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August 24, 2016

Randy Fiorini, Chair
 Delta Stewardship Council
 980 Ninth Street, Suite 1500
 Sacramento, CA 95814

[By EMAIL]

RE: August 25 Agenda Item 8, Discussion Draft of Delta Plan Chapter 7
 Revisions Regarding Priorities for State Delta Levees Investment

Dear Mr. Fiorini:

For the last year, we have coordinated closely with your staff as they developed the Delta Levee Investment Strategy and the Decision Support tool. At the same time, we have been conducting the Delta Flood Risk Management Assessment District Feasibility Study (DFRMADS), which will be completed and presented to the Commission and the Council in September.

We have had productive discussions with staff about the Delta levees investment priorities and draft Delta Plan policies, and concur with many of the proposed policies in the discussion draft. However, we have several concerns about the proposed policies, as follows:

Staff Report recommendations for improving emergency preparedness and response

We have no concerns with the proposed Delta Plan policy changes on *Emergency Preparedness and Response*; however, the staff report suggests (on the bottom of page 3) an alternative policy that we cannot support. Namely, that the local maintaining agencies (LMAs) could be solely responsible for the repair of levee breaches and recovering flooded islands. We find that this alternative is not consistent with provisions of state law (Water Code Sections 12981(b) and 85054, and Public Resources Code 29702(a)) to maintain Delta waterways and unique Delta values as resources of major statewide significance. It is also inconsistent with the proposed levee investment priorities—post-disaster recovery priorities should mirror the investment priorities.

Finance and Implement Local Flood Management Activities

As mentioned above, we are wrapping up the DFRMADFS, which will identify the most feasible financing mechanisms to pay for levee improvements or other methods of reducing flood risk in the Delta. The study will also provide recommendations to DWR on how to implement the ability to pay requirements of Water Code Section 12986(a) (3)(A).

The DFRMADFS originated from long-running policy discussions about how to finance Delta levees improvements, operations and maintenance. From the CALFED Record of Decision in 2000 to the Delta Plan recommendation in 2013, there have been several statements emphasizing that beneficiaries should pay for services provided by the Delta levees. The Delta Plan states “The duty of providing for Delta flood risk management should be borne by *all entities* benefitting from these actions, and an equitable methodology of defining and apportioning *assessments* should be developed and implemented.” In addition, Delta Plan recommendation RR R2 specifically calls for an assessment district with authority to *assess all beneficiaries* of Delta levees (emphasis added).

One of the early findings of the DFRMADFS is that we cannot rely solely on a new assessment district because it would not reach the full range of Delta levee beneficiaries, particularly those outside the Delta. Nor could an assessment district capture the benefits that are not parcel-based. In addition, there are legal constraints that limit the ability of assessment districts to recover the full costs of levee improvements. The draft feasibility study report will be completed in September, and we urge the Council to direct staff to work with us to modify related findings, policies, and recommendations of this Delta Plan section to reflect the findings of the DFRMADFS.

Prioritize Flood Management Investment

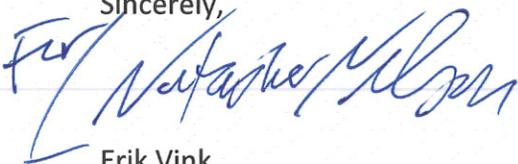
The “Problem Statement” for this Delta Plan section (page 5 of the attachment) states that there is no method to prioritize State investments in Delta levees. Yet Policy RR P1 adopts a three-tiered set of priorities for State investments, referring to “the priorities listed below...” We have four recommendations for this section of the Delta Plan and its attachments:

1. Include a statement that the Council’s policy is to reduce flood risk in the Delta in a cost-effective manner that meets the two coequal goals, while protecting and enhancing the unique values of the Delta as an evolving place. This policy should include the alternative approach (described on page 10 of the Staff Report) that allows moving specific islands or tracts into a higher priority tier based on the need to protect critical infrastructure or other considerations identified by stakeholders or other partner agencies. A higher priority is clearly warranted for islands or tracts where modest investments could bring levees up to the Bulletin 192-82 standard. Such adjustments to the priority tiers would ensure the cost effective use of public funds to achieve the aforementioned goals; and

2. Revise the Problem Statement to reflect the outcomes of the Delta Levee Investment Strategy, identify the methodology for placing islands or tracts into the priority tiers, and describe the needed improvements to the Decision Support Tool and the methodology for evaluating levee investments as additional data becomes available (e.g., information about assets, asset values, fragility curves, and other aspects of the Decision Support Tool that have been discussed at previous Council meetings); and
3. Revise RR P1 to refer to an attachment with the three-tiered priorities for Delta levee investments—do not include the priorities matrix in the Delta Plan, otherwise the priorities can only be adjusted by amending the Delta Plan. The policy should describe the criteria that determined the rankings, criteria for moving islands or tracts into higher priorities (per Recommendation 1, above), how long these tiers will be in effect, and a plan for revisiting the rankings over time; and
4. Attachment 3, with the ranking of each island and tract, includes a column titled “State Funding Program” for levee improvements. Blanks in that column could be read as a suggestion that there is no funding for most of the “Other Priority” tracts and islands. The DFRMADFS will identify feasible financing mechanisms to pay for Delta levee improvements, which could lead to the implementation of other State funding programs for levee improvements of any tier. In addition, entries in this column could be read as eligibility for funding, when the lead agency for the program has not made that determination. Agency and program staff could disqualify any of these islands or tracts from the funding program. We recommend that the Council:
 - a. Add a statement to Policy RR P1 that currently all Delta levees are eligible for maintenance funding from the state’s Subventions Program (Water Code 12980 et seq.) upon submittal and approval of maintenance plans; and
 - b. Add a note on Attachment 3 that the “State Funding Program” column does not represent a policy decision about which islands or tracts are eligible for various sources of funding; and
 - c. Rather than suggest that the funding options are limited to the currently available programs, add a statement in Policy RR P1 and as a note on Attachment 3 that there may be other sources of State funding, pending the outcome of the DFRMADFS and associated implementation actions.

I appreciate the close coordination between our agencies over the past year on these important levee policy studies. I am confident that we can work together to address these concerns prior to the Council’s next meeting in September.

Sincerely,



Erik Vink
Executive Director

cc: Mary N. Piepho, Commission Chair and Contra Costa County Supervisor