

**DRAFT**

November 17, 2022

Chair Virginia Madueño and Council Members  
Delta Stewardship Council  
715 P Street, Suite 15-300  
Sacramento, CA 95814

RE: Office of Administrative Law (OAL) file number Z-2022- 0816-07 – Delta Levee Investment Strategy Administrative Procedure Act Rulemaking Process

Dear Chair Madueño and Council Members:

The Delta Protection Commission (Commission) appreciates the opportunity to provide comment on the proposed rulemaking for implementing Delta Plan policy RRP1 (Delta Levees Investment Strategy). Commission members and staff have participated extensively in the development of the Delta Levee Investment Strategy (DLIS) and submitted comments on the initial rulemaking process.

The prioritization scheme currently proposed in the DLIS fails to acknowledge the importance of all levees in protecting the Delta and achieving the coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The failure of a single levee in the Delta could have a ‘domino’ effect triggering neighboring levees to collapse and causing catastrophic impacts. For this reason, all levees in the Delta are highly important. As stated in our previous letters, the Commission supports improving all Delta levees to the DWR Bulletin 192-82 standard, as called for in the 2012 Economic Sustainability Plan for the Sacramento-San Joaquin Delta.

The Commission also supports the improvement of most “lowland” levees to a higher Delta-specific standard that more fully addresses the risks due to earthquakes, extreme floods, and sea-level rise, and that provides improved protection for legacy communities and opportunities for habitat improvements on the water-side of levees.

In addition, as the Delta Stewardship Council (Council) proceeds to consider rulemaking to implement RRP1, the Commission asks that the definition of “levee operation and maintenance” be amended to include levee rehabilitation, as those activities are currently undertaken through the Delta Levees Maintenance Subventions Program (Subventions Program). Throughout the development of the DLIS, the Council has repeated its intention that levee subventions (i.e. Subventions Program) would not be subject to the prioritization scheme. In the proposed amendment to existing regulation, certain “levee rehabilitation” activities presently funded by the Subventions Program would be subject to prioritization under RRP1. The Commission believes that this proposed action is inconsistent with the intent of the adopted DLIS. The adopted Delta Plan policy RRP1 states that prioritization applies to

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“improvement and major rehabilitation”. There is no definition of “major rehabilitation” in the proposed rulemaking; only a more expansive definition of “rehabilitation”.

The Commission has previously submitted comments regarding this concern; however, the language in the proposed regulation remains the same. If the intent of the Council is to ensure that activities under the Subventions Program are not subject to the DLIS prioritization scheme, we urge the Council to revise the definition of levee operation and maintenance in the regulation to include levee rehabilitation activities.

The Commission appreciates the Council’s consideration of these comments. We invite Council members and staff to take a tour of the Delta’s levee system organized by the Commission to learn more from local flood managers on how we can further protect and enhance the Delta’s unique values.

The Commission voted to approve this letter at its meeting on November 17, 2022 on a XX-XX vote.

Sincerely,

Don Nottoli  
Chair

cc: Members, Delta Protection Commission