



September 29, 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

Directors
Edward J. "Ted" Costa
Kenneth H. Miller
Dan Rich
Pamela Tobin
Bob Walters
General Manager
Shauna Lorange

Dear Mr. Navasero and Members of the Council:

San Juan Water 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 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.

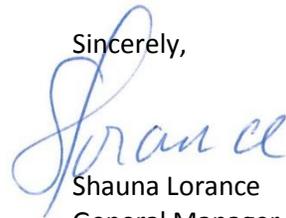
First, DWR, the SWRCB and DFW have worked cooperatively with each other and with stakeholders to develop efficient procedures for considering proposed short-term water transfers. After the Council acted in 2013, California experienced a severe drought. In response, DWR, SWRCB and DFW worked together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

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. Substantial evidence also supports the CEQA findings that have been prepared for the Council, particularly in light of recent California Supreme Court decisions construing applicable provisions of CEQA. *See, e.g., Neighbors for Smart Rail v. Exposition Metro Line*, 57 Cal.4th 439 (August 5, 2013) (existing environmental conditions normally provide the appropriate baseline for conducting environmental analysis) and *Friends of the College of San Mateo Gardens v. San Mateo County Community College District*, Calif. S. Ct. No S214061 (Sept. 19, 2016) (public agencies’ decisions whether to treat proposed projects as changes to previously reviewed projects or as new projects under CEQA are entitled to deference and must be upheld when substantial evidence in the record of proceedings supports the agencies’ determinations).

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, San Juan Water District supports staff’s recommendations on the single-year water transfer provisions and urges the Council to adopt them.

Sincerely,



Shauna Lorance
General Manager