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May 17, 2011

Anthony Saracino, Chair
California Water Commission
1416 Ninth Street, Room 1147
Sacramento, CA 95814

RE: Delta Stewardship Council Delta Plan
Submitted via email: cwc@water.ca.gov

Dear Mr. Saracino:

Due to your interest in the development of the Delta Plan by the Delta Stewardship Council I have taken the liberty of providing you and the members of the California Water Commission with the comments submitted by RCRC to date regarding the Delta Plan.

Please do not hesitate to contact me with any questions or comments regarding our comments to the Delta Stewardship Council on the Delta Plan.

Sincerely,

Kathy Mannion
Legislative Advocate

cc: Members, California Water Commission

1215 K STREET, SUITE 1650 SACRAMENTO, CA 95814 PHONE: 916-447-4806 FAX: 916-448-3154 WEB: WWW.RCRCNET.ORG

May 6, 2011

Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, California 95814

Sent via e-mail to Individual Council members and Council Executive Director

Re: Third Draft – Delta Plan

Dear Chairman Isenberg and Members of the Council:

The undersigned agencies, associations, and organizations have reviewed the Third Draft of the Delta Plan (Third Draft), which was released by the Delta Stewardship Council (Council) on April 23, 2011. While we acknowledge and appreciate that there have been some significant and important improvements to the Third Draft as compared to the Second Draft, many of the foundational concerns we identified in our April 8, 2011 coalition letter remain outstanding. We are particularly concerned with the provisions related to the excessive regulatory approach and the asserted jurisdictional reach of the Council.

The Delta Plan must use clear, precise and consistent language to effectively guide actions toward achieving the coequal goals of water supply reliability and restoring the Delta ecosystem. Language in the Third Draft remains confusing and problematic. Key terms are often used interchangeably and many of the ostensible "standards" proposed in the Plan (e.g., "reasonable" or "effective") are vague at best. If the Plan is to be well understood, key terms must be clearly defined and requirements, especially related to covered actions, must be clarified. If such revisions are not made, "void for vagueness" will be a very real concern as the Council's CEQA process goes forward.

1. *The Delta Reform Act Requires the Council to Prepare a Plan, Not Create a New Regulatory Agency*

The Delta Reform Act (SB X7 1) contemplates that the Delta Plan will serve as a "comprehensive, long-term management plan for the Delta." Water Code §85059. The Council has yet to set forth a program that coordinates and synthesizes the efforts of local, state, and federal agencies in a way that achieves the coequal goals. To the contrary, the Third Draft, like its predecessors, is a long list of proposed regulatory policies that the Council intends to approve and implement. This approach is problematic for several reasons. First, and most fundamental, there is no Plan, but only a series of proposed regulatory acts. Second, this approach effectively ignores the good work in ecosystem restoration, water supply reliability, Delta preservation, and flood control being done by other agencies, and instead requires the Council to "reinvent the wheel" in the form of a wholly new regulatory apparatus. Third, the document lacks cohesion. To create a Plan, rather than a collection of scattered regulatory acts, the Third Draft must include the following three revisions.

First, the next draft Plan should more clearly describe its long-term vision for the Delta (pages 11 and 12); consistent with Water Code sections 85020 and 85300-85309. The emphasis must be on a comprehensive approach which includes the necessary investments in the Delta for improving statewide water supply reliability and reducing the multitude of stressors on the ecosystem. Moreover, this must be accomplished in a manner that protects the unique character of the Delta, including enhancing the Delta economy, protecting the quality of the Delta environment, and providing for public safety through improved flood protection. We suggest that the fourth draft identify the elements of a Delta solution that can be achieved by each of the milestones identified on page 13 of the current draft, as well as the "near-term" and intermediate term timeframe discussed at the Council meeting last week. In this way, the revised Delta Plan can identify targets associated with the implementation of the Delta Plan and ways to measure progress towards the coequal goals.

Second, the Delta Plan should identify all of the programs, policies and actions currently being undertaken by various organizations and agencies that could assist or interfere with achieving the coequal goals.

Third, the Delta Plan should fill in the gaps by identifying additional or modified programs necessary to reach the milestones for achieving the coequal goals. These three steps would comprise a very useful implementation approach for the Plan's initial five-year period, after which the Council could assess progress and develop specific and more narrowly targeted and practical approaches.

