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21 January 2020

Susan Tatayon, Chair
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Subject: Preliminary public review draft of amendments to Chapter 4, Ecosystems, of Delta Plan

Dear Chair Tatayon:

Restore the Delta advocates for local Delta stakeholders to ensure that they have a direct impact on water management decisions affecting the water quality and well-being of their communities, and water sustainability policies for all Californians. We work through public education and outreach so that all Californians recognize the Sacramento-San Joaquin Delta as part of California's natural heritage, deserving of restoration. We fight for a Delta whose waters are fishable, swimmable, drinkable, and farmable, supporting the health of the San Francisco Bay-Delta Estuary, and the ocean beyond. Our coalition envisions the Sacramento-San Joaquin Delta as a place where a vibrant local economy, tourism, recreation, farming, wildlife, and fisheries thrive as a result of resident efforts to protect our waterway commons.

We appreciate the opportunity to comment on the amended preliminary public review draft of Chapter 4 of the Delta Plan. We also thank the Delta Stewardship Council's (DSC) for deciding to push back the comment deadline from January 6 to today. The extra two weeks to review documents and prepare comments we have appreciated, and hopefully will provide the DSC with better comments from the public as a result.

Restore the Delta recognizes that the Delta Stewardship Council (DSC), while a relatively small agency within the state of California, is charged with addressing the needs of a relatively complex region of the state, the Delta. Not only is the Delta conceptually complicated, the reality and implications of climate change mean that the Delta becomes something of a moving target for purposes of planning and regulation.

We recognize too that the DSC a year ago bravely declined to issue a certification of consistency for the California WaterFix dual-tunnels project because as a covered action it failed to comply with key features of the Delta Plan as it was then. This decision was a critical step in the eventual decision of the Newsom Administration to shelve California WaterFix in favor of other potential actions, and it has given the Delta community a badly needed opportunity to not only recover from the campaign against the project, but to formulate alternative futures for the Delta region in an era of climate change, economic uncertainty, and opportunities for youth to envision alternatives for the Delta's future.

The DSC has also articulated in its Delta Plan Five-Year Review a number of key planning topics and emerging issues in which the Delta Plan could serve as a policy and programmatic vehicle for improving conditions in and throughout the Delta. These include the DSC's recognition of environmental justice and disadvantaged communities, as well as the legacy Delta communities as key long-term stakeholders in the Delta's future; climate change, and coordination and participation with federal agencies, not just other state and local agencies.

It is in these diverse contexts that the DSC proposes changes to Chapter 4 of the Delta Plan, to protect, restore, and enhance the Delta ecosystem.

General Comments

- The preliminary public review draft of Chapter 4 retains important ecosystem protection, restoration, and enhancement policies from the previous version. However, the preliminary draft is clearly different from the previous chapter 4, with numerous changes to narrative and to policies and recommendations have been made. We request that the DSC staff prepare a summary of exactly what those changes are and where they are located when it comes before the Council for review.

- We appreciate that the DSC retains Policy ER P1, Delta Flow Objectives, without change. This is vital because Delta inflow is the driving mechanism for the health and sustainability of all other ecosystem elements in the Delta, including Delta water quality, and the unique character of Delta communities and cities.

- We appreciate also that the DSC proposes ER Policy A to extend environmental justice and other social issues and concerns to DSC evaluations of consistency certifications for covered actions. There are important things the DSC should do to ensure meaningful public outreach to these communities and applicant compliance (not just to the letter but to the spirit of the policy), we are grateful to see this proposed policy come into consideration. We look forward to working with DSC to implement ER Policy A.

- We sense from this preliminary draft of Chapter 4 that there is much uncertainty as to the rate at which sea level rise and other effects of climate change will challenge the

efficacy and sustainability of ecosystem restoration projects that come before the DSC as covered actions. We have concerns about this too, many of which we stated in our 2019 report on *Climate Equity and Seismic Resilience in the San Francisco Bay-Delta Estuary*. We attach and incorporate by reference this report and refer the DSC to our concerns and findings about seismic risk and climate change contained especially in Chapters 2 and 3, and Appendix E to the report.

