

**Item 18. Revisions to the Staff Report on Amendments for the Control of Diazinon and Chlorpyrifos Runoff into the Sacramento-San Joaquin Delta
16 June 2006 Version**

This document shows changes made to the April 2006 Public Review Draft Staff Report. Additions to the staff report are shown in underline, deletions are shown in strikethrough.

On the inside of the front cover - Linda S. Adams is now shown as the Cal EPA Secretary and is no longer shown as a Central Valley Water Board member.

Page 7 - under Implementation and Time Schedule

This Amendment recommends that, if neither Waste Discharge Requirements (WDRs) nor a Waiver of WDRs apply to diazinon and chlorpyrifos discharges, then a prohibition of discharge would apply when the objectives or loading capacity allocations are not met. The prohibition is constructed to address the two seasons of use. ...

Page 7 - under Public Participation in the Executive Summary

Public Participation and Comments – Two public workshops have been held to in the preparation of this proposed Basin Plan Amendment and Staff Report.

...

Another public workshop was held on ~~is scheduled for~~ April 27, 2006 in Sacramento to provide information and obtain comments related to this draft Staff Report and the proposed Basin Plan Amendment. ...

Page 48, paragraphs 2-4

The Basin Plan states that the Regional Water Board will ~~use~~ consider 1/10th of the 96-hour LC50 of the most sensitive organism as the daily maximum for protection of aquatic life. Other available information, such as the Lowest Observed Effect Concentrations and No Observed Effect Levels, is to be evaluated to determine whether lower concentrations are required to interpret narrative objectives when numeric Water Quality Objectives or appropriate criteria are not available. ~~If the toxicity test result for the Gammarus fasciatus test is not considered reliable, the next most sensitive species is Ceriodaphnia dubia. Ceriodaphnia dubia is a zooplankton of the order cladocera (waterfleas), which are typically abundant in healthy freshwater ecosystems. The species mean acute value for Ceriodaphnia dubia reported by USEPA (2005) is 377.3 ng/L and the value reported by CDFG (CDFG 2000) is 440 ng/L. Based on existing Regional Water Board policy, the diazinon concentration used to interpret applicable narrative objectives would be between 38 ng/L and 44 ng/L as a daily maximum. Since diazinon and chlorpyrifos criteria have been calculated based on the CDFG dataset, it would not be necessary to interpret narrative objectives using 1/10th of the 96-hour LC50 of the most sensitive organism.~~

Basin Plan policy also requires consideration of other available information when interpreting narrative objectives (e.g. no observed effect levels or lowest observed effect levels). As discussed below under Endangered Species Act,

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~~was pointed out by NOAA Fisheries (NMFS, 2003), effects of diazinon on salmon behavior have been observed at levels as low as 100 ng/L, although the effects at this concentration were not statistically significant when compared to controls (Scholz, et al., 2000). These effects are not currently well understood enough to provide a basis for interpretation of narrative objectives, but may need to be considered in the future.~~

~~have been observed at levels as low as 100 ng/L, although the effects were not statistically significant when compared to controls. Since these effects were observed after short-term (2-hour) exposure of the fish to diazinon (Scholz, et al., 2000), it is likely that longer-term exposure to diazinon would have a more pronounced effect even at the lowest level tested.~~

Under the “no change” alternative for diazinon, the Regional Water Board would not rely on any criteria that include the questionable *Gammarus fasciatus* toxicity test results. Based on existing Regional Water Board policies, compliance with narrative pesticide and toxicity objectives would be determined by using the recalculated California Department of Fish and Game criteria (160 ng/L one-hour average; 100 ng/L 4-day average)⁶. ~~Under the “no change” alternative for diazinon, a daily maximum based on 1/10th of the 96-hr LC50 of the most sensitive species (*C. dubia*) could also be used (42 ng/L).~~

Page 48, 2nd paragraph under Section 5.1.6

The “No change” alternative would not establish Water Quality Objectives for diazinon or chlorpyrifos, but would likely result in the use of either the criteria developed from the CDFG data set, or 1/10th of the LC50 for the most sensitive species, to interpret the narrative objectives.

