CALIFORNIA CENTRAL VALLEY
FLOOD CONTROL
ASSOCIATION

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June 13, 2011

SENT VIA EMAIL: deltaplancomment@deltacouncil.ca.gov

Phil Isenberg, Chair
Delta Stewardship Council

SUBJECT: CA Central Valley Flood Control Association Comments on Third Staff Draft Delta Plan

The California Central Valley Flood Control Agency (CCVFCA) respectfully submits these comments on the Delta Stewardship Council's (Council) Third Staff Draft Delta Plan (DSC Plan) dated April 22, 2011. We apologize for the length of the comments, but due to the inability to properly convey our concerns over the content of the DSC Plan in the snippets of time allowed at the Council's public meetings, we felt it important to be as comprehensive as possible at this point in your planning process.

CCVFCA BACKGROUND

The Association was established in 1926 to promote the common interests of its membership in maintaining effective flood control systems for the protection of life, property and the environment. Association membership includes over 70 reclamation, flood control, levee, and drainage special districts, as well as cities and counties with flood control responsibilities.

The CCVFCA has been actively involved in advancing and advocating for effective flood management throughout the Central Valley, including the Delta, and its members will be greatly affected by the actions, projects and plans that the Council undertakes pursuant to the Delta Plan. We have organized our comments below by chapter, and would be glad to provide greater detail on any particular issue if requested. We have also provided specific recommendations of actions to be incorporated into the DSC Plan based on the following timeline:

Near Term – Through 2017, when the Council is required to do its first update of the Delta Plan.

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Mid-Term - 2018 through 2027, as some actions will have been implemented and projects constructed to evaluate their effectiveness, as well as the effectiveness of the DSC in coordinating agencies with authority in the Delta.
Long Term - 2028 through 2100.

The CCVFCA has previously submitted the following comments to the Council:

January 20, 2011 - Flood Risk White Paper
August 3, 2010 - Draft Interim Plan

GENERAL COMMENTS ON THIRD STAFF DRAFT

The Delta Economy and Its Unique Cultural, Recreational, Natural Resource, and Agricultural Values are Alive and Well.
The CCVFCA appreciates that some of its previous comments have been addressed as the DSC Plan has evolved to date. However, it is disappointing to see the Third Draft continue to promote misguided and incorrect opinions rather than facts, resulting in the narrative of every chapter painting a bleak picture of the Delta's economy and its levees. The CCVFCA's members and staff have participated on DSC panels, commented at the public hearings, submitted written comments, and met with DSC staff in the attempt to correct many of the factual errors in the previous work products, but there still seems to be resistance to accurately portraying the vitality of the Delta economy and its levees.

The Delta ecosystem may be on the verge of collapse, but the Delta levees and economy are not. Yet, reading the DSC Plan, one would think the Delta is a patient so abused over the years that it's now on life support and should have its plug pulled. Nothing could be further from the truth.

The Delta of today has managed to retain many of the valued attributes of when it was originally settled, while at the same time modernizing enough to serve the needs of visitors who come here to get away from the hectic pace of modern civilization. There is a remoteness and serenity to the Delta that is not easy to find elsewhere. It is one of the rare places you can still ride a ferryboat or travel over a working drawbridge.

There are over 100 marinas (more than 12,000 berths), waterside resorts, and RV parks for visitors and locals to enjoy. There are numerous agricultural and cultural festivals throughout the Delta that have tens of thousands of visitors every year such as the Stockton Asparagus Festival, the Isleton Cajun Festival, the Taste of Delta, and many others.

In 1994 (DPC report), the Delta economy represented 1.5 percent of personal income in California and 1.8 percent of employment, with manufacturing as the largest sector, producing $4.5 billion worth of goods in the Delta, followed by trade (wholesale and retail) generating $3 billion in output, and services creating $2.9 billion in output.

The agriculture economy produced $911 million worth of agricultural goods in 1994, resulting in the Delta's agricultural industry purchasing $77 million worth of inputs from local agricultural producers and $21 million of inputs from the local manufacturing sector, while $584 million

went to labor, farm income, and land leases. The Delta agricultural sector in 1994 exported $686 million (or 75%) of its output.

According to a 1997 Dept. of Boating and Waterways report (commissioned by DPC), every dollar spent on lodging in the Delta generates a total of $1.87 of economic output (sales) in the region, $0.75 in income, and $1.14 in value-added. Every million dollars spent on lodging in the Delta generates 31 local jobs. Because of the multiplier effects, the total boating expenditures of $247 million annually generate $445 million in total output, $183 million in income, $279 million in value added, and 8,058 jobs within the Delta region. For fishing, expenditures of $186 million annually, $336 million in total output, $138 million in income, $209 million in value-added, and 6,152 jobs.

These economic values represent 1.7 percent of total Delta income and 3.2 percent of employment in the Delta for boating recreation. Fishing recreation impacts represent 1.3 percent of total Delta income and 2.5 percent of employment. Clearly, recreational boating and fishing are an important part of the Delta economy. The fact that 23 percent of boaters and anglers in California recreate in the Delta every year, further demonstrates that the Delta provides an important outlet for water recreation in California.

Besides its diverse economy, the Delta is also a complex ecosystem supporting over 230 species of birds, 45 mammal species, 52 fish species, 25 reptiles and amphibians, and 150 species of flowering plants. Many of these species are threatened or endangered and rely on the lands protected by the levees to provide important habitat vital for their survival. Although the aquatic species in the Delta have declined due to multiple stressors, the terrestrial and avian species still find it a happy home, particularly migratory birds using the Pacific Flyway to travel from Alaska to Patagonia. Many of these traveling birds rely on the Delta as a source of food and desirable breeding grounds. In fact, Wikipedia denotes the Vic Fazio Yolo Wildlife Area in the Yolo Bypass, the Suisun Marsh, and the San Francisco Bay as three of the bird's ten key rest stops.

Yet, none of these values are mentioned in the DSC Plan as descriptors of Delta as Place, as worth maintaining, or even as positive signs of life. The Council does not need to wait for the Delta Protection Commission's Economic Sustainability to describe how to keep the patient alive, or to describe what makes its heart beat to begin with. How can the Council protect and enhance the values of the Delta as part of the coequal goals identified in PRC 29702 if the DSC Plan does not even recognize the values that need to be enhanced and protected?

GENERAL LEVEE COMMENTS

Provide Equal Time to the Positive Condition and Recent Improvement of Delta Levees.
The CCVFCA appreciates the time and effort the Council's staff and consultants have invested in preparing the Delta Plan, including the level of effort devoted to flood protection, control, management and levee design issues. However, the DSC Plan as currently written seems to focus on the 'sky-is-falling Chicken Little' mentality of everything is negative, and many of them are inaccurate and exaggerated beyond the reality.

The Delta ecosystem is certainly on a critical list and is affecting the reliability of water supply, but the Delta economy and its levee systems have been getting better, not worse, in recent years. We have organized the attached comments by chapter, focusing on correcting statements that verge on hyperbole regarding the current condition of Delta levees, areas experiencing ongoing subsidence, relying on inaccurate information in DRMS, and the general sustainability of the Delta as an evolving place.

The Delta Levee System Is Functional, Though It Can and Should Be Continually Improved. Contrary to the impression conveyed by the Third Draft, the levees are generally in good condition, and the risk of levee failure has been steadily decreasing during recent decades. These improvements are in large part due to the establishment of the Delta Levee Maintenance Program (commonly referred to as the Subventions Program) in 1973 and the Delta Levees Program in 1988.

For example, there are 1,100 miles of levees in the Delta, and during the last decade there were only two levee failures—Jones Tract (2004) and Fay Island (2006)—and the 100-acre Fay Island district was in the process of improving its levees at the time of the flood. It is important to note that these levees held despite this decade's having the seventh-highest water year on record for the combined Sacramento-San Joaquin River system (2005-06).

Earthquakes have been cited as a substantial risk to Delta levees, with predictions of a major quake being likely sometime in the next few decades. However, there has never, in the 160-plus years of managed flood protection and control in the Delta, been a documented failure of a levee due to an earthquake. During the 1989 Loma Prieta earthquake (M_W 6.9), some levees showed cracks, but none failed.

Modeling of the Delta levees' sensitivity to earthquakes has shown that quake-induced liquefaction can cause levee slumping. The history of Delta Levees, however, does not suggest a widespread series of catastrophic failures; and further modeling would need to be done that considers how liquefaction in a levee would actually function during a large-magnitude earthquake in the Delta. A complete assessment would also address the practical steps that can be implemented to repair observed earthquake damage in the immediate aftermath of a quake. Given these uncertainties, the short-term focus for levees (at least during the Interim plan period) must not be on earthquake-proofing, but on reducing the risk of failures due to the continuing threat of floods.

And of course there is an urgent need for ongoing Delta levee maintenance, rehabilitation, and improvement to insure eligibility for federal disaster relief. The DSC Plan can help with this by identifying opportunities and methods for increasing overall levels of funding for levee maintenance and improvements, improving reliability and timeliness of bond payments, and reducing regulatory roadblocks to levee maintenance and improvements.

It is important to understand that all of the various planning efforts involving the Delta will take many years to implement. In the meantime, the Delta remains a critical conduit for the State and Federal water projects. Maintenance and improvement to the existing system must occur to insure system reliability.

Delta Levees (Subvention) Programs. The Delta Levee Program has dramatically improved flood control and increased the reliability of water conveyance by utilizing a very efficient process of partnering with the local flood control agencies. Most of the projects are funded initially by the local agencies, often a year or more in advance of receipt of any State reimbursement funds. Once the projects are contracted and completed, the costs are claimed to the state for payment of a percentage of the total cost. Because the State only pays a percentage of the total cost, and the local agencies fund 100 percent of the work up front, there is great incentive for the local agencies to perform the work in the most cost effective and efficient manner possible. All claims are subject to audit prior to payment of any State monies.

Maintaining the Delta levees for flood control provides multiple benefits to the State and is recognized in several sections of the Water Code, Public Resources Code, and the Delta Protection Act. The improvements made since the inception of the Delta Levees Programs have dramatically increased flood protection within the Delta, as evidenced in the reduced number of flooded islands during the flood events in 1997 and 2006. Additionally, the Delta Levee Program has been a critical factor in maintaining the levee HMP minimum criteria and achieving the optimal PL 84-99 criteria throughout much of the system. If the levees are not maintained at the HMP minimum level, the State risks losing key Federal funding for Disaster Assistance. The Federal disaster payments typically pay for 75% of the recovery costs following a flood event and subsequent levee failures. These costs would be borne by the State and local agencies if the minimum levee standards are not maintained, and valuable Federal funding will not be available.

