



CITY HALL
1110 West Capitol Avenue
West Sacramento, CA 95691

City Council
City Manager
City Clerk
Information Technology
(916) 617-4500

Community Development
Planning/
Development Engineering
(916) 617-4645
Building
(916) 617-4683
Economic Development
& Housing
(916) 617-4535
Code Enforcement
(916) 617-4925

Public Works
Administration
Engineering
Flood Protection
(916) 617-4850
Port of West Sacramento
(916) 371-8000
Refuse & Recycling
(916) 617-4590
Utility Billing
(916) 617-4589

Administrative Services
Administration
(916) 617-4575
Human Resources
(916) 617-4567

Parks & Recreation
Administration
(916) 617-4620
Recreation Center
(916) 617-4770
Community Center
(916) 617-5320

FIRE
2040 Lake Washington Blvd.
West Sacramento, CA 95691
(916) 617-4600
Fax (916) 371-5017

POLICE
550 Jefferson Boulevard
West Sacramento, CA 95605
(916) 617-4900

PUBLIC WORKS
Operations
1951 South River Road
West Sacramento, CA 95691
(916) 617-4850

January 14, 2013

Cindy Messer
Delta Plan Program Manager
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, California 95814

Via E-Mail: RulemakingProcessComment@deltacouncil.ca.gov

Re: Regulatory Rulemaking Text of Proposed Regulation Cal. Code of Regulations, Title 23. Waters. Division 6. Delta Stewardship Council. Chapter 2

Dear Chairman Isenberg and Members of the Council:

The City of West Sacramento is pleased to submit the following comments regarding the text of the Proposed Regulations. We support the achievement of the coequal goals of statewide water supply reliability and the restoration of a sustainable Delta ecosystem while protecting and enhancing the unique cultural, recreational, natural resources, and agricultural values of the Delta as an evolving place. However, we believe that these regulations go beyond the duties and authorities of the Council and are drafted in such a way as to be unenforceable.

Preliminarily, we note that the California Administrative Procedures Act requires that the Office of Administrative Law review these draft regulations using standards of: (1) necessity; (2) authority; (3) clarity; (4) consistency; (5) reference; and (6) non-duplication, as set forth in Government Code section 11349. It is our belief that many of the proposed provisions do not meet these standards. Many of the provisions are not necessary to effectuate the Sacramento-San Joaquin Delta Reform Act (Act) and some clearly exceed the authority provided in the Act. Several provisions directly duplicate the requirements of other State or Federal laws. For these reasons, the draft regulations must be carefully reviewed, edited, and then reissued for public comment.

Our most fundamental comment is that these regulations do not read like regulations implementing a program created by the Legislature. Rather, they read like a new statute creating entirely new programs, programs which go significantly farther than the legislative authority granted to the Council. While legislation commonly reflects a grand compromise made by different interests in the passage of legislation, this instead reads as a heavy-handed attempt to implement a program with no acknowledgment of its one-sided nature.

The following specific comments are provided on a section-by-section basis:

Section 5001 – General Definitions:

The definitions of “encroachment”, “floodplain” and “floodway” should be compared to the existing definitions found in SB 5, the Central Valley Flood Protection Plan, and the Central Valley Flood Protection Board’s regulations, and then modified to be consistent with those existing definitions. In addition, it is not clear who determines what “portion” is “effective” under the definition. Finally, the definition of floodplain derives from the FEMA regulations and is applicable to an insurance program, not a program of habitat restoration and water supply reliability.

The term “Government-sponsored flood control program to reduce risk to people, property, and State interests in the Delta” is defined as a “State or Federal strategy.” It should be modified and defined as a “State, Federal, or Local strategy.” This is especially necessary if the laundry list of programs includes “Local Plans of Flood Protection” as noted in subsection (3).

The term “setback levee” is defined as creating additional “floodplain” when it should be defined as creating additional “floodway.”

The term “covered action” has been defined as an action that meets all of five criteria. However, one of the criteria requires that the agency taking the action determine whether the action will have significant impact on achievement of the co-equal goals *or* will have a significant impact on implementation of a government-sponsored flood control program. While it is logical to have a covered action include actions which impact the co-equal goals (the heart of the Council’s role), what is the basis for an action being a covered action if it does *not* impact the co-equal goals but does impact implementation of a government-sponsored flood control program?

Section 5003- Covered Action Defined

The City is concerned that there appears to be no mention of the exemption for plans and projects located in the secondary zone that are found to be consistent with a sustainable communities strategy (SCS), such as the SCS approved by SACOG in April 2012. The definition of “covered action” in Appendix D of the Delta Plan exempts projects and plans that are found to be consistent with an SCS but this is not included in the draft regulations.

Section 5005 – Reduce reliance on the Delta. California Water Code Section 85021 declares reduced reliance and regional self-reliance as policies of the State of California and does *not* specifically confer on the Council or any other state agency the authority, power, or directive to dictate through regulation how and when this will be done. Therefore, the requirement for “significant reductions” in the amount of water used or percentage of water used lacks any statutory authority for the Delta Plan to include this requirement and therefore it is beyond the scope of the Council’s authority to propose this as a regulation.

Section 5005 as a whole appears to conflict with Water Code Section 85031(d) regarding the SWRCB’s authority which states: “Unless otherwise expressly provided, nothing in this division supersedes, reduces, or otherwise affects existing legal protections, both procedural and substantive, relating to the state board’s regulation of diversion and use of water, including, but not limited to, water right priorities, the protection provided to municipal interests by Sections 106 and 106.5, and changes in water rights. Nothing in this division expands or otherwise alters

the board's existing authority to regulate the diversion and use of water or the courts' existing concurrent jurisdiction over California water rights.”

Section 5010 – Expand Floodplains. This section seeks to impose on the flood protection community the requirement to consider and implement setback levees unless not feasible. This provision goes beyond the authority of the Council.

Sections 5018, 5019, and 5020 – General Provisions. The regulations should specify which provisions in this regulatory package Section 5018 will apply to because there are many provisions on land use, flood protection, and habitat restoration that prohibit or limit certain activities that constitute a regulatory “taking” of private property.

We appreciate the opportunity to provide these comments. As the Council considers them and begins to redraft the regulations, we urge you to use terminology in the regulations that is consistent with and already specifically defined in current law. The structure and depth of many sections is both inappropriate and confusing. Where new definitions are created they are excessively long and complex and often include “actionable language” that makes it very difficult to discern the extent of the prescriptive or regulatory intent of the provisions. The regulations must be clearer and the definitions should be clear and concise, defining only terms where a definition is necessary, and regulatory requirements should not be embedded within a definition.

Respectfully submitted,



Martin Tuttle
City Manager