



# CALIFORNIA FARM BUREAU FEDERATION

LEGAL SERVICES DIVISION

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August 16, 2019

Via electronic mail:

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Erin Mullin, P.E.  
Senior Engineer Delta Stewardship Council  
980-9th Street, Suite 1500  
Sacramento, CA 95814

Re: Public Comment on Proposed DLIS Rulemaking

Dear Ms. Mullin:

The California Farm Bureau Federation (“CFBF”) is a non-governmental, nonprofit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home, and the rural community. Farm Bureau is California’s largest farm organization, comprised of 53 county Farm Bureaus currently representing approximately 35,800 agricultural, associate, and collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California’s resources.

By our letter, sent electronically on August 16, 2019, CFBF, the San Joaquin Farm Bureau, and the Sacramento County Farm Bureaus requested a delay of the Delta Stewardship Council (“Council”)’s August 19, 2019 comment deadline and related August 22, 2019 meeting agenda item relating to the Council’s proposed rulemaking concerning its Delta Levees Investment Strategy (“DLIS”). While our organizations remain hopeful that this request will be granted, in case it is not, we provide these preliminary comments concerning the Council’s current proposed amendments to sections 5001 and 5012, in Title 23 of the California Code of Regulations.

A review of the Council’s proposed rulemaking raises numerous concerns, as follows:



- The Council’s Notice of Proposed Rulemaking and/or its Initial Statement of Reasons includes questionable or erroneous findings and conclusions in support of the proposed rule including:
  - A finding, pursuant to Government Code section 11346.5(a)(3)(D), that the proposed rulemaking is “neither inconsistent or incompatible with existing State regulations.” Quite patently, however, the Council’s proposed rulemaking directly conflicts with the intent of the California Legislature with respect to the Delta Flood Protection Fund (Water Code section 12300, et seq.) and the Department of Water Resources (“DWR”)- and Central Valley Flood Protection Board (“Flood Board”) administered existing Delta Levees Maintenance Subventions and Delta Levees Special Flood Control Projects Programs. Specifically, the Council’s DLIS and proposed rulemaking are inconsistent with the State of California’s existing “Subventions” and “Special Projects” Delta levee programs in that they propose to drop current levee funding from \$16 million and \$31.1 million a year for the majority of predominantly agricultural islands in the Delta classified by the Council as “High Priority” or “Other Priority” islands, respectively, to \$0 unless and until all projects on other (typically non-agricultural) “Very High Priorities” islands are completely funded. Thus, rather than the current roughly 20-40-40 split between “Other Priority,” “High Priority,” and “Very High Priority” islands currently allowed DWR and the rural Reclamation Districts (RDs) and landowners depend on these funds, the DLIS would prioritize 100 percent, or *all* \$78.6 million a year (at current funding levels) to “Very High High Priority islands.”
  - The clearly erroneous findings and analytical conclusions, among others, that the proposed rulemaking will have only a “negligible” *direct* impact on local agencies, including local RDs dependent on these funds, and on California businesses and small businesses and landowner business owners, including Delta farming operations. This conclusion is arrived at, in part, by spreading the total amount of “reallocated” funds available for Delta levees over the entire Delta—ignoring the obvious fact that funds and related benefits are *not* distributed *pro rata* throughout the entire Delta and, rather, the benefits of the \$47.1 million in existing protection that the Council would “reallocate” *away* from typically agricultural “High Priority” and “Other Priority” levees is concentrated at a handful of annually prioritized sites, such the benefit in any one area, is quite large. The analysis’ conclusion ignores that costs will not be spread annually over *all* agricultural acres in the Delta as the analysis supposes. It also ignores that acreages within a Delta levee are either *all* adequately protected, or *all* at risk, and that levees protecting islands in the Delta are part of a larger whole. Spreading risks and benefits, therefore, is not a real-world measure of the impact.

Moreover, while discussing “direct” economic impacts, the analysis says little or nothing of the *indirect* economic impacts that would obviously account the majority of the impacts on local RDs and the landowners they assess to maintain levees in their areas.

- The Council’s analysis of economic impacts is also flawed to the extent it concludes the economic impact of the proposed shifting of *all* funding to typically non-agricultural “Very High Priority” islands and tracts will be insignificant because (to paraphrase) it will only change the timing and prioritization of state investment in levees and not the overall level of investment in Delta levees overall. This, however, completely glosses over the dramatic shift in policy that this would represent for typically agricultural “High Priority” and “Other Priority” tracts and islands.
- The Council’s economic impact conclusions are also distorted by a failure to consider logical long-term cumulative consequences of permanent deprioritization of state investment in the Delta levee system as a whole—including the bulk of the Delta total acreage within non-project levees and agricultural lands—in event of probable multiple levee failures over time when and if current life-line funding from the state is cut to zero or near zero.
- Section 85306 says that the Council is to make “recommend ... priorities” for state investments in Delta levees levees, “in consultation with” the Flood Board. However, the Council’s rulemaking says nothing of any such consultations with the Flood Board—and, even if there was any such contact between the agencies, it clearly did nothing to resolve numerous inconsistencies between existing Flood Board policies (including the Flood Board’s oversight over the existing Subventions Program) and Council proposed rulemaking.
- It is also unclear that the Council made any coherent effort to resolve obvious conflicts with the DWR’s long-standing administration of the Subventions and Special Project Programs—nor does the proposed rulemaking appear to resolve the obvious direct conflict with the Delta Protection Commission (“Commission”)’s “Economic Sustainability Plan” and the Commission’s recommendations concerning a Delta Investment Fund, as reflected in section 85391 of the Reform Act, and section 29778.5 of the Public Resources Code.
- The Council’s proposed definitions of the terms “levee improvement,” “levee maintenance,” and “levee rehabilitation” are at odds with any existing classification or approach to prioritization of work on Delta levees. The proposed rulemaking puts hundreds of miles of levee at acute risk by precluding changes to levee geometry, crown raising, berm construction, etc. to address issues including on-going erosion, settling and compaction, and peat soil subsidence from the definition of “maintenance,” and instead limiting a proposed exemption from “covered action” status to “levee maintenance” work “intended to present the levee system in its current condition.”

- The Council’s proposed annual report from the DWR as means to allow some possible variance from the Council’s prioritizations creates an area of significant uncertainty in the event the Council—or some third party—chooses to invoke the Council’s “covered action,” “consistency finding,” or “appeals” aspects under the Reform Act.
- The Council’s Initial Statement of Reasons describes various alternatives considered but *not* adopted—but fails to consider another other potentially feasible and appropriate alternative: One such alternative would be to preserve current levels of funding for the Subventions and Special Project Programs as a base level of protection for all Delta levees, and to make recommendations concerning sources and possible prioritization of additional funding for Delta levee investment above that level. This could have avoided conflicts with existing programs, while protecting the Delta levee systems as a whole, while avoiding the need to have to pick one set of Delta islands and tracts over another.

Our organizations again urge the Council to extend comments and delay action of the proposed rule to allow time for proper vetting and potential resolution of these and numerous additional concerns.

Thank you for your consideration of these comments. Questions regarding this request may be directed to Justin Fredrickson at 916-561-5673.

Very truly yours,

A handwritten signature in black ink, appearing to read "Justin Fredrickson", with a long horizontal stroke extending to the right.

Justin Fredrickson

/JF

Cc:

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