- In its Five-Year Delta Plan Review, the DSC states, "The Delta will experience climate change effects both from gradual changes and from extreme events that are likely to become more frequent." Preliminary Draft Chapter 4 appears to follow this line of thinking from the Five-Year Delta Plan Review. Extreme events and gradual change are not the only climate change realities we and the DSC face. More frequent extreme events (atmospheric rivers, droughts, wildfires) are distinct from "gradual climate change," but we also think these two manifestations of climate change are distinct from "abrupt climate change." These are instances where a climate-based tipping point is passed.[1] Abrupt climate changes may occur in the very near future, if it has not already commenced. Our attached report states some key reasons for it, including ice sheet melting and massive releases of carbon to the atmosphere from arctic permafrost regions. We urge the DSC and its Delta Science Program to acknowledge and incorporate abrupt climate change into planning efforts, including Chapter 4.

- To help increase the DSC's understanding and application of principles of climate justice in the reality of climate change, we also request that you add definitions for both "environmental justice communities" and "disadvantaged communities" to 23 CCR 5001 (Definitions, p. 4A-3 of Appendix 4A). Please be aware that environmental justice communities were originally defined in Presidential Executive Order 12898 as including communities of color, including non-white race and ethnic groups, as well as people who are impoverished, which can include persons from any race or ethnic group. This is the definition on which Restore the Delta relies for our understanding of communities facing disproportionate burdens from environmental hazards and injustices. It is also important to include in these suggested definitions reference to state and federal civil rights provisions in law that outlaw discrimination on a variety of grounds. Such policies of necessity govern within the scope of DSC's jurisdiction and deserve explicit recognition through regulatory definition.

- DSC should redouble its efforts to ensure that the historical role of Indigenous California communities in the Delta and in its broader watershed are accurately portrayed in scientific representations in Chapter 4 and elsewhere in the Delta Plan. In our specific comments in Attachment 1, we note an ongoing problem with Figure 4-1,

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[1] Two examples of abrupt climate change include: first, massive releases of methane and carbon dioxide from the permafrost in the Arctic region that could rapidly and irreversibly increase greenhouse gas emissions and accelerate global temperature increases; and second, abrupt and accelerated melting of arctic sea ice, the Greenland ice sheet, and the West Antarctic and/or East Antarctic ice sheets melting and calving into the Southern Ocean.

where “early 1800s” Indigenous tribal communities are omitted from a comparison with “early 2000s” ecosystems and human communities.

- The existing nonnative invasive invertebrate species, *Potamocorbula amurensis*, is not merely one of many stressors. It threatens eventual toxic pollution of benthic food webs in the Estuary as well as the ongoing overconsumption of primary ecological production by phytoplankton that threatens starvation for other species reliant on primary production species. The DSC needs to assert policy guidance that addresses existing nonnative invasive that threaten to undermine future ecosystem and habitat restoration projects, as well as existing food webs.

- Accordingly, Restore the Delta-proposes the following policy, since flow is the master ecological variable in the Delta: “Covered actions involving flow and diversion alterations shall only be certified as consistent with the Delta Plan when they demonstrate that they will contribute to permanent reductions in existing populations and/or geographic ranges of nonnative invasive species and cyanobacteria, sufficient for (not just protection) but restoration and enhancement of Delta ecosystems.”

We have more specific comments below in Attachment 1 to this letter that are intended to increase the scientific and evidentiary basis of the narrative sections supporting Chapter 4 policies. Strengthening and clarifying narrative findings is vital to the success of Chapter policies, since they are the legal and policy structures that support DSC consistency determinations for covered actions.