2. *The Delta Reform Act Requires the Council to Coordinate With Existing Agencies, Not Regulate Them*

By including the Delta Reform Act in the 2009 comprehensive water package, the Legislature recognized that there are a myriad of local, state and federal agencies with independent jurisdiction and statutory directives in the Delta. The Legislature also recognized that there is a distinct lack of coordination amongst these agencies regarding actions taken in the Delta. The legislative purpose for establishing the Council against such a backdrop was to facilitate the integration and synthesis of these efforts to achieve the coequal goals, not to place those agencies under the regulatory umbrella of the Council or duplicate existing efforts.

The Council should help the approximately 200 agencies with authority in the Delta to work better together, not just become the 201st regulatory agency. If additional regulations had been the goal, the Legislature could have easily abolished or transferred those agencies' authority and obligations to the Council. Instead, the Legislature recognized that achieving the coequal goals would only be possible if the Council provided the coordination amongst the other agencies necessary to resolve the problems facing the Delta, not duplicate those agencies' efforts.

3. *The Delta Reform Act Requires the Council to Base the Delta Plan on Good Science*

Water Code section 85308(a) requires the Council to base the Delta Plan on the best available science and the independent scientific advice of the Independent Science Board (ISB). Unfortunately, the Third Draft, like its predecessors, does not comply with this direction. In its letter to the Council dated March 22, 2011, the ISB described the problems facing the Delta as "wicked" and admonished the Council for failing to use the best available science as the basis of its policies and recommendations to address those problems. The Third Draft failed to correct this noted deficiency. This represents another failure to satisfy the legislative direction in the Act. Water Code §85308(f).

More recently, in a report presented to the Council last week, the ISB noted that the framework and structure of the Third Draft is not consistent with providing the requisite foundation and parameters for an adaptive environmental management program that will be necessary to adequately address the problems facing the Delta. Specifically, the ISB report stated that "new issues of trust and trust-building processes, including adequate monitoring and transparency, need to be addressed to formally set the stage for a clear and successful transition to AEM [adaptive environmental management]." (*See* Agenda Item 12, Attachment 1 of the DSC April 28-29, 2011 meeting.)

We urge the Council to focus the component of the Delta Plan addressing "Science and Adaptive Management," not on an "academic description" of adaptive management, but rather on developing procedures to assure all stakeholders that actions will only be included in the Delta Plan or modified over time based on full consideration of the latest scientific information. In addition, we encourage the Council to take advantage of the ISB's expertise to develop methods and measures for evaluating whether actions undertaken in the Delta are successfully advancing the coequal goals.

Very truly yours,

Signatures on attached pages

cc: Members of the Council
Joseph Grindstaff

Timothy Quinn
Executive Director
Association of California Water Agencies

David Guy
President
Northern California Water Association

Byron Buck
Executive Director
State and Federal Contractors Water Agency

Allen Short
Coordinator
San Joaquin River Group Authority

John Kingsbury
Executive Director
Mountain Counties Water Resources Association

Richard Atwater
Executive Director
Southern California Water Committee

Dan Nelson
Executive Director
San Luis & Delta-Mendota Water Authority

Melinda Terry
Executive Director
North Delta Water Agency

Mario Santoyo
Director and Technical Advisor
California Latino Water Coalition

Ron Jacobsma
General Manager
Friant Water Authority

Michael J. Reagan
Chair, Board of Supervisors
Solano County

Paul Wenger
President
California Farm Bureau Federation

Valerie Nera
Policy Advocate
California Chamber of Commerce

Richard Lyon
Senior Vice President
CA Building Industry Association

Rex Hime
President and CEO
California Business
Properties Association

Tom Nassif
President and CEO
Western Growers

Kathy Mannion
Legislative Advocate
Regional Council of Rural Counties

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March 7, 2011

Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814
Sent via E-mail: deltaplancomments@deltacouncil.ca.gov

Re: First Draft of the Delta Plan (dated February 14, 2011)

Dear Chairman Isenberg and Members of the Council:

On behalf of the thirty member counties of the Regional Council of Rural Counties (RCRC) I appreciate the opportunity to submit the following general comments on the First Draft of the Delta Plan dated February 14, 2011. These comments build upon comments previously submitted on the Second Draft Interim Delta Plan and the Notice of Preparation (NOP) for the Delta Plan.

1. RCRC believes that the Delta should be the Delta Stewardship Council's (Council) primary focus.

2. The Council should include the proposed finance plan in the Draft Plan sooner rather than later. The Delta Plan and EIR should include an assessment of the fiscal costs/economic impacts of proposed actions. Utilizing the information developed, the Council should recognize fiscal constraints and develop a realistic Delta Plan i.e. a Delta Plan that can be implemented over time with the resources available.