Although we can agree that Delta levees are not as robust as we would like them to be, we <u>do not</u> agree with the Delta levees are in a fragile condition on the brink of collapse. The past 23 years of the Delta Levees Program has proven to us that Delta levees can be stabilized to acceptable levels. We believe that rehabilitating and maintaining Delta levees through the Delta Levees Program, along with proper disaster procedures and planning, will continue to make the levee system sustainable over time.

Streamlined and Increased Funding for Ongoing Levee Maintenance and Improvement. As discussed in the DSC Plan, Water Code Section 85020 recognizes the need for any new governance structure to include funding for flood improvements. As such, the plan should strongly recommend increased funding for maintenance, operation, repair and rehabilitation of Delta levees, preferably under the existing Delta Levees (Subventions) Program. However, the Council should also investigate ways it can improve reliability and the timely delivery of funding reimbursements to local agencies so they can avoid a recent trend of having to float loans and interest payments for up to two years before State reimbursement. An ability to streamline and improve the reimbursement with voter approved bond funds will maximize the use of local and state funds for levee improvement work. For the long term, the Council needs to work with all statewide beneficiaries to establish a reliable funding stream for these important public purposes.

Voters approved Propositions 84 and 1E in large measure to improve flood protection and control in the Delta, and those funds have not been made fully available. The Department of Finance's inability to efficiently and completely release these funds is actively thwarting the voters' will. This concern is urgent because, as currently administered, the Proposition 84 authorization could terminate (2016) before all the funds are released.

Because the promised funds are not being released in a timely manner, local districts are forced to use their limited annual maintenance budgets to pay interest on the short-term bank loans they took out to initiate the flood control projects. Since the bond money is paid out only as State reimbursements, districts are required to spend the money before they are eligible to receive State funds from the Delta Levees Program —and since district budgets are limited, reclamation districts almost always must take out loans to begin the levee work.

Late payments of bond funds to the local districts thus leave them unable to perform all planned levee maintenance work, while jeopardizing their relationship with local banks, and cause the districts to expend their future levee maintenance budget to cover the bank loan payments while waiting for reimbursement from the State.

This means that levee districts, which have very small annual budgets, will not have funds to implement routine maintenance of their levees for years to come as they had to use their maintenance budget to pay interest to the bank. Over the long term, this means the levees of these districts will *not* be able to keep up with their maintenance needs through no fault of their own. Improving the flow of bond dollars to the local districts is an easy near-term fix to this problem as it does not require any changes to the delta levees program or statutes.

Leverage Federal Financing. Non-project levees are an important component of the integrated Delta flood control system. These levees only become eligible for Federal emergency funds (PL 84-99) once they pass an initial inspection assuring they meet the Corps's engineering, maintenance and qualification criteria. Once upgraded to PL 84-99 and active within the program, flood damage to these levees is eligible for repair using federal funding. The potential for upgrading non-project levees to meet these criteria should be an important long-term consideration in the Delta Plan when considering actions, projects and programs.

Prioritize New Flood Protection and Control Improvements. The DSC Plan should expressly prioritize evaluating all potential actions, projects and programs for ways to incorporate integrated flood protection and control enhancements. Habitat, recreation, water supply, and transportation projects in particular provide significant opportunities for heightened flood protection and control. This approach makes simple economic sense, i.e., trying to achieve as many goals as possible through each proposed action. Moreover, new improvements—habitat or conveyance infrastructure or both—will require flood protection or themselves be at risk of being damaged by high-flow events.[1]

For decades, levee improvement projects in the Delta, via the Delta Levees Program mentioned earlier, have been required to include multi-benefits such as environmental improvements. Given the paramount need to protect public health and safety, the Council should ensure that every action, project or plan it approves or undertakes use the same multi-objective requirements that levee projects are required to achieve. This would mean that all projects approved, including habitat restoration projects, <u>incorporate some incremental improvement to the flood protection and control system,</u> just as levee projects have been required to incorporate improvements to the environment in order to be considered for approval.

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[1] Any improvements in the upper areas of the Delta will need to consider potential upstream impacts of new flood control infrastructure.

A related matter is that the suite of actions and plans ultimately approved under the final DSC Plan will undoubtedly result in the movement and excavation of materials that could be invaluable in improving the levees. The plan should prioritize making appropriate sediment, rock and other materials available to local maintaining agencies, without cost, in order to improve levees at a lower cost. The CCVFCA supports the comments on dredging in the Delta submitted by Tom Zuckerman in his June 1, 2011 letter to the Council as part of this prioritization.

Flood Protection Is Paramount. A message too often lost in the Delta planning process is the fundamental significance of flood protection and control. The levees are not simply one part of the greater complex of problems focused around the Delta—or, worse, simply an inconvenient system whose impacts must be addressed. These levees are what protect people's lives, property and communities from being damaged or destroyed by floodwaters. They are absolutely critical to public health and safety; they are the primary feature that enables people to live, work and recreate in the Delta; they assure the reliability of the region for transportation, agriculture, business, and even water conveyance; and they provide this protection at all times, during both daily high tides and seasonal high-flow events.

The levees must be recognized for what they are: the highest public priority for all who live in the Delta or depend on it for their livelihood. In order to achieve the co-equal goals in the Delta Reform Act, the DSC Plan must recognize flood protection as a priority that must be maintained to protect people, property, infrastructure, habitat, and conveyance – or in other words, the three co-equal goals.

No Reduction in Flood Control Capacity. The DSC Plan should include a strong commitment to mitigating any and all such impacts the Plan's actions/recommendations/ policies may have on reducing the level of flood protection. In general, higher water levels along a floodway will require higher levees, and changes in hydraulics will require increased armoring of levees.

By way of example only, several proposals have been made to install habitat projects within the Yolo Bypass. Vegetation along or in a floodway influences hydraulics and reduces water velocity. Although the Bypass levees were designed with five or more feet of freeboard, water levels rose to within a foot of overtopping in 1986, meaning habitat restoration projects in the Bypass would invariably require levee improvements as mitigation, particularly given that the Bypass levees protect substantial lands on either side of the Bypass, including the City of West Sacramento and thousands of acres of productive farmland and habitat.

The funding to implement such mitigation should not come from the adjacent communities, but should be part of the habitat restoration project cost. This approach is inherent in the Central Valley Flood Protection Board requirement to prepare hydraulic modeling of the effect of vegetation plantings in-stream and along levees. A permanent fund should also be established, again as part of the project cost, to maintain the levee improvements necessary for mitigation.

The reclamation and levee districts that operate and maintain most flood protection and control infrastructure in the Delta rely on the local assessment roll as their primary direct funding source, and it would be highly inequitable to leave them to protect new levee improvements or higher

maintenance costs associated with the creation of habitat restoration or water supply associated with achieving the coequal goals.

Vegetation and Levees. Many of the Delta non-project levees have used substantial vegetation planting, mitigation, and management projects to enhance both flood protection and habitat values.

It is the Association's position that when vegetation is selectively chosen and incorporated into levee design, it can improve structural stability and reduce surface erosion. Proper vegetation can also reduce levee maintenance costs while providing habitat value. Unfortunately, however, the current U.S. Army Corps of Engineers (Corps) vegetation policy prohibits vegetation on and around federal project levees.

There are two logical implications of this Corps policy for the DSC Plan. First, the DSC Plan should emphasize that habitat-related projects should incorporate plants that will help provide bank stability near levees, albeit without encroaching into the clearance area designated by the Corps vegetation policy or impacting channel flow characteristics. Second, the Council should actively engage in the discussions among various Federal, State and local interests to influence a new, sound policy (variance) for California levees.

Additionally, the Council needs to recognize that Corp vegetation policy is only one of dozens of potential federal policy guidelines, such as encroachments and levee penetrations (such as pipes), affecting levees and flood facilities in the Delta and the rest of the Central Valley. The Council should therefore develop an appropriate strategy for dealing with these issues, since they will affect the ability for federal funding to be provided for recovery after a levee failure.

Emergency Preparedness. Being prepared for a catastrophic event – high water flooding or earthquake failures – requires having an effective strategy for preventing failures first, with ongoing improvements and maintenance, protocols for responding with emergency flood fighting activities, and a plan for clean-up and recovery after the event.

The DSC Plan should identify clear chain of command of, who pays for what, coordination of response and funding, and a cooperative effort to pursue federal reimbursements for recovery. A first step, may be the endorsement of the SB 27 Emergency Response Plan. Consideration of any new conveyance and habitat restoration projects in the Delta Plan, should ensure any impacts to flood conveyance or levee integrity are fully mitigated—and pro-actively upgraded (armored, raised, widened) whenever possible to make them resistant to flood and earthquake events.

Best Available Science / Transparency. The DSC Plan details the need to rely on the best available science in making decisions. In determining what science is the "best available" in the context of flood protection and control, it will be imperative to utilize the practical expertise of the engineering professionals and firms that have practiced in the Delta for decades, and have a solid understanding of both the controlling technical principles, as well as the site-specific contexts in which flood protection and control operations actually occur.

The plan should also state that all modeling and assumptions used in making decisions for future action items will be made available to the public as early as possible in the process. Transparency will enable the public to follow and review the technical basis for the Council's

decisions, and the Council will benefit from enabling third-parties to provide substantive critiques and peer review.

SPECIFIC COMMENTS ON DSC PLAN BY CHAPTER

Comments on Chapter 1
"The Delta Plan"

Page 9, Lines 31-34: PRC 29704 also says, ". . . and that improvements and ongoing maintenance of the levee system is a matter of continuing urgency to protect farmlands, population centers, the state's watery quality, and significant natural resource and habitat areas of the Delta." The DSC Plan should balance its statements describing a constant threat of flood with the fact that there have been less levee failures in the Delta thanks to the success of the Delta Levee Programs improving the stability of many levee miles in the Delta.

Page 10, line 10: This first sentence when combined with the rest of the paragraph seem to indicate that the only "valued elements of the Delta ecosystem" are the native fish species. As mentioned previously, the Delta has a diverse and abundant number of avian and terrestrial species that feed, breed, rest, and live in the Delta, including the migratory birds that rely on the Delta for respite, food, and breeding ground on their long journey through the Pacific Flyway. The DSC Plan needs to clearly identify how the protection of the 230 species of birds, 45 mammal species, 25 reptiles and amphibians, and 150 species of flowering plants will be balanced with aquatic species. These species have evolved and thrived under the primarily agricultural land use in the Delta and are not in serious decline as stated on line 10, although some are listed and in need of protection. How will these terrestrial species be affected by actions and recommendations to improve water supply? How will the DSC Plan prevent these other species from following the same "serious decline" of the Delta's aquatic species? These avian and terrestrial species are certainly important to maintaining Delta as an evolving place.