In sum, Restore the Delta remains concerned that the DSC continues to cherrypick, consciously or not, what it view as “best available science.” Authentic science goes where the evidence leads. We do agree that DSC is charged with using best available science—and in the best sense of that phrase we think it means that the best and most current data, the most insightful concepts, and the most revealing methodologies contribute greatly to achieving the application of best available science to the policy problems the DSC faces.

Thank you again for the opportunity to comment. Please contact us via email below if you have questions for us.

Sincerely,

Barbara Barrigan-Parrilla
Executive Director
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Tim Stroshane
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tim@restorethedelta.org

Attachments:

1. Specific comments by Restore the Delta
2. Restore the Delta, *Climate Equity and Seismic Resilience for the San Francisco Bay-Delta Estuary,* August 2019. Accessible at https://www.restorethedelta.org/wp-content/uploads/RTD_Climate_Equity_Report_2019_Final.pdf

cc: Randy Fiorini, Vice-Chair
Frank C. Damrell, Member
Mike Gatto, Member
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Irene Calimlim, Fathers and Families San Joaquin
Nathan Werth, Substratum Systems
Tama Brisbane, With Our Words
Nicholas Hatten, LGBT Social Justice Initiative

Attachment 1
Restore the Delta's Specific Comments on
Preliminary Draft Chapter 4 of the Delta Plan

NARRATIVE SECTION

- ***Climate Change:*** In addition to our comments about abrupt climate change in the cover letter, we note that the preliminary draft Chapter 4 fails to incorporate findings about climate change impacts to water supply and environmental quality from the Fourth California Climate Assessment (4CA). It is nowhere cited to in the references of the preliminary draft, nor are any supporting studies associated with 4CA employed and referred to that we could identify. We think this is a grave oversight, and strongly suggests that the preliminary draft Chapter 4 is not based on best available science. While not typically specifically focused on the Delta, the 4CA reports contain numerous analyses and supporting reports and special reports that DSC staff could have availed itself of, particularly as concerns sea level rise impacts in the Delta and indigenous tribal impacts of climate change that may impact ongoing indigenous tribal usage of the Delta. We respectfully suggest references we employed in our attached Restore the Delta report that would help fill these and other gaps between preliminary draft Chapter 4 and 4CA. If the Delta Science Program or Delta Independent Science Board has issues or concerns with the quality and scope of the 4CA, this should be addressed in preparation of the final draft of Chapter 4.

- ***Indigenous Tribal Presence and Use of Delta:*** We appreciated seeing reliance on research on pages 4-6 to 4-7. However, given that, as the DSC writes, "Research over the past several decades has revealed extensive indigenous knowledge of the use of burning to manage the Delta landscape," it would be entirely appropriate to elaborate on what their land management practices, especially as they may relate to management of channel margins, riparian corridors, upland ecosystems, and other prey species for which they managed. This is especially concerning since these are lands that will either be directly affected by sea level rise in the Delta, will provide adaptation space, or will become new areas of littoral or shoreline environments.

- ***Indigenous Tribal Presence in Delta Historical Ecology:*** Figure 4-1, p. 4-8, of preliminary draft Chapter 4, presents a mapped comparison of "early 1800s" versus "early 2000s" historical and modern Delta waterways. The early 1800s map indicates no Indigenous California tribal settlements, while several Delta cities are located on the early 2000s map. The comparison, unfortunately, is not of apples and apples, but of apples and oranges. While the maps do provide a comparison of water way

dendritic flow and channel patterns, inclusion of cities in one and of no settlements in the other suggests inaccurately that there were no Indigenous tribal settlements or communities present in the early 1800s. In 1926 UC Berkeley archaeologist W. Egbert Schenk, published a literature search for potential archaeological sites in the Delta and northern San Joaquin Valley region identified within the Delta.[2] He studied sixteen historical journal accounts of Spanish military personnel and priests. From that information he developed an estimate of population for the area that ranged from 3,000 to 15,000 indigenous persons, which at that time would have greatly outnumbered European Americans in the region.[3]