3. Delta Plan proposed actions should not stray outside of the legal authority specified in the Delta Reform Act of 2009. As noted in previous comments the Council has limited authority outside of the Delta.

4. The Delta Plan should clearly state which actions will be taken utilizing the authority of the Council and which actions it "recommends" be taken under the authority of other state agencies and local governments.

5. The Delta Plan and the EIR must discuss the potential impacts of each alternative on the upstream, in-Delta, and south of the Delta environment.

6. If the Delta Plan includes a discussion on groundwater management it should recognize that groundwater management is best handled on the local level. Additionally, please note that not all groundwater is connected to surface water.

7. Any reference to flow criteria/standards in the Delta Plan should acknowledge the State Water Resource Control Board's authority and existing processes.

8. Any reference to the State Water Board's Delta Flow Criteria in the Delta Plan should recognize its limitations. "Best available science" it is not. RCRC has previously commented on the very limited value of the State Water Board's Delta Flow Criteria. To repeat in part, "Given the unreasonable legislative deadline contained in SB 7x 1 the State Water Resources Control Board's approach was limited to review of instream needs in the Delta ecosystem, specifically fish species and Delta outflows." The Delta Flow Criteria does not consider other public trust resources or a broad range of public interest considerations."

9. Please note that all beneficial uses of water in the state are subject to the reasonable use doctrine and Article X, Section 2 of Constitution.

In conclusion, RCRC looks forward to working with the Council as the Delta Plan progresses. Please feel free to contact me at kmannion@rcrcnet.org or (916) 447-4806 with any questions.

Sincerely,

Kathy Mannion
Legislative Advocate

Alpine Amador Butte Calaveras Colusa
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April 8, 2011

Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814
Sent via E-mail: deltaplancomment@deltacouncil.ca.gov

Re: Second Staff Draft of the Delta Plan (dated March 18, 2011)

Dear Chairman Isenberg and Members of the Council:

On behalf of the thirty member counties of the Regional Council of Rural Counties (RCRC) I appreciate the opportunity to submit the following comments on the staff Second Draft of the Delta Plan dated March 18, 2011. These comments build upon comments previously submitted on the Second Draft Interim Delta Plan, the Notice of Preparation (NOP) for the Delta Plan, and the First Draft of the Delta Plan.

RCRC has chosen to make select comments on the Second Draft of the Delta Plan (Second Draft) in the hope that the third draft will be dramatically revised and we can then submit more focused comments. We have also chosen, for the most part, not to repeat comments submitted to the Council previously.

Chapter 1

Geographic Scope and Use of the Delta Plan

Page 4, lines 38-42

The Second Draft begins to address the issue of the Council's regulatory authority i.e. findings of consistency by local and state agencies for proposed plans, programs and projects that meet the definition of a "covered action" vs areas outside the Council's regulatory authority where the Council is limited to making recommendations to state, federal and local agencies. However, the Second Draft still seeks to expand the authority of the Council beyond that which is provided for in statute. This is a fundamental flaw that diminishes the credibility of the Second Draft of the Delta Plan.

Page 6, lines 20-25

The Second Draft states "…when a covered action has a connection to an out-of-Delta action….." This statement, which appears throughout the Second Draft (in a box), seems to indicate that the Council believes it has some type of authority over out-of-

Delta actions. Again, it is RCRCs strong belief that the Delta Reform Act does not give the Council regulatory authority beyond the Delta and the Suisun Marsh.

Phasing of the Delta Plan and the First Five Years
Page 8, lines 9-14
The declaration that "the first step towards achieving the coequal goals is to halt, to the extent feasible, new or additional practices and activities within the Delta…." is far-reaching and could have an extremely detrimental socioeconomic impacts on those who live and work in the Delta, among others.

The phrase "or that have an impact on the Delta" seems to imply that the Council would seek to halt new or additional practices and activities outside of the Delta which "….further erode water supply reliability or water quality; degrade the Delta ecosystem; or increase risk to people, property or statewide interests." This proposed expansion of the Council's authority exceeds the authority provided for in the Delta Reform Act.

Chapter 3
Delta Stewardship Council Governance Roles
Page 21, lines 28-30
The sentence in question states "Decisions of the Council will be based upon their full authority, including the Act, any applicable provisions of the Constitution of the State of California, this Delta Plan, best available science, and the full record before them." While clearly SB 7x 1 provides the Council with some limited authority, the reference to the California Constitution in the sentence is confusing. While the California Constitution is law, it does not provide the Council itself with any authority. RCRC staff suggests that this sentence be re-written/clarified.