Page 55, Table 5.3

Changes were made to Table 5.3 to be consistent with the discussion in the text regarding the “No Change” alternative.

Page 57, 1st paragraph under Section 5.1.8.

Diazinon and chlorpyrifos have the same mechanism of toxic action, and have been shown to exhibit additive toxicity to aquatic invertebrates when they co-occur (CDFG, 1999; Bailey et al. 1997; Siepmann and Finlayson, 2000). Studies of mixtures of compounds acting through the same mechanism suggest there is no concentration below which a compound will no longer contribute to the overall toxicity of the mixture (Deener et al., 1988). Therefore, the total potential toxicity of co-occurring diazinon and chlorpyrifos needs to be assessed, even when one or both of their individual concentrations would otherwise be below thresholds of concern. As discussed above, existing Regional Water Board Water Quality Objectives require that additive toxicity effects be considered when evaluating compliance with the applicable narrative objectives.

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The Basin Plan (in Chapter IV, "Pesticide Discharges from Nonpoint Sources") provides an additivity formula that applies to diazinon and chlorpyrifos when they co-occur.

Page 68, 2nd paragraph under Section 5.2.7.3

A study conducted on Chinook salmon indicated ~~found~~ that diazinon significantly inhibited olfactory-mediated avoidance response to predators at concentrations as low as 1,000 ng/L. An effect, although not statistically significant, was also found at 100 ng/L. The authors conclude that this inhibition could have negative consequences for survival and reproduction (Scholz, et al., 2000). ~~The currently available diazinon criteria derived using the USEPA methodology did not consider the recent study by Scholz.~~ Since these effects were observed after short-term (2-hour) exposure of the fish to diazinon, longer-term exposure to diazinon may have a more pronounced effect. Felsot, (2005) suggested that the Scholz, et al (2000) study could not be used as the basis for deriving criteria due to the large differences in concentrations tested, poor quantitative separation of observed responses, and ambiguity about the ecological relevance of the observed responses. Regional Water Board staff agrees that the results of the Scholz study cannot be used directly for diazinon criteria derivation, although the study does raise concerns regarding sublethal effects of diazinon on endangered salmonids.

Page 77, Section 6.5

The following footnote was added to the discussion of groundwater recharge: In many areas of the Delta with high groundwater levels, increased infiltration would not have the benefit of increasing groundwater recharge

Second paragraph in Section 7.1.3

The Regional Water Board conducted outreach to the stakeholders in the area covered by this Amendment, as discussed in the Executive Summary. ~~A scoping workshop was conducted in January 2005, and additional workshops are planned before bringing this proposed Basin Plan Amendment before the Regional Water Board.~~ These outreach activities ~~will be~~ were conducted to gain participation stakeholders as part of implementation of the watershed policy. ...

A new section 7.1.5 has been added.

7.1.5 Pesticide Discharges from Nonpoint Sources

The Regional Board's policy on Pesticide Discharges from Nonpoint Sources (Pesticide Policy) was adopted to implement the water quality objectives for

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Pesticides. The Pesticide Policy includes a number of provisions that should be evaluated with respect to this Basin Plan Amendment.

1. *“The control of pesticide discharges to surface waters from nonpoint sources will be achieved primarily by the development and implementation of management practices that minimize or eliminate the amount discharged.”*

The evaluation of available practices for the control of diazinon and chlorpyrifos (Section 6.5) includes both management practices that should minimize the off-site movement of diazinon and chlorpyrifos, as well as practices (i.e. use of other pest control methods) that would eliminate the amount discharged. The proposed Basin Plan Amendment requires dischargers to submit a management plan to describe the actions they will take to meet the applicable allocations. The Basin Plan Amendment has, therefore, been prepared in a manner consistent with this provision of the Pesticide Policy.

