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Thomas D. Cumpston
General Counsel

In reply refer to: LBP2016-007

September 28, 2016

Anthony Navasero, P.E., Senior Engineer
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Via email to: oal_amendsingle@deltacouncil.ca.gov

Re: Agenda Item #11, September 29 meeting
Single-Year Water Transfers Amendments

Dear Mr. Navasero and Members of the Council:

El Dorado Irrigation District (“District”) writes to express its support for the staff recommendations regarding agenda item #11, the single-year water transfers amendments. The Delta Stewardship Council has proposed: (1) an amendment to 23 C.C.R. section 5001, subdivision (dd)(3) (i.e., the Delta Plan’s regulatory definition of “significant impact”) to remove the sunset date and therefore make permanent the exemption of single-year water transfers from Delta Plan regulation; and (2) revision of WR R15, recommending that the Department of Water Resources (DWR), the State Water Resources Control Board (SWRCB), and the Department of Fish & Wildlife (DFW) memorialize certain interagency procedures adopted on a temporary basis in response to recent drought conditions.

Currently, the regulations adopted by the Council on May 17, 2013 list four categories of projects that have been determined to be outside the scope of “covered action” subject to regulation under the Delta Plan; one of these categories is “[t]emporary water transfers of up to one year in duration” (Cal. Code Regs., tit. 23, § 5001, subd. (dd)(3)). However, this provision specifies that the exemption from “covered action” status will remain in effect only through Dec. 31, 2016, unless the Council acts to extend it. The pending proposal would accomplish that extension.

The two concerns raised by the Council in 2013 which led to the imposition of the sunset date related to: (1) a need for DWR and the SWRCB to have sufficient time to work with stakeholders to identify and recommend measures to reduce procedural and administrative impediments to water transfers while protecting water rights and environmental resources, and (2) the perceived lack of adequate public notice of some transfers. Substantial evidence now before the Council amply demonstrates that both of these conditions have been addressed.

First, DWR, the SWRCB and DFW have worked cooperatively with each other and with stakeholders to develop efficient procedures for considering proposed short-term water transfers. After the Council acted in 2013, California experienced a severe drought. In response, DWR, SWRCB and DFW worked together to facilitate temporary water transfers while still protecting water rights and environmental resources.



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Second, on September 23, 2016, the Governor signed into law AB 1755, the Open and Transparent Water Data Act. Among other things, this new law “will integrate existing water and ecological data information from multiple databases and provide data on completed water transfers and exchanges.” (AB 1755, Legislative Council’s Digest.) Thus, substantial evidence confirms that both of the concerns the Council identified in 2013 that led it to include the sunset provision on the one-year transfer exemption have now been addressed.

As the drought has demonstrated, a single-year water transfer can provide much-needed supplies to areas of scarcity and shortage. To better manage through future droughts and other challenging conditions, water agencies need as much flexibility as possible. For these reasons, the District supports staff’s recommendations on the single-year water transfer provisions and urges the Council to adopt them.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Brian D. Poulsen, Jr.', written over a white background.

Brian D. Poulsen, Jr.
Acting General Counsel

BP:pj

cc: Bill George, President of the Board of Directors, EID
Tom D. Cumpston, Acting General Manager, EID
Dan Corcoran, Environmental Manager, EID
John Kingsbury, Mountain Counties Water Resources Association