Submissions of Certification for Proposed Covered Actions
Pages 22-23
RCRC staff understands from the discussion at the Council meeting that this section will be reworked - so we will not submit comments at this time except to urge that provisions be made for small projects and that serious consideration be given to limiting these extensive requirements to large projects.

Review and Revision of the Delta Plan
Page 26
GP P10 states that the Council shall conduct adaptive management review of the Delta Plan at least once every five years and discusses four phases including under #3 the assessment of the legal, administrative and financial feasibility (emphasis added) of possible adaptive management actions. RCRC believes that this is a very important point that must be seriously considered at the initial adoption of the Plan and each time it is reviewed.

Recommendations for Legislative Action
Page 27
GP R1 states that the Council supports creation of a benefit assessment flood management agency for the Delta. RCRC notes that Delta landowners already pay assessments to maintain the levees and seriously questions the creation of yet another

new agency. Additionally, including such a "recommendation" for legislative action is of little value absent more detail as to what the Council envisions would be the authority and duties of such an agency, the interrelationship of the benefit assessment flood management agency with the existing reclamation districts, etc.

Chapter 4

Water Resources Policies

Page 29, lines 11-19 and Page 30, lines 1-3

RCRC believes that utilizing the term "public trust" when referring to flow standards in (a) and (b) is inaccurate and should be deleted. The State Water Resources Control Board (State Water Board) must balance all beneficial uses when developing flow standards – not just public trust values.

In (c) it states that if the State Water Board fails to act by the dates specified in the Delta Plan in adopting flow standards that "the Council will consider new projects or covered actions to be inconsistent with the Delta Plan." As the Council's authority is limited to determining if covered actions are consistent or inconsistent with the Delta Plan it is unclear as to what "new projects" refers to. RCRC urges that this sentence be re-worked for the sake of clarity.

(c) and (d) states that prior to the date indicated that "the Council will utilize existing Delta flow standards". Clarification is requested. How does the Council envision they would "utilize" existing flow standards?

Regional Water Self-Sufficiency

Page 30-31

WR P2 is very confusing as written. It proposes to require all water agencies within the primary and secondary planning area to develop and implement a plan similar to an Integrated Regional Water Management Plan, no later than January 1, 2015 and to update that plan at least every five years. The proposed penalty for noncompliance is that water resource "covered actions" will be found inconsistent with the Delta Plan. The Second Draft also specifies a number of key elements that must be included in the regional plans.

RCRC does not believe that the Council has the authority to require any agency to undertake the extensive planning processes outlined. Please see our previous comments on the NOP relating to the enabling statute and the term "promote".

The only "covered action" that comes immediately to mind that could impact water agencies north of the Delta is if they desired to transfer water through the Delta to buyers south of the Delta. RCRC believes it likely that the multiple planning requirements specified in WR P2 would impact the willingness of these Northern California water agencies to engage in water transfers. Is this really what the Council wants to do?

While RCRC does not believe that the Council has the authority to require agencies to develop the proposed plans we submit the following observations:

One of the elements of the required plan is that each region or agency adopts plans which allow continuation of water service to their customers for up to six months if there is an interruption of water supplies from the Delta. As north of the Delta water agencies do not rely on water supplies from the Delta requiring the inclusion of this element does not make sense. This same comment applies to the seawater desalination element.

The water use efficiency element requires that each region or agency meet the standards established in SB 7x 7 for water use efficiency. The element goes on to state that should no action revising the standards be taken in 2025, 2030 and beyond that the Council (in consultation with the Department of Water Resources and the State Water Board) will develop new standards. RCRC is not aware of any statutory authority giving the Council the authority to develop water use efficiency standards.

Likewise, RCRC questions the Council's authority relating to the water recycling element, the sustainable water supply element, the non-potable groundwater element, the storm water capture and recharge element, and the seawater desalination element.

Page 31
WR P 3 states that water users who impact the Delta (receiving water diverted or exported from the Delta or Delta watershed) shall report on water use and that the reporting shall include a full water balance, including production from all sources system losses, changes in storage and water use. Water use reporting requirements are within the purview of the State Water Board, not the Council.

WR P8 requires agencies currently receiving water diverted or exported from the Delta or Delta Watershed to develop and implement a sustainable rate structure that encourages and supports water use efficiency that includes, but is not limited to, a tiered rate structure. Again, RCRC questions the authority of the Council to impose these requirements upon local agencies.

Chapter 5
Ecosystem Restoration Policies
Page 34, lines 29-36
ER P5 again utilizes the term "public trust" flow standards. Please see previous comments on this subject.