Page 10, lines 35-44: The statement that the potential for levee failure due to floods, sea level rise, and land subsidence "is real, growing, and outpaces the State's ability to manage and fund risk reduction measures" has no basis in fact, is hyperbole at best, and a dangerous misleading statement at worst. There are NO studies that have shown that the cost to maintain or improve levees exceeds the value of the land or property it protects.

Even an accurate analysis of the Jones Tract levee failure which is often highlighted in these cost-benefit discussions, shows that with a land value of about $42 million ($3,500 per acre) and a final cost to seal the breach and reclaim Jones Tract of less than $30 million, so "the cost of maintaining or improving these levees is sometimes more than the value of the use of the land" as quoted from lines 42-44 is obviously untrue. Therefore, these statements should be deleted, especially since they attempt to paint a broad brush across all of the Delta islands as being unworthy of future investment (pull the plug on the patient).

The DSC continues to rely on old or selective statistics in order to sustain the "Chicken Little" theory that the Delta's infrastructure is crumbling. Nothing could be further from the truth. The improvements to the Delta levees after increased funding provided by SB 34 for the Delta

Levees Programs from the 1980s through 2006 when the voters approved Props. 1E and 84 allow us to set the stage for determining the future levee conditions. In our letter dated January 20, 2011, the CCVFCA provided the Council 'Plate 1' showing the major levee improvements within the past 20 years where central Delta levees have been raised several feet in some areas. Based on these types of levee improvements and funding provided over the past 20 years, we are confident the Delta levees will be in even better shape following the expenditure of Props. 1E and 84.

We also take issue with the statements on lines 37-39 indicating that the risk of catastrophic failure from flood, sea level rise, and land subsidence is growing and outpaces the State's ability to manage. *First*, as mentioned previously, the Delta Levees Program investments have resulted in less levee failures from flood and overtopping since 1988. Clearly, these levee improvements have allowed reclamation districts to keep up with sea level rise and will be able to do so into the future if funded adequately, so this is not a growing problem that outpaces our ability to manage.

Second, as we stated in our January 20, 2011 letter, the Delta reclamation districts are planning for sea level rise and the State has performed studies determining the amount of work that must be performed to keep up with the projected sea level rise [study can be provided upon request]. Therefore, if continued and adequately funded, the Delta Levees Program will in fact be able to keep up with this growing problem, and will *not* be outpaced, so this sentence should be modified to describe how the Delta Levees Program can be used to keep pace with the risk factor.

Third, land subsidence is not a growing problem, and is not widespread problem, so it is certainly an issue the State and locals can keep pace with and manage. In our January 20, 2011 letter we referenced recent LidDAR data by DWR analyzed against elevations surveyed between 1974 and 1976 by USGS, which in fact show that in the 30 years between the two surveys, *subsidence did not occur* in areas that are at elevation minus 10 feet below sea level and above. Current analysis shows subsidence is limited to lands currently below elevation 12 feet NGVD and in some areas, this may be as low as minus 15 feet NGVD. We provided 'Plate 2' in our January letter showing there are about 96,000 acres out of about 700,000 acres at this elevation, so the actual area that has any possibility of subsiding at this time is **less than 14% of the entire Delta,** so it does NOT appear to be a growing problem and therefore can certainly be "managed" by the State. In addition, for the amount of acres that are actually subsiding, we do not believe, based on geotechnical analysis, that this subsidence is a significant impact on the stability of the levees, as the subsidence is predominantly occurring landward of the effective structural foundation of the levee (in the middle of the islands). Statements indicating subsidence as a significant or growing risk factor for levees is conjecture based on theory and not actual data.

Finally, we are ***very*** disturbed by the inaccuracy of the statements in this section, particularly since they are used for the basis of coming up with the offensive and ridiculous notion that Delta agriculture has an uncertain future based on these unmanageable risk factors. The biggest risk to the future of Delta agriculture and economy is the conversion of some of the most fertile, productive and water efficient farmland to aquatic habitat and water supply facilities, which the DSC Plan does not even mention as a true risk to Delta as an evolving place. The DSC Plan needs to eliminate inaccurate opinions and hyperbole regarding the inevitability of the Delta

becoming a bathtub due to unmanageable flood risks, with adding in the real threats posed by water supply and aquatic restoration activities to Delta infrastructure, flood protection, agriculture, and economy.

Page 11, lines 2-6: Since the DSC Plan continues to promote its hyperbole that sea level rise, land subsidence and seismicity as problems beyond "human ability or willingness to control", we will continue to adamantly disagree. The levee improvements that have been done since SB 34 (1988) through the Delta Levees Program and funding from Props. 1E and 84 has resulted in an increased level of flood protection. In fact, the amount of money spent on levees after 2006 (Props. E and 84) will be more than had been spent in the previous 20 years *combined*, therefore the DSC Plan should take these levee improvements into account and consider how this success can be continued into the future instead of throwing up its hands and pulling the plug.

Recommended Action Items for Chapter 1

Problem Statement: Success in the Delta without the support of the Delta Communities is difficult to envision. The people who live, work and recreate in the Delta have the most to gain in the success of a Delta Plan, and the most to lose if the Delta Plan fails. The residents of the Delta are asked to bear an inequitable amount of burden in order to achieve water supply and habitat restorations goals that benefit other areas of the state. It is unclear what benefits the Delta residents and communities receive in exchange for bearing those burdens. Venues for Delta residents to participate in evaluating how burdens being imposed on the Delta are impacting its unique values, and make recommendations on mitigations to reduce those impacts, as well as separate venues for Delta residents to identify projects, actions, and policies that would contribute in enhancing the cultural, recreational, natural resource and agricultural values need to be provided.

Near Term (2012-2017) Actions:

- Council should establish a Subcommittee of Delta residents, elected officials, local agencies, farmers and business owners to evaluate the impacts of the actions and policies to promote water supply reliability and habitat restoration that are undertaken/implemented in the first five years of the plan to determine their impacts on the economy and public safety of Delta residents.
- 2016: require the Delta Impacts Evaluation Subcommittee to report to the Council their recommendations for actions needed to mitigate negative impacts from water supply and habitat restoration projects implemented pursuant to the DSC Delta Plan so they can be incorporated into the 2017 update of the Delta Plan.
- Council should establish four subcommittees of Delta residents to report on ideas and opportunities for enhancing cultural, recreational, natural resource and agricultural values in the Delta.
- 2106: require the four Delta Values Subcommittees to report their recommendations of ideas and opportunities for enhancing cultural, recreational, natural resource and agricultural values in the Delta so they can be incorporated into the 2017 update of the Delta Plan.

Mid-Term (2018-2028) Actions:

- In 2018, 2023, and 2028, require the Delta Impacts Evaluation Subcommittee to report on the status of implementation of mitigations identified in 2016.
- In 2018, 2023, and 2028, the Council should recommend discontinuation of any water supply or habitat restoration projects that have failed to mitigate their impacts pursuant to Subcommittee recommendations.
- In 2018, 2023, and 2028, the DPC should submit a report to Council on the changes to the land uses, economic output (all sectors), and tax/assessment revenues.
- In 2018, 2023, and 2028, the Dept. of Fish and Game should report on the changes in species diversity and viability, with particular attention on all listed aquatic and terrestrial species and migratory birds since 2012.
- In 2018, 2023, and 2028, require the Delta Values Subcommittees to report on the status of implementation of their recommendations for projects, actions, and policies to enhance Delta values and identify any barriers in making progress on those projects.

Problem Statement: The Delta is a vibrant, economically productive, and biologically diverse environment with unique cultural, recreational, natural resource, and agricultural values that have been and will continue to be protected by a complex system of levees that have been improved to keep pace with changes in the Delta and require perpetual maintenance, improvements and repairs. The narrative should be modified to reflect the true and accurate nature and status of the Delta levees, economy, land uses, terrestrial and avian species, cultural events, and recreation values in the Delta that accurately reflects a thriving region, rather than a patient on life support.

Near Term (2012-2017) Actions:

- Identify and list programs in the Delta that have proven to be successful in maintaining the Delta as an evolving place that could be supported, expanded, duplicated, and/or funded. Examples include, but are not limited to the Delta Levees Program, North Delta Water Agency 1981 Contract, Williamson Act, and plans that have been developed and successfully implemented for Suisun Marsh, Yolo Wildlife Refuge, Stone Lakes Refuge, and County HCPs.
- Balance the narrative so DSC Plan also identifies the threat that conversion of large areas of agriculture land for aquatic habitat restoration and new water conveyance facilities in the Delta, mentioned on page 12, pose to protecting and enhancing the Delta values pursuant to PRC 29702(a) and to ensuring an increased level of flood protection pursuant to PRC 29702(d).
- Recommend the Delta Conservancy pursue funding opportunities to replace the State's payment to counties of foregone property revenues under the Williamson Act to keep this land under contract to maintain the open space/agricultural easements in the Delta. This will aid in meeting the goals of PRC 29702 (a).
- Integration of existing information and data currently available on the Delta, including how agencies coordinate their efforts.
- Require Dept. of Fish and Game to report to the Council individual and cumulative impacts to terrestrial species, including migratory birds from implementation of actions and policies in accordance with the DSC Plan.

Comments on Chapter 2
"Science and Adaptive Management for a Changing Delta"

Page 31, lines 2-9: On line 5 after "scientists" add: "local experts". There are several local engineers with expertise and knowledge regarding Delta levees that scientists and decision-makers will not have, so this should be utilized whenever possible.

Recommended Action Items for Chapter 2

Problem Statement: Success in the Delta without the support of the Delta Communities is difficult to envision. Their direct participation is critical in light of the significant amount of land proposed for conversion and the high level of uncertainty associated with habitat restoration projects in the Delta. The need to have local residents be part of this evaluation is particularly critical since page 24, line 29 points out there are "irreversible consequences" that could occur "for wrongly predicting the outcomes of the action," and most of the ecosystem restoration projects have a high degree of uncertainty. The participation of the Delta Communities and residents in the ongoing management, monitoring, and adaptive management of ongoing habitat projects in the Delta will also provide local knowledge and expertise to the process including feasibility and potential alternatives, and will help identify ongoing third-party impacts and necessary mitigations .

Near-Term (2012-2017) Actions:

- Council should appoint Delta residents to the Adaptive Management evaluation and monitoring team to provide local expertise, input, and recommendations for alternatives and mitigation.