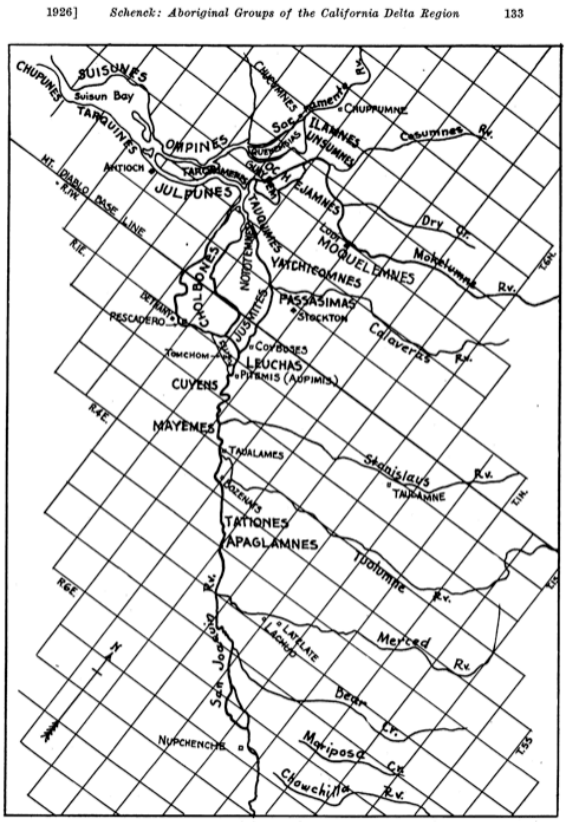

Fig. 1. Map showing location, according to streams, of groups mentioned in Spanish reports.

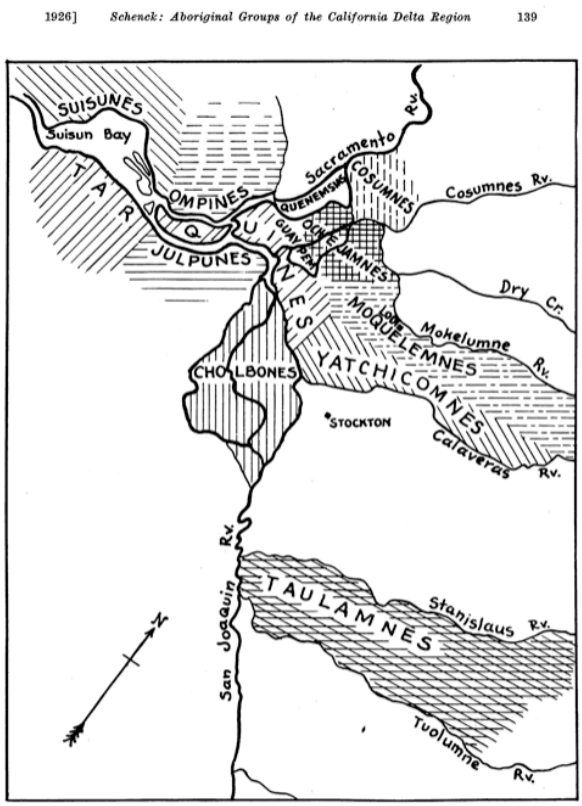

Fig. 2. Map showing probable areas occupied by the major groups of the aboriginal population in the Sacramento-San Joaquin delta region.

From Schenk 1926, see footnote 2 of this letter.

Schenk also included two maps that should be of interest to the DSC, reproduced below. These two maps indicate general territories where Indigenous communities laid

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[2] W. Egbert Schenk. 1926. "Historical Aboriginal Groups of the California Delta Region." *University of California Publications in American Archaeology and Ethnology* 23(2): 123-146, issued November 13. Accessible at http://dpg.lib.berkeley.edu/webdb/anthpubs/search?all=&volume=23&journal=1&item=3.

