

April 17, 2017

*Sent via U.S. Mail and E-Mail [deltaplannop@deltacouncil.ca.gov]*

Delta Stewardship Council  
Attn: Delta Plan NOP  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814

Re: Notice of Preparation: Delta Plan Amendments EIR

Dear Chairperson Fiorini and Councilmembers:

The State Water Contractors appreciate the opportunity to provide comments in response to the Notice of Preparation (“NOP”) of a Draft Program Environmental Impact Report (“Draft PEIR”) for proposed amendments to the Delta Plan involving three Delta Plan components: Delta Levees Investment and Risk Reduction Strategy; Delta Conveyance, Storage, and Operation; and Performance Measures. The State Water Contractors is a non-profit association of 27 public water agencies, which provide water to over 26 million residents and 750,000 acres of farmland and business across the state. Water supply delivered from the State Water Project is from the Sacramento-San Joaquin River Delta. Thus, the State Water Contractors have a substantial interest in any activities or regulations that may affect the Delta.

The State Water Contractors have been engaged in litigation challenging the Council’s previous approval of the Delta Plan and the Council’s concurrent certification of a Program Environmental Impact Report (“Certified PEIR”) for that Plan under the California Environmental Quality Act (“CEQA”). The State Water Contractors support the coequal goals of water supply reliability and the restoration of a sustainable Delta ecosystem under the Delta Reform Act but the State Water Contractors challenged the adopted Delta Plan and the Certified PEIR.

The State Water Contractors are hopeful that the concerns raised previously, through several comment letters submitted to the Council during the preparation and environmental review process for the adopted Delta Plan or through litigation relating to the same, can be addressed in the proposed amendments and the proposed amendments’ environmental review process. After reviewing the NOP, the “Discussion Draft Delta Plan Amendment” (“Discussion Draft”), the related draft Performance Measures, and the proposed amendments related to prioritization of State investments in Delta levees and risk reduction, the State Water Contractors submit the following comments.



#### **DIRECTORS**

**Douglas Headrick**  
**President**  
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MWD

**Mark Gilkey**  
**Vice President**  
Tulare Lake Basin Water  
Storage District

**Stephen Arakawa**  
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**Kirby Brill**  
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**Matthew Stone**  
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**Ray Stokes**  
Central Coast Water  
Authority

**General Manager**  
Jennifer Pierre

The State Water Contractors<sup>1</sup> are primarily concerned that each category of Delta Plan amendments presents repeated concerns under CEQA insofar as: (1) the Project Description is unduly vague and does not allow the public to adequately understand the scope of potential environmental impacts; (2) the geographic scope of analysis will be arbitrarily truncated by failing to analyze environmental impacts outside of the Delta and Suisun Marsh; (3) the analysis of reasonably foreseeable environmental impacts associated with developing replacement water sources and increased reliance on local supplies will be improperly ignored; (4) the true impacts of the proposed amendment will be “discounted” based upon unsupported assumptions regarding baseline conditions and local agencies’ abilities to construct and implement water storage, groundwater banking, and water conveyance infrastructure prior to the curtailment of Delta water exports that the Council believes will result from compliance with the amended Delta Plan; and (5) the nature of the proposed Delta Plan amendments and the alternatives to those proposed amendments must be revisited to assure legal and environmental feasibility.

### ***I. Comments Regarding Project Feasibility and Selection of Alternatives***

The State Water Contractors believe that the current Project description and, hence, any Alternatives that stem from that description, is infeasible, and must be revisited to ensure an accurate description of potential environmental impacts is provided.

First, the Council’s proposal to adopt the Delta Levees Investment and Risk Reduction Strategy in the form of a policy (NOP p. 7), exceeds the Council’s statutory authority under the Delta Reform Act. Specifically, the Council lacks the legal authority to adopt any policy on Delta levee investments. (Water Code, § 85306 [“The council ... shall *recommend in the Delta Plan* priorities for state investments in levee operation, maintenance, and improvements in the Delta...”] [emphasis added].) By seeking to adopt the Delta Levees Investment and Risk Reduction Strategy *as policy*, the Council has described a proposed Project which is legally infeasible. (See 14 Cal. Code Regs., § 15364 [“Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account ... legal ... factors”].)

Second, and because it exceeds the Council’s authority, any effort by the Council to include the Delta Levees Investment and Risk Reduction Strategy even as an *alternative* to the Project is likewise infeasible and cannot be relied upon as the basis for a comparative analysis of impacts in the forthcoming PEIR. (See 14 Cal. Code Regs., § 15126.6(a) [a lead agency’s EIR “must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation”].)