Mid-Term (2018-2028) Actions:

- The Delta residents on the AM team should report to the Council on their evaluation of the Adaptive Management program to address local concerns regarding implementation and on-going management of habitat restoration projects in the Delta.

Comments on Chapter 5
"Restore the Delta Ecosystems"

Page 62, lines 7-13: This section should define when the significant species declines occurred, specifically whether the steep declines happened in the early or late 20th century, or 21st century. While the factual information regarding the number of levee miles constructed and how long ago domestication occurred is true, postulating that these activities are the cause of the species decline is opinion, speculation, and incorrect. Certainly true that land/water manipulation impacted aquatic species *habitat* between 1850 and 1917, but the DSC Plan needs to accurately reflect its level of contribution to actual aquatic species *population* decline. If Delta levees have been in place for 160 years, but the aquatic species populations did not begin significantly declining until the last 10-20 years, then it is more accurate to state the existence of levees had minimal impact on the native species for more than 100 years. Therefore, the decline of species

populations seems to correlate with man building reservoirs and exporting water in the mid-20th century than the levee infrastructure in place since the late 1800s, without any recordation of significant aquatic species population decline between 1880-1980. **The wording of this section needs to be modified to make clear that the land domestication resulted in modification of the aquatic species' habitat, but not the aquatic species population based on historical fish numbers between 1880s and 1980s.**

Page 66, lines 34-37 and line 34-40: The majority of 1,100 miles of levees in the Delta were built in the late 1800s and the last Delta island was formed with levees around 1917. Very few "rapid and dramatic" changes have occurred in the land configuration for more than 90 years, so this statement of when this rapid change occurred, needs to be corrected, to be clear it occurred more than 100 years ago, but did not continue to occur for the whole 160 years indicated here. In fact, if you took a 1911 map of the Delta and superimposed it over the 2011 Delta it would look essentially identical, with a few exceptions such as the addition of the Deep Water Ship Channel. Therefore, with all due respect to Doctors Healey, Moyle, and Baxter referenced on line 19, there has *not* been "rapid and dramatic" land alterations for more than 90 years. Since the altered landscape existed since 1880s thru 1920s, but fish populations did not show significant decline until the late 20th century, more than seventy years after the final alteration of the Delta to what it is today was complete, so this conclusion is factually untrue. We have all of the documentation regarding when these levees were constructed and islands formed and they **DO NOT** correlate with when the aquatic species populations began their "rapid decline." We will provide this factual documentation of island formation if requested. It is particularly offensive since the language stating the rapid decline in habitat led to species population declines is bolded for emphasis on lines 35-37. It is true the landscape was rapidly altered to create the Delta today, which certainly altered the species habitat, but it was in place for 40-100 years before the aquatic species populations began to decline significantly. Most of the fish species were not listed until the 1990s, almost 70 years after Delta reclamation was completed. **This language should be amended to say this landscape transformation altered native aquatic species habitat and *delete* reference to causing aquatic species population declines unless specific studies can be cited showing this specific nexus.**

Page 66, lines 23-25: Since the land configuration of the Delta has been primarily the same as it was 100 years ago, the species have had a very stable landscape configuration for quite a while. **The many thriving non-native aquatic species referenced are a result of being introduced by man, not due to the alteration of the landscape with levees in the 19th century, so this should be corrected.**

Page 67, lines 8-30: **The DSC Plan should expressly prioritize evaluating all potential actions, projects and programs for ways to incorporate integrated flood protection and control enhancements.** Habitat, recreation, water supply, and transportation projects in particular provide significant opportunities for heightened flood protection and control. This approach makes simple economic sense, i.e., trying to achieve as many goals as possible through each proposed action. Moreover, new improvements—habitat or conveyance infrastructure or

both—will require flood protection or themselves be at risk of being damaged by high-flow events.[2]

For decades, levee improvement projects in the Delta, via the Delta Levees Program mentioned earlier, have been required to include multi-benefits such as environmental improvements. Given the paramount need to protect public health and safety, the Council should ensure that every action, project or plan it approves or undertakes use the same multi-objective requirements that levee projects are required to achieve. **This would mean that all projects approved, including water conveyance and habitat restoration projects, <u>incorporate some incremental improvement to the flood protection and control system,</u> just as levee projects have been required to incorporate improvements to the environment in order to be considered for approval.**

<u>Page 67, lines 27-30, [ER P4]:</u> **This should *<u>not</u>* be a mandate imposed on local reclamation districts.** If an evaluation of using setback levees is to be required every time a reclamation district needs to rehabilitate, reconstruct, or construct new levees to provide public safety and keep up with sea level rise, in order to achieve ecosystem restoration that benefits the state as a whole or water supply operations, then this should only be a requirement if state or beneficiary funding is provided to conduct this additional level of analysis. Persons in one county, or reclamation district, should not be compelled to subsidize, even an additional layer of analysis, of the construction of a project that will entirely benefit persons in another county or the state as a whole. Many Delta levee reclamation districts have small operation and maintenance budgets and save for years for construction projects, so this additional analysis requirement will impose a financial burden on them. This means that reclamation districts, which have very small annual budgets, will not have funds to implement routine maintenance of their levees for years to come if a portion of their funds have to pay for this new analysis. Over the long term, this means the levees of these districts will *not* be able to keep up with their maintenance needs through no fault of their own. DSC Plan should make this an optional analysis ***if*** state funding is providing for the additional layer of analysis. In addition, setback levees are <u>not</u> feasible in areas that are already in farming and other uses. Setback levees that interfere or result in taking of existing permanent crops and homes should <u>not</u> be a priority. **The caveat of setback levees "where feasible" has been removed and is a significant step backward for this process and should be added back in. Setback levees in the Delta general do not improve flood capacity due to the overriding affect of the tide, however, along upstream reaches of the Delta, minor setbacks of levees with known deficiencies within the State Plan of Flood Control could be investigated and coordinated *with local stakeholders*.**

<u>Page 67, lines 39-44 and page 68, lines 1-2:</u> Most of the restoration projects recommended for prioritization are in fact flood projects that propose to alter and breech project levees that are critical components of the State Plan of Flood Control. In general, higher water levels along a floodway will require higher levees, and changes in hydraulics will require increased armoring of levees. **The DSC Plan should include a strong commitment to mitigating any and all such**

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[2] Any improvements in the upper areas of the Delta will need to consider potential upstream impacts of new flood control infrastructure.

impacts the Plan's actions/recommendations/ policies may have on reducing the level of flood protection.

By way of example only, several proposals have been recommended to install aquatic habitat projects within the Yolo Bypass, or modify the Bypass' existing flood control structures. Vegetation along or in a floodway influences hydraulics and reduces water velocity. Although the Bypass levees were designed with five or more feet of freeboard, water levels rose to within a foot of overtopping in 1986, meaning aquatic habitat restoration projects in the Bypass would invariably require levee improvements as mitigation, particularly given that the Bypass levees protect substantial lands on either side of the Bypass, including the City of West Sacramento and thousands of acres of productive farmland and natural and developed terrestrial habitats.

The funding to implement such mitigation should not come from the adjacent communities, but should be part of the aquatic habitat restoration project cost. This approach is inherent in the Central Valley Flood Protection Board requirement to prepare hydraulic modeling of the effect of vegetation plantings in-stream and along levees. **A permanent fund should also be established, again as part of the habitat project cost, to maintain the levee improvements necessary for mitigation.**

The reclamation and levee districts that operate and maintain most flood protection and control infrastructure in the Delta, rely on the local assessment roll as their primary direct funding source, and it would be highly inequitable to leave them to protect new levee improvements or higher maintenance costs associated with the creation of aquatic habitat restoration or water supply infrastructure projects without outside funding.

With the DSC Plan recommending large areas of ecosystem restoration as a long term goal, this may result in a future deficiency of suitable land for mitigation of future projects to benefit Delta communities. The Delta communities should not be left unable to pursue necessary projects such as levee improvements to keep up with sea level rise or stabilize for seismic risk, because of lack of available, suitable mitigation habitat, as it will prevent the Delta from "evolving as a place." **The Council should think creatively about ways to set aside some habitat developed as part of large-scale projects, and use it expressly to mitigate for ongoing future local projects.**

<u>Page 68, lines 3-17:</u> The DSC Plan should expressly prioritize evaluating all potential actions, projects and programs for ways to incorporate integrated flood protection and control enhancements. Habitat, recreation, water supply, and transportation projects in particular provide significant opportunities for heightened flood protection and control. This approach makes simple economic sense, i.e., trying to achieve as many goals as possible through each proposed action. Moreover, new improvements—habitat or conveyance infrastructure or both—will require flood protection or themselves be at risk of being damaged by high-flow events.[3]

For decades, levee improvement projects in the Delta, via the Delta Levees Program mentioned earlier, have been required to include multi-benefits such as environmental improvements.

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[3] Any improvements in the upper areas of the Delta will need to consider potential upstream impacts of new flood control infrastructure.

Given the paramount need to protect public health and safety, the Council should ensure that every action, project or plan it approves or undertakes use the same multi-objective requirements that levee projects are required to achieve. **This would mean that all projects approved, including habitat restoration projects, <u>incorporate some incremental improvement to the flood protection and control system,</u> just as levee projects have been required to incorporate improvements to the environment in order to be considered for approval.**

<u>Recommended Actions for Chapter 5</u>

Problem Statement: Most of the habitat restoration projects supported in the DSC Plan and proposed in the biological opinions and BDCP, are in fact flood control projects, as they rely on modifications, including breeching, of Project Levees and bypasses that are part of the State Plan of Flood Control system. Changes to the flood control system to benefit aquatic species can increase the risk to people and property in the Delta and beyond. These Project levees and bypasses are absolutely critical to public health and safety; they are the primary feature that enables people to live, work and recreate in the Delta; they assure the reliability of the region for transportation, agriculture, business, and even water conveyance; and they provide this protection at all times, during both daily high tides and seasonal high-flow events.