[3] *Ibid.*, p. 132.

claim to resources and at least seasonal residences in the region. There may be more recent such research, including by Indigenous researchers, that we are unaware of. But we present this information to insist that a balanced comparison be provided in Figure 4-1, so that the DSC does not continue to perpetuate erasure of the record of Indigenous peoples' Delta residency at a time of more sinuous and tidal marsh-dominated habitat. Both maps need to convey the human-nature presence, and the comparison is how that human-nature presence has changed, not one of an imaginary pristine Delta 200 years ago to one that is now urbanized and channelized. Without changes to Figure 4-1, the DSC is not employing best available scientific methods in publishing such a comparison.

- ***Stressors and Nonnative Invasive Species:*** The DSC has omitted toxic contaminants from its treatment of stressors in preliminary draft Chapter 4**.** On p. 4-9, Chapter 4 states, "The current state of the Delta ecosystem has been severely affected by loss of natural communities, loss of land-water connections, and alteration of hydrology. These stressors have caused a loss of ecosystem function, imperiling many native species and decreasing their resilience to other stressors such as nonnative invasive species, predation, and climate change." This paragraph goes on to list "major causes of ecosystem decline" which will be discussed in this section of Chapter 4. We wish to remind the DSC that as part of its Delta Ecosystem Stressors synthesis report (dated April 5, 2018 the primary stressors of the Delta system (of which DSC lists eight) included "water quality impairment" which covered "flow alterations, and nutrient and contaminant inputs from agriculture and wastewater treatment facilities affect food web function, facilitate non-native aquatic plant growth, and create toxic conditions for native species." The Stressors synthesis also noted that "Aquatic species are directly impacted and water quality is implicated as a major driver of the Pelagic Organism Decline."[4] This omission from Chapter 4 truncates the significance of nonnative invasive invertebrate species, especially *Potamocorbula amurensis*, the overbite claim. In our comments on the Stressors synthesis to DSC on April 23, 2018, we suggested that the DSC rely upon the conceptual models available to the public by the California Department of Fish and Wildlife (the "DRERIP models").[5] While employing DFW's Delta Conservation Framework and Ecosystem Restoration Program Conservation Strategy for the Delta, DSC has ignored use and certainly reference to any of DFW's conceptual models, which represent a scientific community consensus on the conceptual and causal mechanisms and factored associated with Delta ecosystems and their biophysical and biochemical interrelationships. **By ignoring application and acknowledgement of these models, DSC is failing to base its Chapter 4 narrative and policies on best available science.**

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[4] Delta Stewardship Council. 2018. *Delta Ecosystem Stressors: A Synthesis*. Public Review Draft. April 5, p. 23, Table 2. Accessible at

[5] See pages 4-5 of our comment letter, footnote 2.

- ***The existing nonnative invasive invertebrate species, Potamocorbula amurensis, is not merely one of many Delta stressors.*** The preliminary draft Chapter 4 fails to foreground the seriousness of this bivalve's continuing occupation of the Bay-Delta Estuary. It threatens eventual toxic pollution of benthic food webs in the Estuary as well as the ongoing overconsumption of primary ecological production by phytoplankton that threatens starvation for other species reliant on primary production species. The DSC needs to assert policy guidance that addresses existing nonnative invasive that threaten to undermine future ecosystem and habitat restoration projects, as well as existing food webs. This policy guidance should encourage use of freshwater flows to better control this nonnative invasive bivalve and ensure that covered actions do not worsen existing nonnative invasive species presence and damage to Delta ecosystems. This is a fundamental part of protecting the Delta, before even restoration and enhancement can become meaningful outcomes. **To ignore this problem means that the DSC is not relying on best available science to protect, restore, and enhance Delta ecosystems.**