Third, the Discussion Draft includes a number of goals and objectives related to New and Improved Water Storage. (Discussion Draft, p. 10, § II.B.3.) Among these is a goal to reduce reliance on Delta water supplies, which the Council has narrowly equated with either a reduction in the amount of water diverted from the Delta watershed, or a regional reduction in the percentage of such water in a region’s water supply portfolio. However, as we have demonstrated in prior comments this

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<sup>1</sup>The State Water Contractors submit this letter on its behalf and on behalf of all of its member agencies, except Santa Clara Valley Water District.

ignores that fact that the Delta Reform calls on achieving reduced reliance through investment in improved regional self-reliance and not simply calling on water suppliers to use less. (Wat. Code, § 85021.) This distinction is critical to an accurate CEQA analysis. For the Council to merely *assume* that each region using less water is an objective – rather than a consequence – of the proposed Delta Plan amendments related to reduced reliance ignores the question of whether using less Delta supplies is even feasible for all regions and likely obscures the true impacts of the proposed Delta Plan amendments.

Finally, the NOP contains only three sentences addressing the potential alternatives to the proposed Delta Plan amendments. Those sentences recite the CEQA standard for selecting alternatives and states that the Council will identify those alternatives in the forthcoming PEIR. (NOP p. 12.) However, the NOP does not appear to identify the range of alternatives that the Council intends to address.

## ***II. Comments Regarding Environmental Impacts***

Beyond the scope of the alternatives that must be considered in the forthcoming PEIR, the State Water Contractors also have concerns regarding the scope, nature, type, and extent of analysis of potential environmental impacts that may result from each of the three major categories of proposed Delta Plan amendments. We look forward to reviewing the Draft PEIR when it is available and submitting additional comments.

### **A. Proposed Delta Levees Investment and Risk Reduction Strategy**

The description of the proposed Delta Levees Investment and Risk Reduction Strategy is unduly vague, and exceeds the Council's authority under the Delta Reform Act. Specifically, the NOP states that the Council is proposing to amend the Delta Plan through the adoption of a Delta Levee Investment Strategy. (NOP p. 7.) The NOP states that this policy will require that funding for the maintenance of levees “shall continue to be available through the Delta where authorized by Water Code Section 12980 et seq.” (NOP p. 7.) The Council also appears to propose a prioritization scheme under which the Council will urge DWR to first fund levee improvement projects for “the very-high priority islands and tracts,” with any other improvements to follow based on funding availability. (NOP p. 8.)

First, the Council lacks the legal authority to adopt any policy on Delta levee investments under section 85306 of the Water Code. Thus, the Delta Levees Investment and Risk Reduction Strategy cannot serve as the basis for the proposed Project description, nor can it be a potentially feasible alternative for purposes of comparing potential environmental impacts.

Second, the priorities for levee funding may lead to more funding being directed to the very high priority portions of Delta levees and less going to levees with lower priority, reallocating risks of levee failure over the long run from the no action alternative. The PEIR will have to study the impacts of continued farming, soil oxidation, and subsidence on lands with high organic content protected by very high priority levees, as well as the impacts of catastrophic levee failure and flooding of some islands that are protected by lower priority levees. These issues must be fully analyzed in the forthcoming PEIR.

**B. Discussion Draft Section I, “New and Improved Water Conveyance.”**

The Project Description is overly vague: On page 6 of the Discussion Draft, Section I.B.1 refers to the evaluation, design and implementation of new or improved conveyance or diversion facilities. However, it is unclear whether the facilities being referred to here are limited to those described in Section I.A., or could refer to additional, as of yet undefined, conveyance projects, within or outside of the Delta Watershed. Without further detail, it is difficult to comment upon the potential impacts of such amendments to the Delta Plan. This should be defined and evaluated in the PEIR.

The Discussion Draft does not demonstrate compliance with the Delta Reform Act’s coequal goals: The Delta Plan is required to further the coequal goals of “providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem” under the Delta Reform Act. (Water Code, § 85001(c); § 85054; § 85300(a); § 85302(a).) And the Legislature expressly recognizes that providing a more reliable water supply includes new and improved Delta conveyance facilities. (Water Code, § 85004(b), see also § 80202(f) (improving water conveyance system and expand statewide water storage is inherent in the coequal goals); § 85304 (Delta Plan shall promote such options); see also § 85320 (Delta Plan shall incorporate the BDCP, which includes new dual conveyance).)

However, Section I.B.1, which sets forth the criteria against which the “new or improved conveyance or diversion facilities” should be evaluated, designed and implemented, is focused overwhelmingly on the analysis and treatment of ecological impacts within the Delta and Suisun Marsh. These criteria give nearly no attention to the coequal goal of water supply reliability component of the coequal goals. Similarly, on page 7 of the Discussion Draft, Section I.C.1. states that improved or modified through-Delta conveyance and appurtenant facilities should be designed in a manner that reduces impacts to habitat, reduces impacts to fish migration, reduces impacts to public safety, and modifies conveyance capacity and hydraulic characteristics of Delta waterways in a manner that provides multiple benefits. However, no mention is made of the coequal goal of water supply reliability.

The State Water Contractors stress the importance of constructing and operating new or improved water conveyance and diversion facilities consistent with the coequal goals, which requires equal consideration of water supply reliability. Any recommended changes in flow criteria and rates of diversion (as referenced in Section I.B.1(a)),<sup>2</sup> whether associated with existing or new conveyance or diversion facilities, must be based on best available science and designed to promote the coequal goals, including measures to improve and protect reliable Delta water supplies. (See Water Code, § 85054; § 85308(a).)