Near-Term (2012-2017) Actions:

- In order to achieve the co-equal goals, the DSC Plan must recognize flood protection as a priority that must be maintained to protect people, property, infrastructure, habitat, and conveyance – in other words – the three coequal goals pursuant to PRC 29702.
- The DSC Plan should expressly prioritize evaluating all potential actions, projects and programs for ways to incorporate integrated flood protection and control enhancements. This would mean that all projects approved, including habitat restoration projects, <u>incorporate some incremental improvement to the flood protection and control system,</u> just as levee projects have been required to incorporate improvements to the environment in order to be considered for approval. This will help balance the coequal goals.
- The Council should adopt a strong policy commitment to having project proponents and beneficiaries mitigating any and all such impacts the Plan's actions/recommendations/ policies may have on reducing the level of flood protection.
- Establish a fund to pay for mitigating any and all flood protection impacts the Plan's actions/recommendations/ policies may have, including levee improvements necessary for mitigation such as seepage berms or armoring a levee.
- Recommend the Legislature eliminate the sunset on the existing Delta Levees Program (July 1, 2013) and allow the program to fund the full cost of evaluating setback levees as an alternative in submitted levee improvement projects.

Problem Statement: The Delta region should not be saddled with unmitigated impacts and disproportionate burden for improving habitat, because persons in one county should not compelled to subsidize, even at fair market value, the construction of a project that will entirely benefit persons in another county. Creating aquatic habitats are likely to create negative impacts to third parties including seepage damage to crops, erosion of levees protecting lives and

property, entice listed species to areas creating ESA burdens, alter water elevations and access to water supply, and other impacts. In addition, there may be statewide benefit actions that the DSC Plan recommends pursuing such as in ER P4 (setback levees) to increase aquatic habitat that should not be the financial responsibility of local landowners, especially if the projects benefit the ESA compliance for SWP and CVP. With the DSC Plan recommending large areas of ecosystem restoration as a long term goal, this may also result in a future deficiency of suitable land for mitigation of future projects to benefit Delta communities. The Delta communities should not be left unable to pursue necessary projects such as levee improvements to keep up with sea level rise or stabilize for seismic risk, because of lack of available, suitable mitigation habitat, as it will prevent the Delta from "evolving as a place." The Council should think creatively about ways to set aside some habitat developed as part of large-scale projects, and use it expressly to mitigate for ongoing future local projects.

Near-Term (2012-2017) Actions:

- Establish a fund for pay for the relocation or consolidation of in-Delta diversions and discharges as well as third-party impacts to neighboring properties. All habitat projects should have to pay a certain amount into that fund prior to implementation. The funding to implement such mitigation should not come from the adjacent communities, but should be considered part of the project cost.
- Establish a fund to pay for in-lieu property taxes and assessments for lands converted to habitat and make each project pay into the fund prior to construction/implementation.
- Council should direct the Delta Conservancy to identify a process or program for having each habitat restoration project contribute mitigation credits to a bank for local reclamation districts to use for mitigating their levee improvement projects. This is critical to avoid lack of available habitat being available for mitigation of levee improvement projects if lands are already protected and spoken for in BDCP, County HCPs, or other easements. The amount of land allowed to be used as habitat to benefit areas outside of the Delta, such as for ESA requirements for the operation of the SWP and CVP, should be regulated to assure that sufficient lands remain for local entities such as a reclamation district to use for mitigation of a levee improvement project such as setback levee or to keep up with sea level rise. The issue of supply and demand for available mitigation land, due to land being removed from availability by BDCP and the Delta County HCPs, will drive up the cost of levee improvement projects.
- Each ecosystem measure/action/project should require a monitoring and management plan and securitized funding to pay for project management, maintenance, data collecting, modeling, operation, and mitigation. The Management Plan should specify the detailed discontinuation process to be followed if the project's management plan is not being followed or funding not being provided. The funding to implement such a management plan should not come from the adjacent communities, but should be part of the habitat restoration project cost.
- Consistent with the Delta Conservancy policy in PRC 23266 & 32370, the DSC should also preclude the use of eminent domain (except when requested by the landowner) to obtain habitat and include strong policies to coordinate with local agencies and landowners in planning and implementing habitat projects.
- Council should describe the significant existing terrestrial and migratory bird habitat values maintained in the Delta on agricultural lands and recommend policies to the DPC

and Delta Conservancy to protect and maintain those values through incentives such as conservation easements or payment of Williamson Act if the State discontinues these payments to counties.

- Adopt a policy requiring any habitat projects, including those in ER R1, comply with ecosystem plans or other agreements developed for those regions such as the 'Suisun March Habitat Management, Preservation, and Restoration Plan EIS/EIR,' the 'Yolo Bypass Wildlife Area Land Management Plan,' County HCPs, or other agreements that have criteria that result in protection of species such as the NDWA 1981 Contract.
- Provide ESA/CESA take authority and funding for in-Delta water diversions for in-Delta use to mitigate their impacts for ecosystem restoration projects that succeed in enticing listed aquatic species to their area.

Mid-Term (2018-2028)

- Evaluate Delta Conservancy's progress in facilitating safe harbor agreements and take protection pursuant to PRC 32322(b)(11).

Comments on Chapter 7
"Reduce Risk to People, Property, and State Interests in the Delta"

Page 87, lines 26-33: Chicken Little crows his mantra of panic and fear once again. This section leads the public to believe that the patient's death is unavoidable, so let's just pull the plug now, and not bother providing anymore medical care or medications to keep her healthy. The risk of flooding in the Delta "increasing over time" or the failure of significant parts of the Delta are "unavoidable" would ***only*** be true if the local reclamation districts, the State, and the DSC Plan chose to stop investing in levee maintenance and improvements in the Delta. Until this kind of hyperbole is balanced against the truth about the levee investments and improvements made in the Delta over the last 23 years through the Delta Levees Program, it will lead many Delta stakeholders and the public to conclude that they should not bother investing in planning for and managing this risk through levee improvements. This passage is a glaring example of the negative narrative discussed in the beginning of our comments, and will unfortunately undermine any credible efforts to maintain and improve Delta levees over time, which would be detrimental to reliable water supply, protection of habitat, and protecting Delta as an evolving place.

Page 88, lines 15-34: FEMA's designation of floodways when mapping floodplains is different than the Title 23 CCVFPB authority, so should be distinguished from each other as they are not interchangeable. Also, *floodplains* and mapping of floodplains and designating *floodways* are two different things, with similar but different regulatory and land use ramifications, and should therefore not be confused with each other. They are not interchangeable. Floodways have not been designated by FEMA in the Delta, but could be selected by the communities themselves and incorporated into their NFIP program, so the DSC could encourage the Delta communities to do so. The three components of the National Flood Insurance Program (NFIP) are: 1) flood insurance; 2) *floodplain* management; and 3) flood hazard mapping. Communities can participate in the NFIP by adopting and enforcing floodplain management ordinances to reduce future flood damage. In exchange, the NFIP makes federally-backed flood insurance available to homeowners, renters, and business owners in these communities. *Community participation in*

NFIP is voluntary. Flood insurance is designed to provide an alternative to disaster assistance to reduce the escalating costs of repairing damage to buildings and their contents caused by floods, *the ounce of prevention theory*. In addition to providing flood insurance and reducing flood damages through floodplain management regulations, the NFIP identifies and maps the nation's *floodplains*. Mapping flood hazards is intended to create broad-based awareness of the flood hazards, provide data needed for floodplain management programs, and to actuarially rate new construction for flood insurance. **Line 25, after 'FEMA' add: 'can'. Line 26, after 'floodways' add: 'in coordination or upon recommendation of the local communities'. On line 27, after 'floodways' add: 'and floodplains".** The CCVFCA agrees that the CVFPB using their authority under Title 23 for designating floodways is an appropriate mechanism for the management of development in floodplains. Development of the lands within the Delta is currently controlled by County land use policies, FEMA's current remapping program of floodplains, and the authority of the Delta Protection Commission. When considering future land use strategies, the Delta residents and counties will need to be involved to assure development policies will balance sustainable economies of the Delta with reducing flood risks.

<u>Page 89, lines 3-5, [RR P2] and lines 6-20, [RR P3]:</u> This encroachment prohibition should also specifically include aquatic habitat restoration projects and water supply projects implemented to achieve the coequal goals. **The DSC Plan should expressly prioritize evaluating all potential actions, projects and programs, including habitat restoration and water supply projects, for ways to incorporate integrated flood protection and control enhancements**. Habitat, recreation, water supply, and transportation projects in particular provide significant opportunities for heightened flood protection and control. This approach makes simple economic sense, i.e., trying to achieve as many goals as possible through each proposed action. Moreover, new improvements—habitat or conveyance infrastructure or both—will require flood protection or themselves be at risk of being damaged by high-flow events.[4] In addition, the authority of a Local Agency to use assessment funds for restoring species and riparian habitat may be in question based on recent court decisions, such as, *Silicon Valley Taxpayers' Ass'n, Inc v. Santa Clara County Open Space Authority*, 44 Cal.4th 431 (2008). Also the high cost of these additional public benefit components in proportion to the amount of flood protection they provide also are often beyond the locals' ability to pay.

For decades, levee improvement projects in the Delta, via the Delta Levees Program mentioned earlier, have been required to include multi-benefits such as environmental improvements. Given the paramount need to protect public health and safety, the Council should ensure that every action, project or plan it approves or undertakes use the same multi-objective requirements that levee projects are required to achieve. This would mean that all projects approved, including habitat restoration projects, <u>incorporate some incremental improvement to the flood protection and control system,</u> just as levee projects have been required to incorporate improvements to the environment in order to be considered for approval.

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[4] Any improvements in the upper areas of the Delta will need to consider potential upstream impacts of new flood control infrastructure.

Page 89, lines 14-20: This bullet refers to reclamation districts as 'R-2075, R-2064," etc. This is inconsistent with common practice of referencing reclamation districts. **It should be 'RD 2075, RD 2064,' etc.**

Page 89, lines 22-31, [RR R1 and RR R2]: The CCVFCA supports both of these recommendations.

Page 90, lines 1-5: This section needs to be balanced with ***current*** facts and data regarding the reduced number of levee failures over the last 23 years and the ***current*** condition of levees (provided to DSC by Gilbert Cosio in a letter dated April 8, 2011) which should not be categorized as poor. It is true than many levees overtopped prior to the 1980s, but that was 30 years ago and a lot of progress in improving levees has been made since then. The Delta levee improvements implemented since SB 34 passed in 1988 (Delta Levees Program), have resulted in nearly ***all*** levees in the Delta currently being ***above*** the 100-year floodplain, and the failure due to high tides or high flows has been essentially eliminated. **These advancements in reducing risk for levee failure should be recognized and the Delta Levees Program highlighted as one of the most successful and cost-effective means of reducing the risk of levee failures in the Delta.** Alleviating ALL risk will be too expensive to implement, **therefore the DSC Plan should identify opportunities to reduce risk and fund recovery after a disaster occurs**. Mr. Cosio's letter made it clear that ALL of the Project levee miles already are above the 100-year floodplain and *exceed* PL 84-99 standards, and identified a remaining 504 miles of non-project levees in need of rehabilitation to meet PL 84-99 standards. It should be noted that many levee improvements have been made with the Prop. 1E and 84 funding, so the cost identified in the Cosio letter would likely be less, but should be examined and re-evaluated by DSC to ascertain the true cost in 2011.