- ***Selenium and Potamocorbula amurensis, the nonnative invasive bivalve:*** Restore the Delta and the California Water Impact Network have prepared summary syntheses in testimony provided to the State Water Resources Control Board concerning interactions between selenium, a recognized toxic contaminant-stressor in the Delta, and *P. amurensis*.[6] The essential points are that selenium arrives in the Delta water from two directions—from the west where point sources are petroleum refineries, and from the southeast where nonpoint sources are irrigated selenium-containing lands of the western San Joaquin Valley. *P. amurensis* arrived about 1986 and has significantly colonized the benthic (bottom sediment) communities of Suisun Bay and the western Delta. Unfortunately, *P. amurensis* is a dramatic bio-accumulator of water-borne chemical species of selenium that become bioavailable in slow flows. *P. amurensis* prefers brackish to salty water, and the Delta's western waters often have that water quality profile. US Geological Survey studies indicate that this bivalve is dramatically reduced, if not eliminated during high, sustained fresh water flows. Unfortunately, the dominant water export regime in the Delta tends to sustain conditions that are more brackish. *P. amurensis* also is a voracious filter feeder in open waters, which has resulted in dramatic alteration of the phytoplankton foundation of the Delta's estuarine food webs. It is the combination of these three factors—export-oriented flow regimes in the Delta leaving the western Delta brackish, with *P. amurensis*'s proclivities toward selenium bioaccumulation and voracious filter feeding that have caused resident fish to become listed species and threaten ecosystem

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[6] Testimony of Tim Stroshane, policy analyst with Restore the Delta, Before California State Water Resources Control Board Hearing in the Matter of California Department of Water Resources and United States Bureau of Reclamation Request for a Change in Point of Diversion for California WaterFix, November 29, 2017, pages 13-25. Accessible at https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/RestoretheDelta/part2/RTD_12.pdf; and California Water Impact Network, Recent Salinity and Selenium Science, prepared by Tim Stroshane, for Workshop 1, August 12, 2012. Accessible at https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/cmnt081712/tim_stroshane.pdf

restoration projects that seek to promote tidal marsh food exports to open waters in the estuary. This latter problem comes about because such food supplies will largely be inhaled by *P. amurensis*, rather than the intended, desired species such projects seek to feed. A fourth factor in *P. amurensis'*s reign as a vexing nonnative invasive species is state and federal agencies' unwillingness to manage the system to eliminate this species from the Bay-Delta Estuary. That would take greater fresh water flow, the one thing that no regulator, fisheries agency, nor water agency has yet had the courage to act on. DSC leadership through a new policy and related recommendations addressing P. amurensis's threat to both existing food webs and future restoration efforts is badly needed. **Without addressing existing nonnative invasive species like *P. amurensis*, the DSC is not proceeding in the preliminary draft Chapter 4 on the basis of best available science.**

- **More analysis of harmful algal blooms is needed and policy attention directed to it by the DSC in preliminary draft Chapter 4**. Warmer water temperatures are expected to lead to more, and more frequent HAB occurrence under climate change. HABs threaten to undermine benefits of ecosystem restoration projects in the future, which as covered actions that are found consistent with the Delta Plan, the DSC must be concerned about. The implications of this threat to restoration works is glossed over in preliminary draft Chapter 4. Warmer water is not the only condition for HAB formation, for there must be absence of flow—lengthened residence time of water which often occurs during drought periods (intra-annual as well as inter-annual)—as well as abundant sunlight, ample nutrient concentrations, such as phosphates and ammonium. Unfortunately, a team of scientists (led by Dr. Peggy Lehman of the California Department of Water Resources) found that "once established" cyanobacteria that cause harmful algal blooms are "likely to be resistant to extreme wet conditions, as long as water temperature and other key water quality conditions are favorable."[7] This strongly suggests that the preliminary draft Chapter 4 of the Delta Plan should ensure that such ecological factors are given priority in covered actions certifiable as consistent with the Delta Plan going forward. Desirable levee and ecosystem restoration projects must include features and elements that counteract the conditions—either passively or actively—that contribute to HAB formation.