The proposed scope of the analysis is improperly and arbitrarily limited to the Delta and the Suisun Marsh: In addition to consistency with the coequal goals, any environmental impacts that may

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<sup>2</sup> The State Water Resources Control Board is the only administrative agency authorized by law to conditions water rights, and the only administrative agency with approval authority over water rights transfers. (Water Code, §§ 174(a), 1727(b), 1736; see also *Light v. SWRCB* (2014) 226 Cal.App.4th 1463, 1485.) Accordingly, any efforts by the Council to address flows can only be made in the form of *recommendations*, not enforceable flow or diversion policies or regulations.

occur from recommended changes in flow criteria, rates of diversion, or Delta conveyance must be analyzed within the Draft PEIR regardless of where they may arise geographically. CEQA requires the analysis to include any reasonably foreseeable impacts, even those outside of the Delta and Suisun Marsh but the Council proposes to limit the geographic scope of its analysis to the Delta and the Suisun Marsh. Case precedent confirms that a CEQA lead agency's obligation is to analyze reasonably foreseeable impacts wherever they happen to arise. (See *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544 [even impacts hundreds of miles away must be analyzed if they are reasonably foreseeable].) To artificially limit the geographic scope of analysis would be improper.

Environmental impacts outside the Delta are reasonably foreseeable and must be analyzed in the Draft PEIR: The Certified PEIR acknowledged that the existing approved Delta Plan would result in an overall decrease of water exports from the Delta. (E.g., Certified PEIR p. 2A-67.) Yet, the Certified PEIR provided no analysis whatsoever, not even in general terms, of the environmental impacts of increasing local supplies to meet demand, or how much local supplies will have to be increased. This should be corrected in the PEIR to be consistent with CEQA and with all of the other Delta-related EIRs that have been developed that may affect south-of-Delta deliveries. Specifically, environmental impacts outside the Delta and Suisun Marsh are reasonably foreseeable and must be analyzed, particularly in light of the proposed "Outcome Performance Measures" that anticipate reduced water exports. (See Section II.5, below, for additional discussion regarding the Performance Measures.) The Council does not have the legal authority to approve or impose changes in flow criteria. Additionally, the reduced reliance aspects of the Delta Plan amendments may result in changes in south-of-Delta deliveries that could result in environmental impacts that would need to be disclosed in the PEIR. However, to the extent the Council *recommends* changes in flow criteria or other actions that may affect south-of-Delta deliveries, the Draft PEIR must, at a minimum, analyze and disclose at least two sets of foreseeable environmental impacts:

- The Council must identify what changes to flow criteria (if any) are recommended by the Council under the proposed Delta Plan Amendments, how these criteria (if adopted by the State Board) might affect the reliability of water supply, how they may affect Delta water exports, and how they may affect Delta conveyance.<sup>3</sup> As demonstrated above, such recommendations must further the coequal goals of reliable water supplies for California as well as Delta ecosystem benefits. They cannot sacrifice one for the other; nor can they result in reduced exports to further a narrow view of reduced reliance as a reduction in either the percentage or amount of water diverted from the Delta watershed to meet regional water supply needs.
- The Council must analyze all reasonably foreseeable environmental impacts, even those outside the Delta and Suisun Marsh which may occur from any recommended alterations in the timing or amounts of exports. These include, but are not limited to, impacts to special status species and habitats affected by loss of water supply or by development of new local supplies, impacts to land use compatibility as local agencies

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<sup>3</sup> In addition, setting flow objectives is within the jurisdiction of the SWRCB and it is not appropriate for the Council to merely assume what will be done by another agency without supporting evidence.

attempt to develop new supplies, displacement of housing and populations as local agencies determine they do not have adequate supplies to meet future or even existing demand, impacts to aesthetics and visual resources as local supplies dwindle, impacts relating to air quality, greenhouse gas emissions, and energy use as a result of development of new water supplies and related infrastructure, the impact of new emissions on nearby sensitive receptors, and impacts on hydroelectric power generation.

**C. Discussion Draft Section II, “New and Improved Water Storage”**

Again, limiting analysis to the Delta and Suisun Marsh artificially truncates the environmental analysis and improperly focuses on meeting ecological needs to the exclusion of water supply reliability goals. On page 8 of the Discussion Draft, Section II.A.1 states that “within the Delta Watershed, new or expanded off-stream or on-stream surface water storage projects” should be promoted that are designed and operated to, among other things, provide water supply reliability, provide flexibility in storing exported Delta supplies, and contribute to improved conjunctive management and sustainable management of overdrafted groundwater basins. It is unclear why such concerns are limited to “within the Delta Watershed” as exported Delta water is relied upon throughout the State of California for water supply reliability and conjunctive and sustainable management of overdrafted groundwater basins. Indeed, areas outside the Delta watershed may be more susceptible to overdraft impacts if Delta exports are altered consistent with Delta Plan recommendations in a manner that will require increased reliance on groundwater basins. The State Water Contractors urge the Council to take into account more than just the limited geographic area of the Delta itself, and in the case of impacts to groundwater use, consideration of SGMA and other factors affecting this resource. As three specific examples:

- On page 9 of the Discussion Draft, Section II.B.1(b) states that new or expanded surface storage projects should be designed and implemented to “contribute to regional self-reliance and reduced reliance on the Delta.” Any reasonably foreseeable alteration in the timing or amounts of water exports could have profound, direct, and reasonably foreseeable environmental impacts throughout the State of California, and therefore the scope of environmental analysis must include those areas beyond just the Delta and Suisun Marsh. At least one alternative should recognize that new or expanded surface storage projects would be operated to improve water supply reliability, not to reduce supplies of water diverted from the Delta watershed. The state’s policy of reduced reliance in Water Code section 85021 does not require a reduction in the amount or percentage of water diverted from the Delta watershed to meet California’s future water supply needs, and it should not be made an end in itself of new or expanded surface storage projects, or else water suppliers would have no incentive to help fund such projects, and such projects would not be consistent with the coequal goals.
- Also on page 9, Section II.B.1(d) states that new or expanded surface storage projects must “to the extent feasible, participate in exchanges and transfers that support the provision of more reliable water supplies consistent with the needs of the Delta ecosystem.” The coequal goals are “coequal” – neither is subservient to the other. While the phrasing of this criterion appears to be intended to be consistent with the coequal goals, as phrased, it implies that ecosystem goals for the Delta are superior to

and supersede coequal goal of water supply reliability relevant throughout the State because the water supplies must give way to ecosystem goals. Under the Delta Reform Act, new storage should be encouraged to further both coequal goals. Further, if the Council adopts policies or recommendations that alter water deliveries, those alterations would have environmental impacts throughout the State of California, and the Draft PEIR would have to analyze those impacts – not just those occurring within the Delta and Suisun Marsh.

- On page 10 of the Discussion Draft, Section II.B.3 states that new or expanded surface water storage projects outside the Delta watershed, but within the Delta water export area, should be designed and implemented to (a) contribute to regional self-reliance and reduced reliance on the Delta, (b) promote regional conjunctive management, and (c) contribute to a comprehensive, integrated water management approach that considers multiple water supply sources. While these are laudable goals and ones that the State Water Contractors support, the Draft PEIR must analyze the reasonably foreseeable impacts of the Delta Plan Amendments, and must be based upon reasonable assumptions. As discussed in Section I, the Discussion Draft should acknowledge that improved regional self-reliance for regions that receive all or some of their water from the Delta watershed is a form of reduced reliance and not a separate objective.

The Council appears to assume that local supply replacement projects will offset any reductions in Delta deliveries: The Certified PEIR concluded that water supplies within the Delta export area would remain the same because local agencies will build wells, desalination plants, and recycled water facilities, and will engage in water transfers to meet existing and future demands as supplies diverted from the Delta are reduced over time. However, the ability to use these replacement sources is entirely speculative – both in availability, feasibility, and the timing and funding of the infrastructure needed to implement such sources.<sup>4</sup> In most areas, local supplies are already fully utilized, which is in large part why local suppliers must import water from the Delta. In some areas, local supplies are already over-utilized, resulting in groundwater overdraft conditions, which the proposed Delta Plan amendments could exacerbate if they result in less reliable Delta export supplies. Therefore, it is important that the Draft PEIR assess (1) the conditions that the Council is proposing to use as its CEQA “baseline” for purposes of evaluating the impacts of the proposed Delta Plan amendments, (2) the potential existence of local replacement sources of water, (3) the feasibility of paying for and constructing new or expanded surface water storage projects, and (4) the potential impacts of developing such projects, including an analysis of whether replacement

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<sup>4</sup> Similarly, the previous Certified PEIR failed to describe what baseline conditions were actually used for purposes of evaluating impacts from replacement water projects necessitated by the Delta Plan. Without such a disclosure, a meaningful comparison of the Delta Plan’s potential impacts against those baseline conditions was impossible. As examples, the Certified PEIR stated that baseline conditions were “existing conditions,” but did not address whether the Council assumed drought conditions or normal conditions, whether conveyance was assumed to be curtailed by operational permit constraints and/or biological opinions, what assumptions were made regarding the capacity of existing storage and transport facilities, and what assumptions were made regarding local surface water and groundwater supply availability. Further, the baseline conditions appeared to take no account of readily foreseeable changes in on-the-ground physical conditions over time, even though local urban water suppliers are required to plan to meet growing demand over the long-term. To avoid duplicating this flaw in its current PEIR, the Council must thoroughly describe the baseline conditions it uses, as well as the substantial evidence supporting those conditions in its forthcoming PEIR. (See 14 Cal. Code Regs., § 15125.)

projects are likely to fully offset any reductions in Delta deliveries. The Draft PEIR's analysis cannot be based upon a structure of assumptions that new local supplies are available, feasible, and locally cost effective, and that groundwater or surface water storage projects can and will be constructed, or that such projects will be able to fully offset any decrease in water supply resulting from the Delta Plan amendments.<sup>5</sup>

**D. Discussion Draft Section III, "Improve Operations of Storage and Conveyance."**

On page 12 of the Discussion Draft, Section III.A.1 calls upon the Department of Water Resources and the Bureau of Reclamation to develop a coordinated operations plan, which must include, among other things, changes in routine operations during drought conditions. As specified above, any changes in operations will have impacts throughout the State, and the Draft PEIR's environmental analysis must consider these direct and indirect reasonably foreseeable environmental impacts, and be based upon reasonable assumptions.