2. *“The Board will use water quality monitoring results to evaluate the effectiveness of control efforts and to help prioritize control efforts.”*

The proposed Basin Plan Amendment includes provisions that address the evaluation of water quality monitoring results to evaluate the effectiveness of control efforts (see Sections 3 and 8). Prioritization of which control efforts to pursue will be conducted primarily by growers or their representatives and will be identified in the management plan submitted. The Basin Plan Amendment has, therefore, been prepared in a manner consistent with this provision of the Pesticide Policy.

3. *“Regional Board monitoring will consist primarily of chemical analysis and biotoxicity testing of major water bodies receiving irrigation return flows. The focus will be on pesticides with use patterns and chemical characteristics that indicate a high probability of entering surface waters at levels that may impact beneficial uses. Board staff will advise other agencies that conduct water quality and aquatic biota monitoring of high priority chemicals, and will review monitoring data developed by these agencies. Review of the impacts of "inert" ingredients contained in pesticide formulations will be integrated into the Board's pesticide monitoring program.*

When a pesticide is detected more than once in surface waters, investigations will be conducted to identify sources. Priority for investigation will be determined through consideration of the following factors: toxicity of the compound, use patterns and the number of detections. These investigations may be limited to specific watersheds where the pesticide is heavily used or local practices result in unusually high discharges. Special studies will also be conducted to determine pesticide content of sediment and aquatic life when conditions warrant. Other

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agencies will be consulted regarding prioritization of monitoring projects, protocol, and interpretation of results.”

These provisions focus on the general approach the Regional Board will use in determining whether a water quality problem related to pesticides exist. This procedure was generally followed in the investigation of water quality problems related to diazinon and chlorpyrifos. The Regional Board will need to continue following this procedure to determine if shifts in pesticides use patterns or use of alternatives to diazinon or chlorpyrifos require investigation or special studies. The proposed Basin Plan Amendment does include provisions that address continued sampling and evaluation of pesticides in the major waterbodies (see Sections 3 and 8). The Basin Plan Amendment has, therefore, been prepared in a manner consistent with this provision of the Pesticide Policy.

4. “To ensure that new pesticides do not create a threat to water quality, the Board, either directly or through the State Water Resources Control Board, will review the pesticides that are processed through the Department of Food and Agriculture’s (DFA) registration program. Where use of the pesticide may result in a discharge to surface waters, the Board staff will make efforts to ensure that label instructions or use restrictions require management practices that will result in compliance with water quality objectives. When the Board determines that despite any actions taken by DFA, use of the pesticide may result in discharge to surface waters in violation of the objectives, the Board will take regulatory action, such as adoption of a prohibition of discharge or issuance of waste discharge requirements to control discharges of the pesticide. Monitoring may be required to verify that management practices are effective in protecting water quality.”

This provision of the Pesticide Policy describes a procedure to be applied during the registration process for new pesticides, and is, therefore, not directly related to the control of diazinon or chlorpyrifos runoff and does not apply to this Basin Plan Amendment.

5. “The Board will notify pesticide dischargers through public notices, educational programs and the Department of Food and Agriculture’s pesticide regulatory program of the water quality objectives related to pesticide discharges. Dischargers will be advised to implement management practices that result in full compliance with these objectives by 1 January 1993, unless required to do so earlier. (Dischargers of carbofuran, malathion, methyl parathion, molinate and thiobencarb must meet the requirements detailed in the Prohibitions section.) During this time period, dischargers will remain legally responsible for the impacts caused by their discharges.”

This provision of the Pesticide Policy refers to the pesticide water quality objectives adopted at the time of the policy. The provision, therefore, does not apply to the establishment of site-specific water quality objectives for diazinon contained in this Basin Plan Amendment.

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6. “The Board will conduct reviews of the management practices being followed to verify that they produce discharges that comply with water quality objectives. It is anticipated that practices associated with one or two pesticides can be reviewed each year. Since criteria, control methods and other factors are subject to change, it is also anticipated that allowable management practices will change over time, and control practices for individual pesticides will have to be reevaluated periodically.”