Chapter 7
Reduce Delta Flood Risk
Page 44
RR R6. Please see previous comments on the creation of a Delta Flood Control Assessment District.

Chapter 8
Delta as an Evolving Place Recommendations
Page 46
DP R2 states that the Council supports the creation of a system of "payments in lieu of taxes" to replace the loss of local government revenues resulting from the removal of properties from property tax rolls for ecosystem restoration or water supply purposes.

This recommendation is unlikely to give the Delta counties much comfort as the State has proven to be an unreliable partner to local agencies. For example, the Department of Fish and Game (DFG) owes 36 counties about $19.4 million through 2010 for payments in lieu of taxes on lands acquired and operated by DFG as wildlife management areas. Partial payments were made from 1993 – 2001, followed by zero payments from 2002 on. More recently, the Legislature has greatly reduced, and now has eliminated, Williamson Act subvention payments to counties for the state share of this important program – a loss to counties of $38 million per year if fully funded.

Chapter 9

Finance Plan to Support Coequal Goals

Page 47

RCRC will limit our comments on this chapter as it is anticipated that it will undergo substantial revision. The Council is only one of a number of state agencies that are seeking sources of funding in these tough budget times, and there are numerous other important statewide water related unmet funding needs besides the Bay Delta Conservation Plan and Delta ecosystem restoration. For example, the Legislative Analyst's Office (LAO), working with the California Research Bureau, has estimated the unmet funding demands for drinking water infrastructure (statewide) at $39 billion over a period of 20 years, wastewater infrastructure at $29.9 billion over a period of 20 years; and flood infrastructure at $26 billion over a period of 20 years.

Therefore, it is very important that the Council and the Delta Plan concentrate its attention on actions and activities in the Delta as required by the Delta Reform Act.

Conclusion

In conclusion, RCRC urges the Council to re-think the direction in which it is heading. The Second Draft is unsupportable as written. RCRC believes that it is more important for the Council to get it "right" and to develop a realistic, affordable and implementable Delta Plan as opposed to adopting a Delta Plan by the specified deadline that does not have the buy-in of the stakeholders - and is challenged every step of the way.

Please feel free to contact me at (916) 447-4806 if you have any questions.

Sincerely,

Kathy Mannion
Legislative Advocate

cc: Joe Grindstaff, Executive Officer
Terry Macaulay, Deputy Executive Officer

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May 5, 2011

Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814
Sent via E-mail: deltaplancomment@deltacouncil.ca.gov

Re: Third Staff Draft of the Delta Plan (dated April 22, 2011)

Dear Chairman Isenberg and Members of the Council:

On behalf of the thirty member counties of the Regional Council of Rural Counties (RCRC), I appreciate the opportunity to submit the following comments on the staff Third Draft of the Delta Plan dated April 22, 2011. These comments build upon comments previously submitted on the Second Draft Interim Delta Plan, the Notice of Preparation (NOP) for the Delta Plan, the First Staff Draft of the Delta Plan and the Second Staff Draft of the Delta Plan.

The Third Staff Draft of the Delta Plan (Delta Plan) is an improvement over the previous documents, and RCRC commends the Council and staff for the positive changes made. The document is also easier to read with the new revised format. However, RCRC continues to have very serious fundamental problems with the Delta Plan - as described in our comment letters on the First and Second Staff Drafts of the Delta Plan. In short – the Delta Plan continues to propose a regulatory scheme that significantly exceeds the authority provided to the Council in the Delta Reform Act.

Given the short turnaround time between the release of the Delta Plan and the comment deadline, RCRC will once again focus on selected sections of the document and endeavor not to repeat comments previously submitted, the majority of which have yet to be addressed.

Chapter 1, The Delta Plan

Overall, RCRC agrees with previous commenter's remarks as to the Delta Plan not containing a "plan" to meet the co-equal goals as required by statute.

Page 13, lines 22-35.

Please see RCRCs previously submitted comments on the geographic scope and use of the Delta Plan. To repeat, the proposed geographic scope and proposed

use of the Delta Plan is a serious fundamental flaw. RCRC urges the Council not to follow in the footsteps of the failed CALFED Bay-Delta Program.

Chapter 3, Governance: Implementation of the Delta Plan

RCRC urges the Council to re-consider the approach put forward in Chapter 3.

Page 27, Lines 11-16

The Delta Plan's proposed definition of "significant impact" is extremely broad i.e. …"a substantial or potentially change in existing conditions that is directly, indirectly, and/or cumulatively caused by a project and that will or may….". This definition is so inclusive that it provides no guidance whatsoever to entities that may propose a plan, program, or project.