As an initial comment, it is unclear upon what basis the Council believes that DWR and Reclamation can develop a coordinated plan to address changes during drought. Every drought is different in geographic scope, intensity, and duration. It is not feasible for DWR or Reclamation to predict how long a drought will last, at what intensity it will persist, or if other climactic conditions may merit other modifications to water supply management. A call for a plan of coordinated operations assuming a multi-year drought makes sense only if one assumes foreknowledge of the length, intensity, and location of drought impacts. For those reasons, it seems unreasonable for DWR or Reclamation to prepare a detailed plan addressing how water management operations will be handled during drought. As stated above with regard to certain other Project elements, the Council cannot assume the success of Project elements that are clearly "infeasible" under CEQA, nor can those elements be used as the basis for an alternatives analysis in the PEIR. To the extent the Council continues to propose a coordinated plan as a Project element, the State Water Contractors request that the Council first explain why it believes such a plan is feasible, prior to carefully analyzing its potential environmental impacts.

Similar to Discussion Draft Section II.B.3, on page 12 Sections III.A.2 and III.A.3 direct local agencies to improve self-reliance through the development of facilities that promote water exchanges, groundwater recharge, and groundwater banking and exchanges. Again, the State Water Contractors support these goals; however, the State Water Contractors are also concerned that the environmental analysis in the PEIR will discount potential impacts by assuming that local supplies are available, that local agencies will have the ability and funding to implement local projects, and that local water supply projects will be able to fully offset any changes in timing or amount of water deliveries from the Delta that may result from implementing the Council's recommendations. The Council should also consider how Delta water is used to manage these local supplies and how that relates to reduced reliance. Again, the State Water Contractors stress

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<sup>5</sup> In fact, the previous Certified PEIR noted that existing water supplies in Southern California are fully used, further groundwater development is limited due to declining and poor quality groundwater, and existing reductions are already challenging the area's ability to meet its water needs. (Certified PEIR p. 3-69 to 3-70.) This is a key fact that must be incorporated in the Delta Plan Amendments' Draft PEIR analyses.



that the Draft PEIR must analyze these issues as well any environmental impacts that are likely to result from the implementation of local water supply projects.

Further, Discussion Draft Section III.B. sets forth criteria for “operational plans,” and Section III.A.2 states that “lead agencies for new or modified conveyance facilities” should develop those operational plans in a manner consistent with Section III.B’s criteria. In other words, the Council seems to be asking local lead agencies, even those outside of the Delta, to develop operational plans for their new facilities that address protection/enhancements to the Delta ecosystem; avoid adverse effects on the Delta; address climate conditions like sea-level rise; and address other potential ecological concerns. While the State Water Contractors support responsible environmental stewardship, the Council’s proposed directives with regard to operations overlook the coequal goal of water supply reliability by requiring operational plans to focus almost exclusively on ecological concerns. To the extent that such operational plan guidance is retained in the proposed Project, the Council must address how its proposed Amendments further the statutorily mandated coequal goals.

#### **E. Discussion Draft, Performance Measures**

The Project Description is overly vague. On pages 16 through 18, the Discussion Draft includes four “Outcome Performance Measures.” Although no actual values are provided, performance measures are proposed which seem to focus on measurably decreasing water deliveries, particularly during dry years. Without additional information as to the reductions in exports that may be recommended, and as against what baseline conditions any such reductions will be measured, it is impossible for the Council to define and study the scope of potential environmental impacts. Accordingly, the State Water Contractors request that the forthcoming Draft PEIR identify what the Council may be proposing and analyze what the impacts of that proposal may be.

The Discussion Draft does not demonstrate compliance with the Delta Reform Act’s coequal goals. Proposed Outcome Performance Measure 4.2 specifically calls for “restoring a healthier estuary” through the use of “more natural functional flows, including in-Delta flows and tributary input flows to support ecological floodplain processing.” While the State Water Contractors agree that to the extent flows can contribute to ecosystem restoration, the focus should be on their ecological functions, not just amount and timing, the inclusion of such a performance measure suggests that the Council is recommending the use of modified flows alone to restore estuarine health. However, the health of the Delta is affected by a plethora of potential factors, such as predation, habitat quality, water temperatures, agricultural practices, pollution from a variety of sources, drought, and other stressors. Yet, the performance measures proposed in the Discussion Draft do not address any of these stressors, and suggest that the Council may be improperly attributing all declines in estuarine health to be caused by flow issues in a manner that, again, promotes ecological benefits at the apparently expense of water supply reliability in violation of the coequal goals. Accordingly, the State Water Contractors request that the forthcoming Draft PEIR set forth the Council’s interpretation of this proposed Performance Measure and analyze the environmental impacts that may arise from its implementation.