Page 90, lines 16-17: It should be noted that this FEMA Hazard Mitigation Plan standard ***only*** applies to non-Project levees in the Delta; and ***only*** those that do not have restriction such as levee height due to their existence in the flood bypasses (they are designed to allow high flood flows), or restrictions due to other requirements. The DSC Plan should also document how many miles of levees this pertains to.

Page 90, lines 18-24: This section also needs to clarify that most Project levees in the Delta, if not all Project levees, already exceed PL 84-99 standards. **The section should also identify which levees do not meet this standard and recommend which ones should be improved to this standard in the near-term and which ones in the long-term through a phased timeline.**

Page 91, lines 5-6: This statement is wrong. As previously stated, most if not all Project levees in the Delta already *exceed* PL 84-99 standards, and nearly all levees in the Delta are above the 100-year floodplain, and failures due to high tides or high flows has been essentially eliminated, thanks in large part to the success of the Delta Levees Program.

Page 91, Table 7-1: This table indicates that Class 2 and Class 3 levee system classifications, which are HMP and PL 84-99, are current DWR non-urban levee design criteria. As far as we know, these two classifications have not been accepted or adopted by DWR as any sort of design criteria, so this is incorrect. In addition, the CCVFCA does not consider HMP to be an

acceptable levee standard, but rather a *minimum interim* levee standard to satisfy FEMA's minimum requirements to participate in future disaster assistance, while a PL 84-99 standard is pursued. **We consider the PL 84-99 agricultural standard as the minimum acceptable level of protection against failure due to flooding, so Table 7-1 should be change HMP to PL 84-99 criteria. PL 84-99 is the standard to strive for once the minimum is reached because it also enables federal participation in levee repair and rehabilitation after a levee failure, effectively leveraging federal dollars.**

Page 92, lines 1-4, [RR P5]: "Any action" is too sweeping and would jeopardize public safety if it prevents actions to prevent seepage such as berms. If this accommodation for setback levees is for the purpose of habitat goals, then it **should not be a mandate, should be willing sellers, should not be a cost shouldered by the local reclamation district or landowners, and should not be allowed if it prevents actions to protect life and property**.

Page 92, lines 6-11: This section should also list the benefits and Delta values listed in Water Code Section 12981 and PRC Section 29702(a) and (d).

- Water Code 12981: "(a) The Legislature finds and declares that the delta is endowed with many invaluable and unique resources and that these resources are of major statewide significance. (b) The Legislature further finds and declares that the delta's uniqueness is particularly characterized by its hundreds of miles of meandering waterways and the many islands adjacent thereto; that in order to preserve the delta's invaluable resources, which include highly productive agriculture, recreational assets, fisheries, and wildlife environment, the physical characteristics of the delta should be preserved essentially in their present form; and that the key to preserving the delta's physical characteristics is the system of levees defining the waterways and producing the adjacent islands. However, the Legislatures recognizes that it may not be economically justifiable to maintain all delta islands. (c) The Legislature further finds and declares that funds necessary to maintain and improve the delta's levees to protect the delta's physical characteristics should be used to fund levee work that would promote agricultural and habitat uses in the delta consistent with the purpose of preserving the delta's invaluable resources."
- PRC 29702: "(a) Achieve the two coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resources, and agricultural values of the Delta as an evolving place.
- PRC 29702: (d) Improve flood protection by structural and non-structural means to ensure an increase level of public health and safety.

Page 92, lines 30-38, [RR P6]: Add additional items eligible for utilizing state investments:

- Protects and enhances the unique cultural, recreational, natural resources, and agriculture values of the Delta as an evolving place, pursuant to PRC 29702(a) and working landscapes pursuant to PRC 32322(b)(2).
- Improves water quality to protect human health and the environment consistent with achieving water quality objectives in the Delta pursuant to PRC 32322(b)(6), PRC 85004(e), and PRC 85021(d)(6).

- Vital transportation corridors for cars, ships, and recreational boats; energy pipelines and corridors, and other vital infrastructure.

Page 93, lines 21-23: This problem statement is too narrow in scope and should be expanded to include transportation and energy corridors, recreation, and agriculture. It is a known fact that when a levee fails, it put extreme pressure on neighboring levees due to seepage and future wave wind fetch forces. These erosive forces have been documented thoroughly and therefore should be recognized in the problem statement.

Page 93, lines 27 thu Page 94, line 3: The best form of emergency preparedness is prevention, or at least reduce the frequency of failure by reducing risk. Therefore, an additional action should be added as a bullet:

- Establish a minimum factor of safety or minimum level of protection, such as PL 84-99 criteria for Delta levees so that uncertainty surrounding the weak spot of the system can be alleviated over time.

Page 93, lines 37-40: The cost to prepare a plan as described here would cost more than the annual levee maintenance budget of most Delta reclamation districts. Limited local district dollars are better spent on actions (levee maintenance and improvements) to reduce the risk of flood, rather than more plans. Preparation of emergency response plans for individual reclamation districts should be paid for by the State, so that the limited budgets of the local districts can be used for moving dirt, for maintaining and improving levees to defend against floods, earthquakes, and sea level rise.

Page 94, lines 31-40 and Page 95, lines 2-19, [RR R6]: As has already been stated, the Delta Levees Program is one of the great success stories of the Delta and is responsible for reducing the risk of levee failures in the Delta for the past 23 years. In addition, the local reclamation districts have a process to finance local levee operations, maintenance, and improvements, so we fail to see what is broken that needs to be fixed as far as process, except that the Delta Levees Program current cost share is due to sunset on July 1, 2013. Therefore, the recommendation to abandon the current process for financing local flood management activities in favor of creating a new flood management agency is premature, not well defined, and not currently supported by local levee maintaining agencies. The CCVFCA has concerns about the effect the creation of a Delta-wide benefit assessment district for flood management would have on the ability of local Reclamation Districts to secure funding to keep their levees up with changing standards and future sea level rise. Currently, this recommendation lacks sufficient details on how it would be formed, who it would assess, who can serve on the new district, how local levee maintainers would access funding for their levees, and many other unknowns at this time. Existing entities already have the authority to do the actions listed on page 95, lines 6-17, so we do understand the justification or need for a 201st agency to be created. **Therefore, the CCVFCA requests the Council abandon this recommendation and instead work with the CCVFCA and Delta Reclamation Districts to develop a plan for more efficient distribution of subvention funds, reducing costs of meeting increasing regulatory requirements, and identify additional sources of revenue to fund these activities.**

Recommended Actions for Chapter 7

"Flood Protection"

Problem Statement: The State Legislature only extended the sunset date of the existing Delta Levees Program until 2013, because it wanted to wait to see what the DSC's Delta Plan recommends long term. Since the Delta levee improvements have been implemented over the last 23 years, pursuant to SB 34 passed in 1988 (Delta Levees Program), nearly ***all*** levees in the Delta are ***above*** the 100-year floodplain, and the failure due to high tides or high flows has been essentially eliminated. Therefore, this program as currently defined in statute should have the sunset removed, so that it can continue for the next 23+ years. Additionally, the Delta Levee Program has been a critical factor in maintaining the levee HMP criteria. If the non-Project levees are not at least maintained at the HMP minimum level, the State risks losing key Federal funding for Disaster Assistance. The Federal disaster payments typically pay for 75% of the recovery costs following a flood event and subsequent levee failures. These costs would be borne by the State and local agencies if the minimum levee standards are not maintained, and valuable Federal funding will not be available.

Near-Term (2012-2017) Actions:

- The Council should recommend the Legislature approve legislation to eliminate the sunset date (July 1, 2013) on the existing Delta Levees Program as currently defined, Water Code Section 12986 and 12987.5, since it has proven itself to be a successful and cost-effective program over the last 23 years. ***Suggested amendment to Water Code 12986(d):*** **~~This section shall become inoperative on July 1, 2013, and, as of January 1, 2014, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2014, deletes or extends the dates on which it becomes inoperative and is repealed.~~**
- For the State to maximize the projects which may be constructed during the life of Props. 1E and 84 (thru 2016), the Council may want to consider requesting the Legislature also amend Water Code Section 12986(a)(2) to make the state's cost share portion a minimum instead of a maximum, so that if other statewide significant goals (coequal goals) can be achieved in a levee project, then the state's cost share would increase accordingly. ***Suggested amendment to Water Code 12986(a)(2):*** **~~Not more than~~ <u>At least</u> 75 percent of any costs incurred in excess of one thousand dollars ($1,000) per mile of project or nonproject levee shall be reimbursed.**
- Amend the Delta Levees program to allow a higher state cost share to Disadvantaged Communities as defined in Water Code Section 79505.5.
- Amend Delta Levees Program to offer 100% cost share for rural areas that volunteer to provide transitory storage to produce regional flood control benefits or for rural areas that agree to establish agricultural easements over their properties to limit future development in the floodplain.
- Investigate opportunities and methods for increasing overall levels of funding for Delta levee maintenance and improvements, improving reliability and timeliness of bond payments, and reducing regulatory roadblocks to levee maintenance and improvement.

Problem Statement: Maintaining the Delta levees for flood control provides multiple benefits to the State and is recognized in several sections of the Water Code, Public Resources Code, and the Delta Protection Act. Both Project and non-Project levees are critical elements to the State's ability to convey water through the Delta and maintain water quality as part of water supply reliability. Even if new conveyance facilities are ever built, the export of water from the Delta will still require the use of the South Delta pumps and conveyance of water through the Delta, so the long term stability and maintenance of these levees will remain critical components of a sustainable export supply of water. In addition, the levees are also critical to protecting the other coequal goals of protecting the Delta ecosystem and Delta as an evolving place, including protecting life and property.