The proposed Basin Plan Amendment (see Section 3) describes a role for the Central Valley Water Board in reviewing management practices and provides for periodic review of those practices. Dischargers of diazinon and chlorpyrifos will be responsible for providing that information to the Central Valley Water Board. The Basin Plan Amendment has, therefore, been prepared in a manner consistent with this provision of the Pesticide Policy.

7. “Public hearings will be held at least once every two years to review the progress of the pesticide control program. At these hearings, the Board will
review monitoring results and identify pesticides of greatest concern,
review changes or trends in pesticide use that may impact water quality,
consider approval of proposed management practices for the control of pesticide discharges,
set the schedule for reviewing management practices for specific pesticides,
and
consider enforcement action.

“After reviewing the testimony, the Board will place the pesticides into one of the following three classifications. When compliance with water quality objectives and performance goals is not obtained within the timeframes allowed, the Board will consider alternate control options, such as prohibition of discharge or issuance of waste discharge requirements.

“1. Where the Board finds that pesticide discharges pose a significant threat to drinking water supplies or other beneficial uses, it will request DFA to act to prevent further impacts. If DFA does not proceed with such action(s) within six months of the Board's request, the Board will act within a reasonable time period to place restrictions on the discharges.

“2. Where the Board finds that currently used discharge management practices are resulting in violations of water quality objectives, but the impacts of the discharge are not so severe as to require immediate changes, dischargers will be given three years, with a possibility of three one year time extensions depending on the circumstances involved, to develop and implement practices that will meet the objectives. During this period of time, dischargers may be required to take

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interim steps, such as meeting Board established performance goals to reduce impacts of the discharges. Monitoring will be required to show that the interim steps and proposed management practices are effective.

“3. The Board may approve the management practices as adequate to meet water quality objectives. After the Board has approved specific management practices for the use and discharge of a pesticide, no other management practice may be used until it has been reviewed by the Board and found to be equivalent to or better than previously approved practices. Waste discharge requirements will be waived for irrigation return water per Resolution No. 82-036 if the Board determines that the management practices are adequate to meet water quality objectives and meet the conditions of the waiver policy. Enforcement action may be taken against those who do not follow management practices approved by the Board.”

The Regional Board, through the Clean Water Act Section 303(d) listing process, has reviewed available monitoring results for pesticides and has identified diazinon and chlorpyrifos as two of the pesticides of greatest concern, which is consistent with this provision of the Pesticide Policy.

In preparing this Basin Plan Amendment, the Regional Board has reviewed changes and trends in use of diazinon and chlorpyrifos and potential replacement products, which is consistent with this provision of the Pesticide Policy.

As part of the review procedure identified in this Basin Plan Amendment (see Section 3), the Regional Board will consider enforcement action, which is consistent with this provision of the Pesticide Policy.

By adopting this Basin Plan Amendment, the Regional Board is effectively considering diazinon and chlorpyrifos to fall within classification two identified by this provision of the Pesticide Policy. A conditional prohibition of discharge of diazinon and chlorpyrifos is proposed unless such discharges are regulated either by a waiver of waste discharge requirements or waste discharge requirements or the diazinon and chlorpyrifos water quality objectives and loading capacity are met. This Basin Plan Amendment requires monitoring to demonstrate that interim steps and proposed management practices are effective. The Basin Plan Amendment is, therefore, consistent with this provision of the Pesticide Policy.

8. “To ensure the best possible program, the Board will coordinate its pesticide control efforts with other agencies and organizations. Wherever possible, the burdens on pesticide dischargers will be reduced by working through the DFA or other appropriate regulatory processes. The Board may also designate another agency or organization as the responsible party for the development and/or implementation of management practices, but it will retain

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overall review and control authority. The Board will work with water agencies and others whose activities may influence pesticide levels to minimize concentrations in surface waters.”