Page 35, lines 28-32

The document states, relating to regulatory policies, that the Delta Plan will "seek to prevent actions that may preclude the future implementation of projects that meet the requirement of the Act" and "protect floodplains and floodways until studies are completed by the Department of Water Resources." Please see RCRCs previous comments on the extent of Council authority and local agency land use control. RCRC supports the comments of the Delta Counties on this topic.

Page 36, lines 1-7

RCRC appreciates the addition of language in the Delta Plan recognizing the Council's role, per the statute, as a coordinator of the agencies who have the regulatory authority to implement the Delta Plan. RCRC believes that it would be appropriate for the Delta Plan to identify the agencies to be included on the committee.

Lacking in the document is recognition that other state agencies have responsibilities that extend beyond the more narrow interests of the Council which they are obliged to fulfill, and which may conflict with the guidance and recommendations of the Council. This may be an appropriate location in the Delta Plan to include recognition of this fact.

Page 36, lines 32-38

The Delta Plan states that various CEQA statutory and categorical exemptions are not cross-referenced in the definition of a "covered action" and that these types of projects therefore fall under the Delta Reform Acts definition of covered action.

The Legislature had provided these statutory and categorical exemptions for a reason – and RCRC fails to grasp how the Council can assert jurisdiction (i.e. consistency review) over projects over which other state and local agencies have no discretion (i.e. ministerial projects).

If the Council believes that it must assert jurisdiction over these types of projects due to the lack of a cross-reference in the law - RCRC recommends that the Council

include in the Delta Plan a recommendation that the Legislature remedy this oversight via legislation.

Page 39, lines 13-18

The statement is made that a covered action must be implemented as described in its finding of consistency. How and when does adaptive management come into play?

Page 40, lines 1-19

RCRC appreciates that the Delta Plan now makes a distinction as it relates to more comprehensive requirements for "large-scale ecosystem restoration and water management covered actions".

Chapter 4, A More Reliable Water Supply for California

Please see RCRCs previous comments on the Council's authority or lack thereof extending beyond the Delta, and the meaning of the term "promote". RCRC encourages the Council to substantially re-write Chapter 4.

Page 47, lines 13-21

As the Council knows, the export/transfer of water is within the jurisdiction of the State Water Resources Control Board (State Water Board). It is therefore unclear to RCRC staff how the Council envisions this proposed regulatory policy would work. Is the Council proposing that they make a finding of consistency, for example, prior to the State Water Board considering/approving a water transfer and that the State Water Board cannot take action until the Council has determined consistency? Or, that once the State Water Board approves a water transfer that the Council has the authority to stop the transfer if they make a finding of inconsistency? Further clarity as to process and a discussion of the Council's authority to impose new requirements is requested.

Page 48, lines 14-38

Please refer to RCRC's previous comments relating to excessive proposed requirements.

Page 49, lines 14-45

RCRC agrees with other commenter's regarding the use of the correct terminology in order to avoid confusion when discussing flows i.e. "water quality objectives" v. "flow standards".

Page 50, lines 11-19

Placing in the Delta Plan dates by which a sister agency should accomplish certain actions comes across as rather high-handed, and the statement "If the State Water Resources Control Board fails to act by the dates indicated, the Council will XXX" is even more so. The State Water Board has their own multiple responsibilities and priorities, and is not subservient to the Council.

The State Water Board staff has informed the Council that in order to meet the proposed dates in the Delta Plan that they would have to significantly redirect their efforts from other State Water Board priorities. It would be of great interest to RCRC to know the specifics as to what other programs would have to be reprioritized if the State Water Board were to redirect their efforts.

Another very important detail is funding or the lack thereof. Water right fee payers would rightly object to the redirection of their fees for purposes other than what was intended. As it is, water right fee payers have considerable angst at the high level of fees currently being paid as the result of the elimination of general fund support for the Water Rights Program. As noted earlier, the State Water Board's fees are the subject of litigation.

Additionally, RCRC notes that the Council expects the State Water Board to set flows that "are necessary to achieve the coequal goals". The State Water Board has responsibilities that extend beyond the narrow focus of the Council (i.e. balancing of competing needs), and flows are not the sole solution to achieving the coequal goals. The Council should not presume to instruct the State Water Board on how they should fulfill their responsibilities.