Near-Term (2012-2017) Actions:

- Update the 1999 CalFED study done by KSN and MBK engineers identifying which levees do not meet PL 84-99 criteria and recommend phased work to get each levee up to the PL 84-99 criteria in a set timeframe. There is no more effective way to leverage federal funds than by retaining flood control works' eligibility in PL 84-99 because the repair and recovery costs after a flood event are 100% federally funded.
- Adopt a policy that any levee protection standards higher than PL 84-99 criteria (e.g.: earthquake stability or setback levees) shall be paid for State and/or other beneficiaries.
- Immediately send an *urgent request* to the U.S. Army Corps of Engineers to delay their strict enforcement of the Corps' existing policy on levee vegetation removal until the Corps can work with the State and local maintaining agencies to develop a variance for the Central Valley that balances maintaining some level of levee vegetation (habitat) that does not compromise the integrity of the levee or inhibit inspections and flood fighting. Also request the Corps to confirm in writing that vegetation planted as part of the SRBPP and other federally funded projects are *not* in violation of the Corps' vegetation policy, consistent with the current Operation and Maintenance Manual and other flood control guidance, and required by environmental laws, in order to prevent districts from removing levee vegetation or losing PL 84-99 eligibility.
- Adopt a policy to require DSC Delta Plan habitat restoration and water supply projects in the Delta to include flood protection and control enhancements as part of their multi-purpose objective, which is consistent with PRC 29702 "to ensure an *increased* level" of flood protection.
- Investigate opportunity areas and designs, compatible with local land uses and landowner objectives, to incorporate minor setback levees to provide channel margin habitat during levee rehabilitation. Offer higher cost-share to levee rehabilitation projects that provide channel margin habitat through minor levee setbacks.
- Direct the CA Water Commission to request federal funding for upgrading non-project levees to PL 84-99 standards in the Delta, which is consistent with PRC 29702 "to ensure an *increased* level" of flood protection .
- Direct DWR Delta Levees Program pay 100% for evaluation of levee setbacks pursuant to DSC recommendation suggested in RR P5, page 92.
- Direct DWR to do a study on levees critical to statewide interest for maintaining reliable water supply and make recommendations on a plan for the State to pay to upgrade these high priority levees to a higher earthquake standard to benefit statewide water supply reliability.

- Require establishment of permanent funding mechanisms (including long-term maintenance) for mitigation of any changes in water elevations, and changes in water hydraulics, for projects that are detrimental to effective flood control system, by proponents of water supply and habitat restoration actions, projects and programs in the Delta.

Mid-Term (2018-2028) Actions:

- Start a phased levee improvement program for beneficiaries and/or the State to finance the upgrades on levees critical to reliable statewide water supply to an earthquake standard that is higher than required to meet existing land uses.
- Evaluate progress in completing levee improvements to get all levees up to PL 84-99 criteria based on the phased plan mentioned in previous near-term recommendation.
- Report on compliance with the policy to require habitat restoration, recreation, water supply, and transportation projects in the Delta to include flood protection and control enhancements as part of their multi-purpose objective.
- Report on progress of the State in upgrading levees for seismic stability to protect statewide water supply reliability.
- Direct DWR to present a report, developed cooperatively with the USACE and local reclamation districts, on impacts to the level of flood protection in State Plan of Flood Control as a result of water supply reliability and habitat restoration projects implemented pursuant to the DSC Plan.

Long Term (2029-2100) Actions:

- Evaluate the project and non-project levees in the Delta in terms of their effectiveness in keeping up with sea level rise.

"Emergency Response"

Problem Statement: Our current system of emergency response disempowers the lowest level of government "command" (Reclamation Districts, local government such as county Office of Emergency Services) and forces decisions for relatively modest levee problems to higher levels of command or levels of government (DWR, State OES, Federal government agencies) where either decision making authority and/or funding is available. The lowest level of command are the first people on the scene; the RD officials and their engineers, then come the County, DWR, and Federal officials in the field. The local RD has the best information and can make the fastest assessment of problem. However, for problems that go beyond sandbags, we have an upside down funding system where the RDs quickly throw up their hands due to lack of readily available funds. Consequently, response to the emergency event is delayed due to the need to transfer information to these higher levels of command who have probably not been on the ground to assess yet (e.g. County OES, DWR, State OES, USACE) in order to release the needed funding. A good emergency response system empowers and encourages the lowest level of command that can deal with a problem the fastest and lowest cost, to deal with it quickly and arms them with detailed pre-planned responses.

Near-Term (2012-2017) Actions:

- Convene work groups with federal, state, and local responders to investigate the opportunities and feasibility of SB 27 key recommendations and determine which key recommendations to develop the detailed logistics on how they would be implemented.
- Convene a work group, including Delta RDs, to develop flood contingency maps.
- Convene a work group, including Delta RDs, to create efficiencies in the multi-agency response system with clear chain of command of existing authorities and pre-assignments identified.
- Convene a work group, including Delta RDs, to evaluate the opportunity and feasibility of establishing a special Delta emergency fund and potential process, criteria, and initial start-up funding recommended in order to allow local districts to access emergency funding as quickly as possible.
- Convene a work group, including Delta RDs, to evaluate the feasibility, cost-effectiveness, and the detailed logistics of creating a regional emergency response authority to coordinate coordination of flood fights and management of a Delta emergency response fund.

Mid-Term (2018-2028) Actions:

- All levels of government consider approval of flood contingency maps.
- All levels of government consider approval of formal agreement of agency/jurisdiction pre-assignments if work group is successful in preparing flood contingency maps.
- All levels of government consider approval of a new regional emergency response authority and recommend funding sources, including beneficiaries with assets in need of flood protection and response.

"Emergency Preparedness"

Problem Statement: Risk from levee failures can be reduced, but it cannot be eliminated, so being prepared for a flood emergency is the best defense – *the ounce of prevention theory*. Most of the populated Delta, via counties, is rated as A-Zone and is participating in FEMA's National Flood Insurance Program (NFIP), by adopting and enforcing floodplain management ordinances on new construction in a floodplain, that meets or exceeds FEMA's minimum criteria to reduce future flood damage. In exchange, the NFIP makes federally-backed flood insurance available to homeowners, renters, and business owners for agreeing to comply with these minimum criteria. NFIP communities are required to regulate all development in Special Flood Hazard Areas (SFHA), which is the 100-year floodplain. Before a property owner can undertake any development in the SFHA, a permit must be obtained from the community (county). Under the NFIP, communities must review subdivision proposals and other proposed new development, including manufactured home parks or subdivisions to ensure that these development proposals are reasonably safe from flooding, and that utilities and facilities servicing these subdivisions or other development are constructed to minimize or eliminate flood damage. Since the State serves as a partner in many of FEMA's NFIP incentive programs, the Council could monitor and offer financial assistance to expand, duplicate, and implement these programs.

Near-Term (2012-2017) Actions:

- Have FEMA report on the results of their monitoring compliance for Delta communities (Counties) in adopting ordinances that meet or exceed minimum NFIP floodplain management criteria and enforcing their ordinances.
- Recommend Delta counties investigate (and possibly implement) the opportunities for designating regulatory floodways (designed to carry the waters of the 1-percent-annual-chance flood) as part of their floodplain criteria in their NFIP program. Floodways designated by a community in their NFP program are prohibited from development that would increase in flood heights.
- Work with FEMA to identify how Council can assist NFIP Delta communities to qualify and access FEMA's Hazard Mitigation Grant Program that provides funding for reducing or eliminating future flood damages to existing structures after a flood disaster, including additional resources for mitigation projects and planning.
- Request DWR to report on the State's administration of the Hazard Mitigation Grant Program, detailing grant funding distributed to each Delta NFIP community, list of mitigation projects completed, and recommendations on where and how to expand the program in the Delta.
- Assist Delta communities to access funding for FEMA's Increased Cost of Compliance (ICC) coverage, the Flood Mitigation Assistance (FMA) program, Hazard Mitigation Grant Program (HMGP), Community Assistance Program (CAP), or other incentives provided by FEMA to NFIP communities. The ICC will help pay for the cost to elevate, relocate, demolish, or floodproof (non-residential buildings only) up to a maximum of $20,000. The FMA program provides up to $20 million a year with a 75/25 cost share to conduct local planning meetings to obtain citizen input, contracting for engineering or planning technical assistance, surveying structures at risk of flooding, and assessing repetitive losses. The HMGP also funds critical mitigation measures and grant disbursement is administered by DWR.
- Direct the Delta Conservancy to work with NFIP participating communities to develop a program in the Conservancy to financially assist NFIP communities fund and implement eligible flood mitigation projects identified by FEMA by paying their local cost share.
- Evaluate Delta counties participation in FEMA's Cooperating Technical Partners program, and offer assistance to help them participate if needed.

Mid-Term (2018-2028) Actions:

- Have Delta counties report on their progress on implementing mitigation projects pursuant to NFIP and offer recommendations on how the State could provide further assistance to continue making progress.

Comments on Chapter 8
"Protect and Enhance the Unique Cultural, Recreational, Natural Resources, and Agricultural Values of the California Delta as an Evolving Place"

Page 99, lines 2-6: Since the Delta's economic viability and vitality are critical components of protecting and enhancing it as an evolving place, this title should be expanded to include "economic vitality."

Page 102, lines 27-28: The problem statement should be expanded to recognize the detrimental affect new facilities for conveyance of water and habitat restoration projects necessary to comply with ESA take permits and mitigation for new water supply infrastructure will have on the Delta's flood control system, unique characteristics, and economy supported by agriculture, recreation, and supporting businesses. These impacts also need associated recommendations to protect and enhance these values in the form of assurances, protections, and incentives.

Page 102, line 39, [DP R1]: This is redundant to line 36. If there are in fact two different objectives intended, then they need to be better defined.

Page 103, line 5-7, [DP R3]: This recommendation should be modified to make payments in lieu of local taxes/assessments, which include RD assessments, be required as an element of all DSC Plan water supply reliability and habitat restoration recommendations/actions/measures in order to be considered consistent covered actions. If a source of funding for these payments is not identified and securitized, then the covered action will be considered to be inconsistent with the DSC Plan.

Page 103, line 7: A new recommendation should be added: "Legislature should appropriate funding to the DSC for the establishment of a Delta landowner compensation fund to pay for claims by landowners for damage caused by water supply reliability and habitat restoration measures/actions/recommendations implemented pursuant to the DSC Plan." This has been significant problem with the implementation of the San Joaquin River Restoration Agreement.

Page 103, line 28, [DP R5]: This recommendation is premature, not well defined, and not currently supported by local levee maintaining agencies (RDs). The CCVFCA has concerns about the effect the creation of a Delta-wide benefit assessment district for flood management would have on the ability of local Reclamation Districts to secure funding to keep their levees intact. Currently, this recommendation lacks sufficient details on how it would be formed, who it would assess, who can serve on the new district, how local levee maintainers would access funding for their levees, how local RD's will be affected, and many other unknowns at this time. Therefore, the CCVFCA requests the Council withhold making this recommendation until the CCVFCA, NDWA, CDWA, SDWA, and Delta Reclamation Districts can better understand the details of creating a new bureaucracy in light of the more than 200 entities already in existence.