### ***III. Request for Notices Going Forward***

Delta Stewardship Council

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The State Water Contractors look forward to reviewing the Draft Environmental Impact Report once it is completed. Towards that end, the State Water Contractors request to be added to the notification and distribution lists for all Project CEQA notices, public meeting notices, and public hearing notices as permitted under CEQA and the Ralph M. Brown Act. Please direct all such notices to the address above.

Thank you for the opportunity to submit these comments.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jennifer Pierre". The signature is fluid and cursive, with a large initial "J" and a stylized "P".

Jennifer Pierre  
General Manager

March 22, 2017

*Delivered via email: [jpearson@deltacouncil.ca.gov](mailto:jpearson@deltacouncil.ca.gov)*

Ms. Jessica R. Pearson  
Executive Officer  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814

Dear Ms. Pearson:

The State Water Contractors (SWC) have been following the Delta Stewardship Council's (Council) development of the Delta Levee Investment Strategy and have provided input to its development. As background, the SWC represents 27 of the 29 agencies that have contracted for water supplies from the State Water Project (SWP). Since the SWP relies, in part, on conveyance of water through the Sacramento-San Joaquin Delta, we are very interested in the reliability of Delta levees, considering rising sea levels, subsidence, seismic events, and other physical phenomena that can compromise levees or jeopardize timely emergency response in the wake of levee failures.

As noted in previous correspondence, the SWC supports the development of a Delta Levee Investment Strategy and recommended priorities for state investments in Delta levees as directed by California's Water Code: "The Delta Plan shall attempt to reduce risks to people, property, and state interests in the Delta by promoting effective emergency preparedness, appropriate land uses, and strategic levee investments" (section 85305), and "the council, in consultation with the Central Valley Flood Protection Board, shall recommend in the Delta Plan priorities for state investments in levee operation, maintenance, and improvements in the Delta, including both levees that are a part of the State Plan of Flood Control and nonproject levees"(section 85306). However, as we have stated in prior comments, these Water Code provisions do not authorize the Council to adopt new Delta Plan policies and regulations regarding State levee funding priorities. They expressly only authorize the adoption of recommended priorities. Thus, the proposed prioritization policy (RR P1: Prioritization of State Investments in Delta Levees and Risk Reduction) should be re-cast as a recommendation.

We previously submitted comments on October 30, 2014, July 1, 2015, April 26, 2016, and most recently on the Discussion Draft (January 25, 2017). Our most recent comments focused on coordination between Council and DWR and the development of future funding mechanisms. The SWC understands that the organizations are considering an approach based on a Memorandum of Understanding to establish a long-term process for coordination between agencies on priorities for the state's levee investments in the Delta, which we support.



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San Bernardino Valley  
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Tulare Lake Basin Water  
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Napa County FC&WCD

**Ray Stokes**  
Central Coast Water  
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**General Manager**  
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While we still have the same concerns raised in our prior comments, the SWC agrees with several of the proposed recommendations. For instance, we agree with RR R3 to “[p]rovide adequate State Funds to support maintenance and improvement: Adequate State funds to support levee maintenance and improvement should continue to be provided through the Delta Levees Maintenance Subventions Program, the Delta Levee Special Projects Program, and through programs that implement the Central Valley Flood Protection Plan.” We agree that a simplified ability to pay methodology should be explored. Potential reductions in the State’s cost share will result in a maximizing of the State’s investments in levee maintenance and extend available funding. As discussed at the last Council meeting, an assessment based on an estimate of net proceeds per acre seems appropriate.

However, we continue to have concerns on the approach for developing future funding mechanisms. As noted in January, we encourage the Council to work with DWR, the Central Valley Flood Protection Board and the Delta Protection Commission (DPC) to develop mechanisms that meet the requirements of a beneficiary-pays approach and ask that you consider the definition of benefits and recommend the definition included in the CALFED Bay-Delta Program Implementation Plan (July 2000):

Economic benefits are a measure of the willingness of beneficiaries to pay for the flow of services from a program or project - either to obtain additional benefits (additional or more reliable water supplies) or to avoid damages (flood damages, higher treatment costs, or less reliable water supplies). Benefits are not measured simply by looking at the ongoing stream of benefits from existing activities - for example, the economic activity associated with Delta agriculture and recreation. Rather, benefits are measured as the difference between the benefits that would occur with the program compared to the benefits that would occur without the program. Notably, an adequate beneficiary-pays principle does not look at ability to pay; it must reflect the willingness of beneficiaries to pay in light of the incremental benefits they will receive for their investment.

The latest discussion draft of the DLIS references the DPC’s Draft Levee Assessment Feasibility Study (Draft Feasibility Study) on page 35 in an uncritical manner that requires qualification. It states, in relevant part:

The [DPC’s Draft Feasibility Study] concludes that the most feasible portfolio of finance mechanisms is one that could generate revenue to pay for levee maintenance, repair, rehabilitation and improvements, including new fees that would bring in revenue from beneficiaries that do not currently pay for Delta levees in proportion to the benefits they receive. Candidates include contributions from the State Water Project or Central Valley Project for improvements protecting the conveyance of water through the Delta for export . . . .