  Recently, we learned that DWR scientists gathered data on 2019 HABs in the Delta and found a total of eleven (11) different species of cyanobacteria that bloom, many of which have cyanotoxins. We understand some species of cyanotoxins can become airborne, meaning that HABs are not just toxic when ingested by humans or dogs, but may be inhaled by human beings next to or not far from water bodies where HABs are present. This raises a serious public health concern for Delta residents in warm seasons. Stockton environmental justice tracts near the Port of Stockton and South Stockton waterways were recently awarded AB617 status to foster improved air quality

[7] P.W. Lehman, T. Kurobe, and S.J. Teh. 2020. Impact of extreme wet and dry years on the persistence of *Microcystis* harmful algal blooms in San Francisco Estuary. *Quaternary International*, accessible at https://doi.org/10.1016/j.quaint.2019.12.003. This article is designated open access.

conditions. The proliferation of airborne cyanobacteria could undercut other efforts to improve air quality for these impacted Delta environmental justice communities. Policies that support public and environmental health should be considered an element in the DSC's mandate for protecting the Delta as place. **In the absence of such a policy based on a fuller interpretation of HAB formation factors, the DSC is not proceeding in the preliminary draft Chapter 4 on the basis of best available science.**

- **Controlling and reducing HAB formation from now on should be an important policy goal in Chapter 4** not just because of benefits that can be expected for ecosystem and habitat restoration projects, but because they will also benefit Delta legacy communities and Delta environmental justice and disadvantaged communities (about which the DSC wrote eloquently in its recent 5-year Delta Plan review). HABs are also a public health concern, and it goes to the heart of how communities can enjoy summer water-based recreation or subsistence fishing when its waters may be polluted with unsightly and toxic HABs. Over time, a community's perception that its summertime water access is choked off because of such toxicity will languish into a disconnection of that community to its local water environment. This is an incalculable tragedy that for many in the Delta's environmental justice and disadvantaged communities has already occurred: young people feel disconnected from their neighboring sloughs and rivers, and to the environmental values that they might otherwise enjoy in the presence of healthy water bodies.

POLICY SECTION

- ***New ER Policy A:*** Section (a)1 is awkwardly worded, sprawling, and repetitive. May we suggest this friendly rewrite for section (a):
  (a) Certifications of consistency for covered actions described in Subsection (b) shall:
    1. Identify priority attributes for each covered action and disclose the action's contribution to restoration of a resilient, functioning Delta ecosystem using Appendix 3A (Section 1, including documentation required), and associated ecosystem restoration tier for the action based on its priority attributes.
    2. Identify and disclose the action's cultural, recreational, agriculture, and/or natural resource attributes anticipated from project implementation using Appendix 3A, Section 2.

- ***Revised ER P4:*** We respectfully suggest a clarification to state in section (a): *"Consistency certifications for levee projects must evaluate, and, where feasible, incorporate alternatives [or take advantage of all opportunities] to increase floodplain and riparian habitats."*

- ***New ER Recommendation A:*** There is a typographical error in Appendix 3A, Table 1.62.2, p. 3A-18. Field 1, we believe, should refer to Table 1.6.2, not 2.6.1?

- ***New ER Recommendation B:*** We respectfully suggest that this recommendation be revised to include application of the Good Neighbor Checklist not only to restoration projects but to levee projects as well. It could be rewritten to state: "*Project managers should use the Department of Water Resources' Good Neighbor Checklist when planning and designing restoration and levee projects, in order to demonstrate that their project avoids or reduces conflicts with existing uses.*"

- There is a typographical error in Policy ER P2 section (b), p. 4-63. "The certification of consistency for a covered action that takes place, in whole or in part, in the Intertidal Elevation Band and Sea Level Rise Accommodation Band shall ***be*** based on best available science."

- Restore the Delta-proposes the following policy, since flow is the master ecological variable in the Delta: "Covered actions involving flow and diversion alterations shall only be certified as consistent with the Delta Plan when they demonstrate that they will contribute to permanent reductions in existing populations and/or geographic ranges of nonnative invasive species and cyanobacteria, sufficient for (not just protection) but restoration and enhancement of Delta ecosystems."