The Regional Board has worked with the Department of Pesticide Regulation (DPR)¹ to identify possible ways of reducing the burden on pesticide dischargers. Management practices for controlling diazinon have been added to the diazinon use label requirements (MANA, 2004d), which are implemented by the County Agricultural Commissioners under DPR’s supervision. Management practices for controlling diazinon and chlorpyrifos are also expected to be incorporated into upcoming revisions to the chlorpyrifos use labels requirements (DPR 2004), as well as DPR’s pending dormant spray regulations (DPR 2005b). The proposed amendment contains provisions for continuing to work with DPR and the County Agricultural Commissioners to assess the success of the management practices being implemented. The program of implementation established by this Basin Plan Amendment also still retains the Regional Board’s role in reviewing management practices and monitoring data, as well as determining what further control actions might be required. The Basin Plan Amendment has, therefore, been prepared in a manner consistent with this provision of the Pesticide Policy.

9. “Since the discharge of pesticides into surface waters will be allowed under certain conditions, the Board will take steps to ensure that this control program is conducted in compliance with the federal and state antidegradation policies. This will primarily be done as pesticide discharges are evaluated on a case by case basis.”

Anti-degradation policies have been explicitly considered in a number of sections of this staff report. The Basin Plan Amendment has, therefore, been prepared in a manner consistent with this provision of the Pesticide Policy.

A new section 7.1.6 has been added.

SWRCB’s Water Quality Control Policy for Addressing Impaired Waters

The SWRCB adopted to the Water Quality Control Policy for Addressing Impaired Waters (SWRCB, 2005) to describe the requirements for how the State and Regional Boards must correct impairments to the waters of the State.

“A. If the water body is neither impaired nor threatened, the appropriate regulatory response is to delist the water body.”

As discussed in the Background section of this staff report, diazinon and chlorpyrifos are still found at levels exceeding water quality standards in the

¹ DPR was part of the California Department of Food and Agriculture at the time the Pesticide Policy was adopted.

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Delta Waterways, therefore this impairment still needs to be corrected through a Regional Board action.

“B. If the failure to attain standards is due to the fact that the applicable standards are not appropriate to natural conditions, an appropriate regulatory response is to correct the standards.”

As discussed in the section of this report Beneficial Uses (section 4) the beneficial uses that are most sensitive to diazinon and chlorpyrifos warm and cold freshwater habitat, have been reviewed and are appropriate for the delta waterways

“C. The State Board and Regional Boards are responsible for the quality of all waters of the state, irrespective of the cause of the impairment. In addition, a TMDL must be calculated for impairments caused by certain EPA designated pollutants.”

Pesticides fit under the definition of pollutants, and diazinon and chlorpyrifos are technically suitable for TMDL calculation in the Delta Waterways. Therefore a TMDL must be calculated. The proposed amendment contains all of the necessary elements of a TMDL; the Loading Capacity, allocations, and consideration of seasonal variations and a margin of safety.

“D. Whether or not a TMDL calculation is required as described above, impaired waters will be corrected (and implementation plans crafted) using existing regulatory tools”

The proposed Amendment uses existing regulatory tools, including prohibitions of discharge, waste discharge requirements and, possibly, waivers of waste discharge requirements, to correct the diazinon and chlorpyrifos impairment in the Delta Waterways.

“D1. If the solution to an impairment will require multiple actions of the regional board that affect multiple persons, the solution must be implemented through a basin plan amendment or other regulation.”

Correcting the diazinon and chlorpyrifos impairment in the Delta will likely require multiple actions of the Regional Board to gain compliance from all of the dischargers to the Delta Waterways, therefore a Basin Plan amendment is necessary in this case.

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“D2. If the solution to an impairment can be implemented with a single vote of the regional board, it may be implemented by that vote.”

As discussed under D1, the solution to this impairment will likely require multiple votes of the Regional Board, therefore a regulation, such as a Basin Plan Amendment, is required.

“D3. If a solution to an impairment is being implemented by a regulatory action of another state, regional, local, or federal agency, and the Regional Board finds that the solution will actually correct the impairment, the Regional Board may certify that the regulatory action will correct the impairment and if applicable, implement the assumptions of the TMDL, in lieu of adopting a redundant program.”