As a threshold matter, the DPC Draft Feasibility Study is not final, so it is premature to reference any of its conclusions at this time. But more important, it erroneously assumes that regions of the state served by water from the CVP or SWP have not been paying enough to maintain Delta levees

to match the benefits those regions have received. As the Council is aware, most of the funding for Delta levee maintenance has come from the state through bonds, which are ultimately funded with tax revenues. The SWC submitted the following comment to the DPC on its Draft Feasibility Study March 2, 2017, and urge the Council to consider it when revising the DLIS and in any future deliberations on levee funding:

[A]ny future recommended levee funding alternatives should accurately quantify the tax revenues generated by each region to determine their relative contributions to Delta levee maintenance to date. Tax revenues from regions served with water exported from the Delta by the CVP and SWP—including parts of Bay Area, the Central Valley, Central Coast, and Southern California—represent a far greater share of overall state revenues than revenues from the Delta counties.

Thus, while the SWC supports a beneficiary-pays principle consistent with the CALFED definition above, guidance on levee funding should not be based on the erroneous assumption that the CVP or SWP export beneficiaries, who are ultimately the taxpayers and ratepayers in their service areas, should be paying more than they have to date. Instead, it should be based on the willingness of beneficiaries to pay in light of the incremental benefits they will receive for their investment, which will require a demonstration of the incremental benefits to the various beneficiaries.

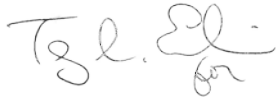
Finally, the recent revision to RR R4: Update Delta Levees Maintenance Subvention Program's Cost-sharing Provisions, Section A, is not justified, and should be removed. The revised recommendation states: "The Delta Levees Maintenance Subvention Program's maximum 75 percent State cost share for maintenance and major rehabilitation projects should be extended indefinitely." Existing law states that "on and after July 1, 2018, declares the intent of the Legislature to reimburse eligible local agencies under this program in an amount not to exceed 50 percent of those costs that are incurred in any year for the maintenance and improvement of levees." In 1996, the Legislature temporarily increased the reimbursement rate from 50 percent up to 75 percent of any costs incurred in excess of \$1,000 per mile depending on the local levee maintaining agency's ability to pay. This rate was to be reduced to 50 percent on July 1, 2006. But the Legislature subsequently extended this date in 2006, 2010, and 2012, with the current date set for July 1, 2018. This reflects the Legislature's intent to make the 75 percent maximum state cost share under the subventions program temporary, to accelerate levee maintenance, then drop back to the original 50 percent cost share.

The state has limited resources and should utilize its available levee subvention program funding in a manner that maximizes benefits. Criteria regarding economic production and value of the areas should be factored into eligibility for State funding, which, after July 1, 2018, should be limited under the subvention program to a maximum of 50 percent consistent with the Legislature's original intent.

We recognize the efforts that Council has made with the Delta Levee Investment Strategy and the importance of the levees in the Delta to the Delta's inhabitants, the Delta economy, and the state. We request that the Council convert the proposed prioritization policy into recommendation; base future guidance on levee funding on an appropriate beneficiary-pays principle that includes accurate,

quantified, and demonstrated incremental benefits to each beneficiary; and that the Council eliminate the recommendation to indefinitely extend the 75 percent State cost share in the levee subvention program as you move forward. We are interested in continuing to work with the Council staff and consultants as the process goes forward. If you have any questions about our comments, please call me at (916) 447-7357.

Sincerely,

A handwritten signature in black ink, appearing to read "Tgl. El." with a flourish underneath.

Jennifer Pierre  
General Manager

March 22, 2017

*Delivered via email: [jpearson@deltacouncil.ca.gov](mailto:jpearson@deltacouncil.ca.gov)*



Ms. Jessica R. Pearson  
Executive Officer  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814

Dear Ms. Pearson:

The State Water Contractors (SWC) have been following the Delta Stewardship Council's (Council) development of the Draft Delta Plan Amendment for Water Conveyance, System Storage, and Operation of Both (CSO) and have provided input to its development. We have also been following the proposed refinements to the Performance Measures in the Delta Plan. This letter provides comments on both. Overall, we encourage the Council to develop a suite of recommendations and performance measures that can help to inform future actions on conveyance, storage, and operations. To refine the existing draft, we recommend that Council define *reduced reliance* to include improved regional self-reliance and to amend the corresponding performance measure accordingly. We also have suggested refinements to several statements in the CSO discussion as well as some of the recommendations regarding operations as applied to the Central Valley Project (CVP) and State Water Project (SWP), including the Bay Delta Conservation Plan/California WaterFix.

As background, the SWC represents 27 of the 29 agencies that have contracted for water supplies from the SWP. SWC member agencies have made and continue to make significant investments in developing their local and regional supplies, as well as other measures such as conservation, water use efficiency, groundwater banking, recycling, investing in new technologies, and regional planning, which are critical to meet future water supply needs as California's population and economy are projected to continue to grow. It is important to recognize, however, that improving regional self-reliance may not reduce the amount of or percentage of SWP supplies in each and every water supplier's portfolio.