Page 104, lines 13-20: Add another bullet: "The functionality, stability, and sustainability of the flood control system."

Recommended Actions for Chapter 8

Problem Statement: Currently Chapter 8 is woefully inadequate and predominantly paints a picture of a patient (The Delta as Place) as being on life support without even identifying remedies to improve the patient's health, but instead seems to lead to choosing to pull the proverbial plug. Nothing could be further from the truth. The Delta ecosystem may be sick, but the Delta economy and its levees are in far better condition than indicated. As mentioned previously, the Delta levee improvements implemented since SB 34 passed in 1988 (Delta

Levees Program), has resulted in nearly ***all*** levees in the Delta now being ***above*** the 100-year floodplain, and the levee failures due to high tides or high flows has been essentially eliminated. ALL of the Project levee miles are already above the 100-year floodplain and many *exceed* PL 84-99 criteria, so these are hardly the symptoms of a dying patient.

Near-Term (2012-2017) Actions:

- The DSC Plan should identify the existing plans, programs, and policies such as the Delta Levees Program and the Delta Protection Act that have been successful in protecting the unique values that make Delta as a Place that should be identified as things to support, promote, fund, duplicate, and expand upon.
- Update the 1999 CalFED study done by KSN and MBK engineers identifying which levees do not meet PL 84-99 criteria. There is no more effective way to leverage federal funds than by retaining flood control works' eligibility in PL 84-99 because the repair and recovery costs after a flood event are 100% federally funded.
- Require DWR to submit a work plan, developed in conjunction with Delta RDs and the Delta Protection Commission, for all Project and non-Project levees that are recommended to be brought up to PL 84-99 criteria and a phased timeline for completing the levee improvements.

Mid-Term (2018-2028) Actions:

- Have DWR report on percentage of Project and non-Project levees that meet or exceed PL 84-99 criteria.

Comments on Chapter 9
"Finance Plan Framework to Support Coequal Goals"

Page 108, lines 4-7: This principle should be expanded to better define the types of securitized funding required. Also, should make it clear that ALL Delta improvements associated with water supply reliability and ecosystem enhancements associated with water supply reliability and operation of water export facilities be prohibited, until the specifically defined type of securitized funding in perpetuity is in place.

Page 108, line 31: A new bullet should be added: "Funding for water supply and ecosystem restoration projects should have securitized funding in place before proceeding."

Page 108, line 31: Another new bullet should also be added: "Local Delta governments and landowners should not have to bear the burden of paying for modeling, monitoring, data collecting, facility improvements that are necessary to achieve objectives that benefit the state as a whole. A fund should be established to pay for local costs of compliance for measures that benefit areas outside the Delta."

Page 112, lines 10-13, [FP R3]: See previous comments made on a regional flood management agency.

Page 112, lines 27-30, [FP R7]: Before the beneficiary pays principle is implemented, it needs to be defined and developed in an open, transparent, public process and should take into consideration the ability to also credit those Delta communities/entities/landowners that bear the burden for negative impacts to its economy due to the construction and operation of water supply and ecosystem projects intended to provide statewide benefit. Before the stressors pays principle is implemented, it needs to be defined and developed in an open, transparent, public process and should also provide the ability to also offer credits to Delta communities/entities/landowners that have been previously harmed by human activities in the Delta due to the construction and operation of water supply and ecosystem projects intended to provide statewide benefit.

Page 112, lines 31-33, [FP R7]: What is the source of funding for these 'advances?' Is it state general fund, bond funds, or some other source? Sources need to be specified.

Page 113, lines 1-6, [FP R10]: A public goods charge for water is much more complicated than energy. Energy is a man-made resource and distributed by public agencies and very few people make their own energy (maybe some do with solar panels), so must buy from a regulated company. Water on the other hand is a natural resource captured and harnessed by many individuals, some with riparian water rights. Since many Delta ecosystem costs are associated with "ecosystem improvements to reduce damage by operations of the existing export pumps in the Delta" (page 110, lines 8-9), then it is unclear how people not using water exported by these facilities should have to fund these project specific ecosystem costs. Since this is an apples and oranges comparison of water v. energy public goods charge, we would recommend that the Legislature should NOT be encouraged to create such a charge ***until*** the Council has taken the time to hold open, transparent public meetings to investigate how this charge would be created and applied fairly.

Page 113, line 13, [FP R11]: Expand the last sentence to say: "through an open, transparent, and public process."

Page 114, lines 16-17: What exactly does this last sentence mean? Does it mean the Council is going to be in the business of being a statewide watermaster and make decisions what areas get how much water? Whatever the objective of the last sentence is, it should be more clearly stated or deleted.

Page 114, lines 25-26: The Council's research into potential for assigning such a fee should be done in an open, transparent, and public process.

Page 114, lines 31-33: This section does not make sense at all, so how and where costs savings are envisioned should be explained. A better recommendation for 'cost efficiencies' would be for the Council to identify government agency overlap in terms of costs for studies, science, research, projects, etc. to avoid wasting money on duplication of effort which is much more clear on how and where cost savings could occur. Again, this should be part of the initial near-term activities the Council should pursue as it will help streamline effort and money.

Page 115, lines 3-11: Carbon offsets have yet to find a stable market in California, therefore this recommendation should be approached with caution, starting with only pilot projects, limited to

publicly owned lands, and its detrimental impacts to performance measures on page 104, lines 14-20, particularly the 'Gross revenue from agricultural in the Delta' should be evaluated prior to any large-scale implementation.

Recommended Actions for Chapter 9

Problem Statement: Local Delta governments and landowners should not have to bear the burden of paying for statewide costs for modeling, monitoring, data collecting, facility improvements that are necessary to achieve objectives that benefit the state as a whole and/or are required as ESA conditions for operating the SWP or CVP.

Near-Term (2012-2017) Actions:

- A fund should be established to pay for local costs of compliance for measures that benefit areas outside the Delta and/or are "ecosystem improvements to reduce damage by operations of the existing export pumps in the Delta" (page 110, lines 8-9).

Problem Statement: There is likely a great deal of overlap and duplication occurring in the Delta resulting in waste of precious fiscal resources, so opportunities for cost saving should be identified immediately.

Near-Term (2012-2017) Actions:

- Council should identify government agency overlap in terms of costs for studies, science, research, projects, etc. to avoid wasting money on duplication of effort, so know how and where cost savings could occur. This should be part of the initial near-term activities the Council should pursue as it will help identify saved money opportunities if it can streamline effort and money.

Mid-Term (2018-2028) Actions:

- Federal, State, local agencies report to Council on progress made in reducing overlap and identify amount of money saved as a result.

Problem Statement: The DSC Plan, BDCP, PPIC reports, Biological Opinions and other venues have identified tens of thousands of acres in the Delta to be converted from its current land use (primarily farming) to accommodate water supply goals and ESA requirements, which will result in land changing from privately owned to publicly owned. Need a reliable mechanism and funding to replace lost local government revenues (taxes, assessments), including RDs, resulting from conversion of lands to habitat, water supply infrastructure and other actions in support of the coequal goals, but not limited to the BDCP.

Near-Term (2012-2017) Actions:

- Require consistency determination for these covered actions to include criteria for a securitized funding source to be in place to pay these taxes for all converted parcels in perpetuity, prior to the projects approval, OR;

- Establish a fund to be managed by DSC, DPC, or Delta Conservancy to pay these taxes for all converted parcels in perpetuity.

Mid-Term (2018-2028) Actions:

- Request DPC to prepare and submit a report to the Council regarding the effectiveness and compliance with the requirement for all local taxes/assessments to be paid for public lands being used to implement coequal goals.

Problem Statement: Need a reliable mechanism and funding to pay for the long-term management of water supply reliability facilities and habitat restoration lands to ensure they do not reduce the level of flood management and protection in the Delta over time.

Near Term (2012-2017) Actions:

- Require consistency determination for these covered action projects to include criteria for a securitized funding source to pay for the ongoing data collection, maintenance, operation, monitoring, adaptive management, and compliance with flood control requirements, OR;
- Establish a fund to be managed by DSC, DPC, or Delta Conservancy to pay for the ongoing data collection, maintenance, operation, monitoring, adaptive management, and compliance with flood control requirements.

Mid-Term (2018-2028) Actions:

- Require DWR to evaluate, in cooperation and coordination with Delta RDs and the Delta Protection Commission, the individual and cumulative impacts that water supply and ecosystem restoration projects have had on the functionality and sustainability of each component of the flood control system.

Problem Statement: Water supply reliability and habitat projects (water impoundment including reservoirs and forebays, water conveyance, or wetland and tidal habitat) are likely to result in the seepage of water onto or under the adjacent lands and result in adverse effects associated with seepage, levee stability, subsidence, water elevations, and levee erosion. This could have significant impacts on the costs to RDs for performing their drainage duties. Also, other impacts may include moving or consolidating in-Delta diversion intakes and protective devices (e.g., fish screens) necessary to meet the objectives of ESA/CESA. These third-party impacts have already occurred with operations and projects associated with the San Joaquin River Restoration Agreement and therefore should be anticipated for the DSC Plan.

Near-Term (2012-2017) Actions:

- Establish a process for Delta RDs and landowners to submit a claim for compensation for damage or increased drainage costs caused by water supply reliability and habitat projects associated with achieving the coequal goals or operation of the SWP and CVP, prior to any of these projects/actions being implemented. This would include costs for ESA/CESA compliance such as screening, consolidating, or moving diversion intakes, or other necessary measures.

- Establish a fund to be managed by the DSC, DPC, or Delta Conservancy to pay for the compensation claims submitted for third party impacts associated with actions, projects, policies, and operations associated with achieving coequal goals or operation of the SWP and CVP.

Mid-Term (2018-2028) Actions:

- Evaluate the impacts that water supply and ecosystem restoration projects implemented to achieve the co-equal goals have had on the operations and maintenance duties of RDs and on neighboring landowners.

CONCLUSION

The CCVFCA appreciates the time and effort the Council has placed on complying with PRC Section 29702(d), 85004(g), 85305, 85306, and 85307 to improve flood protection and reduce risks to people and property in the Delta. We hope our comments are helpful in providing new ideas and opportunities to include in an effective DSC Plan, as well as correcting erroneous and exaggerated opinions inappropriately offered as fact, which only serve to distort the political and policy discussion. We encourage the Council to utilize the knowledge and expertise of Delta reclamation districts by convening work groups to facilitate their assistance.

Sincerely,

Melinda Terry, Executive Director