Page 50, lines 20-29

RCRC objects to the three options presented for consideration by the Council "for consequences if flows not adopted". The Council is aware of the flawed nature of the 2010 *Development of Flow Criteria for the Sacramento-san Joaquin Delta Ecosystem* report. To propose that the Council use this report to determine consistency of covered actions is not reasonable. The Council is well aware that the State Water Board made it clear that the flow criteria do not consider the balancing of public trust resource protection with public interest needs for water. Additionally, the flow criteria did not consider other public trust resource needs such as the need to manage cold-water resources in reservoirs tributary to the Delta.

Also objectionable are the proposals to determine inconsistency of covered actions that would increase the capacity to store water, etc., and to recommend that the State Water Board cease issuing water right permits in the Delta and the Delta watershed. The adversarial and punitive nature of these (and other) proposals in the Delta Plan are, in the opinion of RCRC staff, counter-productive and should be deleted.

Pages 53-54

As it relates to groundwater, groundwater overdraft is not a statewide problem but a localized one. RCRC supports local management of groundwater resources as groundwater resources are best managed by local jurisdictions, and opposes state interference in local groundwater management.

A productive recommendation would be that groundwater management in the state would benefit from increased state and federal funding for groundwater research, monitoring, and other management programs.

Additional Suggested Language

The Delta Plan contains select language from the Delta Reform Act, which is appropriate. RCRC urges the Council to additionally include in the Delta Plan, at a minimum, a reference to the following code sections, if not the specific language, taken from the Delta Reform Act:

85031. (a) This division does not diminish, impair, or otherwise affect in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections, including, but not limited to, rights to water appropriated prior to December 19, 1914, provided under the law. This division does not limit or otherwise affect the application of Article 1.7 (commencing with Section 1215) of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462, and 11463, and Sections12200 to 12220, inclusive.

(b) For the purposes of this division, an area that utilizes water that has been diverted and conveyed from the Sacramento River hydrologic region, for use outside the Sacramento River hydrologic region or the Delta, shall not be deemed to be immediately adjacent thereto or capable of being conveniently supplied with water therefrom by virtue or on account of the diversion and conveyance of that water through facilities that may be constructed for that purpose after January 1, 2010.

(c) Nothing in this division supersedes, limits, or otherwise modifies the applicability of Chapter 10 (commencing with Section 1700) of Part 2 of Division 2, including petitions related to any new conveyance constructed or operated in accordance with Chapter 2 (commencing with Section 85320) of Part 4 of Division 35.

(d) 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.

85032. This division does not affect any of the following:

(a) The Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code).

(b) The California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code).

(c) The Fish and Game Code.

(d) The Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000).

(e) Chapter 8 (commencing with Section 12930) of Part 6 of Division 6.

(f) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(g) Section 1702.

(h) The application of the public trust doctrine.

(i) Any water right.

(j) The liability of the state for flood protection in the Delta or its watershed.

Chapter 5, Restore the Delta Ecosystem
Pages 64-65

The Delta Plan states that altered Delta flow regimes are detrimental to native aquatic species, and under "Policies" refers the reader to WR P4 (page 50) which states that the State Water Board should develop flow criteria and establish flows by certain specified dates. See RCRC's earlier comments under Chapter 4.

The Delta Plan, it appears, is not only stating that the State Water Board should develop flow criteria and establish flows, but that when doing so that the State Water Board should create a more natural flow regime. (Page 64, line 42)

As RCRC has previously stated, the State Water Board must by law balance a number of considerations when establishing new objectives. The Council has no authority to tell the State Water Board what it should do and how it should do it.

Page 67

Please see RCRCs previous comments relating to local land use control. RCRC supports the comments of the Delta Counties on this topic.

Page 69

The Delta Plan proposes that if the Bay Delta Conservation Plan (BDCP) is not completed by a date certain that the Council will proceed with ecosystem and conveyance planning recommendations independent of the BDCP process. RCRC finds this proposal objectionable given the narrow focus of the Council.

Decisions of this nature must be made by agencies that are required to balance competing needs like the Department of Fish and Game (DFG). For example, the DFG must consider in its decision-making process within the BDCP process the potential for negative impacts on upstream ecosystems from proposed actions to benefit the Delta.

Chapter 6, Improve Water Quality to Protect Human Health and the Environment
Page 80, lines 37-38

Throughout the Delta Plan the Council proposes regulatory action or recommendations that various state agencies undertake actions, often by a date certain. For example, WQ R3 states that "The California Department of Public Health should prioritize funding for disadvantaged communities that lack safe drinking water supplies."