Recent and anticipated changes in pesticide use requirements by regulatory agencies such as DPR and USEPA are expected to reduce diazinon and chlorpyrifos discharges. However, some of those changes have not yet been implemented, so there is no guarantee that these actions will result in attainment of water quality objectives. Therefore the adoption of a Basin Plan Amendment is appropriate. In addition, this provision of the Policy provides an option for the Regional Water Boards and not a requirement to certify a regulatory action by another agency.

“D 4. If a solution to an impairment is being implemented by a non-regulatory action of another entity, and the regional board finds that the solution will actually correct the impairment, the regional board may certify that the non-regulatory action will correct the impairment and if applicable, implement the assumptions of the TMDL, in lieu of adopting a redundant program.”

A solution to the impairment is not being implemented through a non-regulatory action by another entity, so this provision could not be applied.

“II. Process for adopting TMDLs”

For the reasons stated above, a Basin Plan Amendment is the appropriate means for the adoption of a TMDL for diazinon and chlorpyrifos in the Delta Waterways. The adoption of this TMDL will follow the process outlined in this policy

The proposed Basin Plan Amendment contains all the necessary elements of a TMDL, and an implementation plan that uses existing regulatory tools, prohibitions, waivers and WDRs to correct the impairment caused by diazinon and chlorpyrifos in the Delta Waterways. This Basin Plan Amendment has, therefore, been prepared in a manner consistent with this provision of the SWRCB's Water Quality Control Policy for Addressing Impaired Waters

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Page 104, under Section 10.2

The signature block for the CEQA findings was changed to the Executive Officer's signature.

The potential findings were changed to more accurately reflect the options under the Basin Plan Amendment process.

On the basis of this initial evaluation:

~~I find that the proposed Basin Plan Amendment could not have a significant effect on the environment. I find that the Proposed Project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.~~

I find that although the proposed Basin Plan Amendment could have a significant effect on the environment, there will not be a significant effect in this case because feasible alternatives and/or feasible mitigation measures exist that would substantially lessen any significant impact. These alternatives are discussed in the attached written report. ~~I find that although the Proposed Project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the Project have been made by or agreed to by the Project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.~~

I find that the proposed Basin Plan Amendment may have a significant effect on the environment. There are no feasible alternatives and/or mitigation measures available which would substantially lessen any significant adverse impacts. See attached written report for a discussion of this determination. ~~I find that the Proposed Project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.~~

~~I find that the Proposed Project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect: 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.~~

~~I find that although the Proposed Project could have a significant effect on the environment because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the Proposed Project, nothing further is required.~~

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Public Participation and Agency Consultation Section

A new section 11 was added to the report.

11 Public Participation and Agency Consultation Chapter

Two public workshops have been held to in the preparation of this proposed Basin Plan Amendment. A public workshop was held on January 19, 2005 in Stockton to obtain comments on the proposed scope of the Basin Plan Amendment. No comments on changing the scope of this proposed Basin Plan Amendment were received at that meeting or at any other time during the scoping period for this Amendment. The peer review draft of this Staff Report was made publicly available in February 2006, and the public review draft was made available in April 2006. Another public workshop was held on April 27, 2006 in Sacramento to provide information and obtain comments related to this draft Staff Report and the proposed Basin Plan Amendment. Staff has also contacted representatives of municipalities, agricultural and environmental groups to see if they have any questions or concerns regarding the amendment to discuss before the June Board hearing.

The following agencies participated in the development of this draft amendment, through receipt of mailings pertaining to development of the amendment, attendance at public workshops, and submission of comments on the amendment: California Department of Pesticide Regulation; California Department of Fish and Game; National Oceanic and Atmospheric Administration – Fisheries; U.S. Fish and Wildlife Service; and U.S. Environmental Protection Agency.

References Section

A number of minor corrections were also made to the References section of this report.

Appendix A

The following waterways have been added to the list of Delta Waterways and Figures A-1 and A-2

- 144. Deuel Drain
- 145. Dredger Cut
- 146. Highline Canal

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Other Changes

When finalizing the Staff Report, staff may make other minor, non-substantive changes to clarify or enhance the readability of the Staff Report (e.g. formatting, grammar or spelling corrections).