With improved conveyance, ecosystem restoration, and reductions in the "stressors" that harm Delta species, we believe it is feasible to achieve the coequal goals to improve both water supply reliability and the Delta ecosystem, without reducing exports. The SWP contractors and ultimately their customers have made considerable investments in conservation, recycling, storage, and improvements in system reliability.

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Jennifer Pierre

Despite these efforts, some SWP contractors will continue to be highly dependent on the Delta; delivery of imported water provides essential water supply and water quality benefits to these contractors' service areas and therefore must be maintained to accomplish the coequal goals.

Accordingly, we strongly encourage the Council to clarify *reduced reliance* and the associated performance measure to expressly include improved regional self-reliance through continued investment in measures that enhance local supplies and stretch existing supplies further, including conservation, water use efficiency, groundwater banking, recycling, desalination, new technologies, and improved regional planning, consistent with the language of Water Code Section 85021:

The policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. Each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts.

In addition, the Council has defined achieving the coequal goals to include reduced reliance by each region that uses water from the Delta watershed "improving, investing in, and implementing local and regional projects and programs that increase water conservation and efficiency, increase water recycling and use of advanced water technologies, expand storage, improve groundwater management, and enhance regional coordination of local and regional water supply development efforts." (23 Cal. Code Regs., § 5001(h)(1)(B).) Indeed, the title of the Council's policy is "WR P1. Reduce Reliance on the Delta *through Improved Regional Water Self-Reliance*." (Delta Plan (2013), p. 102, emphasis added.)

Defining *reduced reliance* to include improved regional self-reliance also comports with the Urban Water Management Planning Act, which imposes the duty to plan to meet local demands on local agencies, not the state.

The Discussion Draft (page 4 at lines 34-37) states: "The operation of water-storage facilities (above and below the Delta) and Delta conveyance must be adaptively managed to address: changing climate conditions, the need to sustainably manage the State's aquifers, and the need to promote regional self-reliance and reduced reliance on the Delta for water supplies." We recommend that you separate the very different issues of reservoir/conveyance operations from the promotion of improved regional self-reliance. Reservoir and project operations under a variety of state and federal statutes are seeking to balance the needs of the environment, the economy, and flood protection. The above sentence should either be deleted or amended in a way that does not expand reservoir operations to factor in unrelated water management activities in communities hundreds of miles away.

We also recommend that the Council make a corresponding revision to include improved regional self-reliance as a stand-alone measure of progress toward reduced reliance in its updated performance measures. One key benefit of investing in local and regional projects to improve



regional self-reliance is to lessen demand during dry years and take advantage of water available during wet years, which is consistent with the Council's CSO discussion draft as well as the current Delta Plan. As noted above, the result may not be an average reduction in the amount of or percentage of water in every water supplier's water supply portfolio; nevertheless, it is consistent with the Legislature's express reduced reliance policy and the Council's own definition of achieving the coequal goals.

The proposed PM 3.9 should not state that total Delta exports should decrease in dry years and increase in wet years. This parsing of year types does not capture how in any given winter, operational decisions are being made in real time without the clairvoyance of knowing whether the full precipitation season will be wet, dry, or average. We recommend revising the performance measure to support improved real-time management of the system in a manner that promotes the safe capture of supplies during wet periods. Even in dry years there are limited wet periods that can allow for water diversions that can contribute to meeting the coequal goals. Performance measures geared to real-time operations, rather than the eventual precipitation year type, are more valid for the dynamic Delta environment that we face now and in the future.

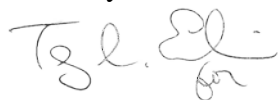
The current draft has a passage relating to Delta water quality that is of concern. On page 3, lines 21,22, the draft states: "Drinking water quality for exports can be improved by moving diversion locations, but doing so has the potential to degrade water quality for in-Delta uses." First, neither the BDCP nor California WaterFix propose to "move" intakes for the SWP; they propose to add three new intakes along the Sacramento River, which will create the very kind of dual conveyance system that the discussion draft promotes.

Second, the Final EIR/EIS for the BDCP/California WaterFix studied water quality impacts in depth, and demonstrated that the preferred Alternative 4A, the California WaterFix, with mitigation and environmental commitments, will not have significant adverse impacts on Delta water quality for other users of water diverted from the Delta. Compliance with water quality standards is a legal necessity.

The SWC supports the Council member recommendations at your February 23 Council meeting to acknowledge the extensive variety of options addressing Delta issues considered over the past several decades and the untenable status quo with respect to current Delta conveyance. Both suggestions provide valuable input into the current status of the Delta, the need to address historical issues and provide information on the various alternatives that have been considered.

We are interested in continuing to work with the Council staff and consultants as the process moves forward. If you have any questions about our comments, please call me at (916) 447-7357.

Sincerely,

A handwritten signature in black ink, appearing to read "T. L. Pierre" with a stylized flourish at the end.

Jennifer Pierre  
General Manager