The DPH has a priority system in place currently that ranks communities based on public health and safety criteria. RCRC suggests as an alternative that the Council recommend that the State Legislature provide funding in the State Budget to supplement State Revolving Fund (SRF) funding for water and wastewater projects that benefit small and disadvantaged communities. The Small Communities Wastewater Grant Program is an example of an extremely valuable program that is only funded from time to time if specific funding is included in a G.O. bond.

Recommending throughout the Delta Plan that the State Legislature provide additional funding to state agencies in order that they may undertake actions of importance to the Council's mission would seem more appropriate than trying to dictate (or recommend) what another state agency should do and when they should do it.

Chapter 7, Reduce Risk to People, Property, and State Interests in the Delta
Page 88-89

RCRC supports the comments of the Delta Counties relating to local land use and floodplain and floodway protection.

Chapter 8, Protect and Enhance the Unique Cultural, Recreational, Natural Resources, and Agricultural Values of the California Delta as an Evolving Place
Pages 101-104

RCRC supports the comments of the Delta Counties relating to the protection and enhancement of the unique cultural, recreational, natural resources, and agricultural values of the California Delta as an evolving place.

Chapter 9, Finance Framework to Support Coequal Goals

RCRC questions the legality of the fees proposed.

Pages 107- 118

As it relates to the Finance Plan Framework Guiding Principles, RCRC submits the following comments for Council consideration:

- RCRC believes that public benefits should be funded by state and federal funds not otherwise required for project mitigation or by law for other purposes.
- As RCRC has stated previously relating to the "beneficiary pays" principle, the so-called beneficiaries must directly benefit. Once having established that there is a direct measurable benefit RCRC could support the concept of a sliding scale cost allocation based on the degree of benefit received.
- RCRC understands that the Council proposes the use of the "stressors pays" principle as opposed to the "polluter pays" principle as it is perceived that doing so will result in the inclusion of a wider pool of potential payees. Please note that RCRC would oppose the identification of upstream water diversions as a "stressor" simply due to the diversion of water from the watershed.
- If there are to be user fees to fund the Delta Plan, RCRC agrees that the fees must be protected from redirection to other purposes. The only method is ensure that the current or future Legislature is unable to tap into such funds is to include specific protection within the California Constitution.
- RCRC opposes volumetrically based user fees for water diversions.

On page 110, lines 6-21, the Delta Plan identifies three immediate financing needs. The first is the protection of the existing Delta water export system from flood risks and needed ecosystem improvements to reduce damage by operations of the existing export pumps in the Delta. The water exporters are the beneficiaries of these actions, but there is also a public benefit that should be funded by the state and federal funds.

The second is the funding of a strong Delta Science Program. This would seem to be appropriately funded with state and federal funds. As to the operations of the Delta Stewardship Council and the Delta Conservancy, it would seem appropriate that state and federal funding be augmented by beneficiaries for the "services" provided by the Council.

RCRC cannot support (page 112, lines 27-30) the Council's recommendation that the Legislature grant to the Council blanket authority to develop fees for beneficiaries and stressors of the Delta ecosystem to fund the operational costs of the Council, the Delta Conservancy and the Delta Protection Commission.

RCRC also opposes (page 113, lines 2-6) the Council's recommendation that the Legislature additionally create a public goods on urban and agricultural water users to fund ecosystem costs or State water management costs such a developing the California Water Plan Update. These are public benefit costs that should be paid by the state and federal government utilizing the proceeds of taxes and/or bonds.

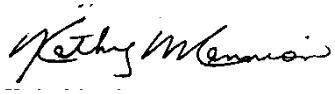
RCRC understands only too well the current fiscal constraints faced by the state and federal government. California State legislators and members of Congress should, like local government must, determine their priorities and allocate funds accordingly.

On page 114, lines 16-17, the Delta Plan states "Allowing reallocation of resources among users may be required for the long-term economic vitality of the State." RCRC would appreciate clarification as to the meaning of this statement.

The Delta Plan puts forward a variety of potential funding sources (redirecting fees, fines, and forfeitures from the State Water Resources Control Board to Delta activities; reallocating funds among agencies involved with Delta operations; additional fees on hydropower generators; fishing fees; other stressor fees; and, water marketing fees, among others) while also recognizing that significant funding from these sources in not anticipated. RCRC reminds the Council that when proposing to establish a new/additional fee that a nexus must be established.

In conclusion, RCRC appreciates the opportunity to provide the Council with comments on the third draft of the Delta Plan. Please contact me at (916) 447-4806 or kmannion@rcrcnet.org with any questions.

Sincerely,



Kathy Mannion
Legislative Advocate

cc: Joseph Grindstaff, Executive Officer