximately six feet in elevation, states that "the most subsided lands would be the lowest priority for restoration to tidal marsh because raising elevations to the range appropriate for vegetation establishment is likely to be infeasible." The higher priority areas for restoration identified in Appendix 3 are those areas that are not subsided or only slightly subsided, since these areas are within the range of feasibility for subsidence reversal. Since sediment supply in the Delta is limited, it is recommended that use of sediment stockpiles in habitat restoration projects should be focused in areas that are already situated near target elevations or are not highly subsided.

- **Protect Opportunities to Restore Habitat. Delta Plan Policy ER P3** (23 CCR Section 5007) calls for protecting opportunities to restore habitat in priority habitat restoration areas. We suggest evaluating whether removal of sediment from Decker Island may interfere with restoration of this island in the future. Decker Island is identified as an area within the Western Delta Priority Habitat Restoration Areas as it contains potential intertidal, transitional, and upland habitat.

- **Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats.** We suggest evaluating the potential impact that removal of sediment stockpiles from areas that are subsided would have on those islands' vulnerability to flood risk. Dredge spoils may also be used to reverse subsidence or used to bolster existing levees, which preserves their existing beneficial use by reducing flood risk. Please see **Delta Plan Policy DP P2** (23 CCR Section 5011) for additional information.

- **Flood Management.** We understand that a variety of constraints resulted in USACE's conclusion that there is no federal interest in flood management in Delta. As we discussed, we feel it will be important to clearly explain to our partner agencies and the public why the USACE and the Delta Stewardship Council, which is responsible for completing a study prioritizing state investments in Delta levees, are likely to reach different conclusions about the need for investment. In the future, we encourage USACE to consider non-traditional risk management options that may be more feasible, and to use system-wide considerations and categories to define the risks and benefits for the region. Consideration should be given to health and safety threats as well as economic damages related to interruption of water conveyance; economic damage of extended travel times for major transportation corridors; and risk to life of population in transit on major transportation corridors. Council staff looks forward to continuing to work with USACE on existing state-federal partnerships and to explore and identify additional state-federal joint interests and to carry out projects that will create multiple benefits to regional water supply reliability, transportation corridor protection, critical infrastructure safety, risk reduction through flood-proofing, and ecosystem enhancement and restoration, all of which are vital components to California's, and the nation's, economic stability and environmental sustainability.

Council staff acknowledges that USACE can play an important role in helping to achieve the Delta Plan's coequal goals of water supply reliability and ecosystem restoration, while protecting and enhancing the Delta as an evolving place. However, we are concerned about the USACE's policy constraints that have prevented the USACE from considering priority habitat restoration areas and from finding a federal interest in flood management in the Delta. We look forward to continuing discussions with USACE to address these concerns.

In general, we appreciate USACE's interest to invest in the Delta and welcome future opportunities to collaborate with your agency to identify, plan, and execute multi-benefit projects in the Delta. Thank you again for the opportunity to provide comments. We look forward to continuing to work with the USACE on this project as well as others. If you have any questions or would like additional information, please feel free to contact me or my staff, You Chen (Tim) Chao at YouChen.Chao@deltacouncil.ca.gov or (916) 445-0143.

Sincerely,

Cindy Messer
Deputy Executive Officer
Delta Stewardship Council