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April 26, 2017

**SENT VIA EMAIL (amanda.bohl@deltacouncil.ca.gov)**

Chairman Fiorini and Council Members  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, Calif. 95814

**RE: Comments from Local Agencies of the North Delta  
DSC April 27-28th Meeting Agenda**

Dear Chairman Fiorini and Council Members:

These comments on Delta Stewardship Council (“Council”) April 27-28 Meeting Agenda Items are submitted on behalf of the Local Agencies of the North Delta (“LAND”). LAND is a coalition comprised of reclamation and water districts in the northern geographic area of the Delta.<sup>1</sup> As explained in our April 17, 2017, letter and below, we believe the Council is headed in the wrong direction with the proposed Delta Plan amendments, and request that the Council reconsider its approach.

Agenda Item 7f: Consultant Amendment

Agenda item 7f includes a \$2 million increase in the \$2.45 million contract with Stantec for development, processing and environmental review of the amendments to the Plan.<sup>2</sup> This item authorizes the addition of \$2 million for the

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<sup>1</sup> LAND member agencies cover over 120,000 acres of the Delta; current LAND participants include Reclamation Districts 3, 150, 307, 317, 349, 407, 501, 551, 554, 556, 744, 755, 813, 999, 1002, 2111, 2067, the Brannan-Andrus Levee Maintenance District, and Maintenance Area 9 South. Some of these agencies provide both water delivery and drainage services, while others only provide drainage services. These districts also assist in the maintenance of the levees that provide flood protection to homes and farms.

<sup>2</sup> Delta Stewardship Council April 27-28, 2017 Meeting Agenda Item 7f Delegation of Authority for the Executive Officer to Increase the Stantec Contract in Support of Delta Plan Amendments, *available at* <http://deltacouncil.ca.gov/docs/delta-stewardship-council-april-27-28-2017-meeting-agenda-item-7f-delegation-authority>

contract with Stantec to carry out review and analysis of the proposed Delta Plan amendments. As explained in my letter of April 17, 2017, it is wasteful for the Council to undertake limited amendments to the Delta Plan while the May 18, 2016 Sacramento County Superior Court ruling on JCCP No. 4758 (“Ruling”) invalidating the Delta Plan is on appeal. While the Council might have an argument if the amendments had nothing to do with the Ruling, the proposed amendments relate directly to the areas in which the trial court found the Plan lacking.

As explained below, and in previous comments, the proposed amendments also fail to implement the mandates of the Ruling and the accompanying Writ of Mandate. Thus, it appears the Council is “doubling down” on winning its appeal at taxpayer expense. It would be much more efficient for the Council to comply with the Writ as part of a comprehensive process to amend and update the Delta Plan, rather than taking a piecemeal approach.

Moreover, with respect to policies on conveyance, LAND and other parties argued throughout the development of the Delta Plan adopted in 2013 that the Delta Plan must include conveyance policies; this view of the 2009 Delta Reform Act (Wat. Code, §§ 85000 et seq. [“DRA”]), was also adopted by the Trial Court. To the extent the Council now wishes to rush through conveyance and related amendments, its prior actions—explicitly *avoiding* such amendments despite clear statutory direction—have been inconsistent with that approach.

Additional public funds should not be spent in pursuit of Delta Plan amendments that are incompletely developed, and are in conflict with the DRA requirements and/or the trial court’s Ruling. We suggest that no further funds be spent on this Delta Plan amendment and review process until these issues are resolved.

#### Agenda Item 9: Performance Measures Delete Reduced Delta Reliance

LAND is also concerned that the proposed performance measures have deleted from Outcome 3.4 all references to reduced reliance on the Delta that appeared in the 2013 Delta Plan.<sup>3</sup> Now the Proposed Performance Measures for

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<sup>3</sup> See Delta Stewardship Council April 27-28, 2017 Meeting Agenda Item 9, Attachment 1, Redline Version of a Subset of the Proposed Performance Measures Compared against February 2016 Adopted Version, pp. 2-3 *available at* <http://deltacouncil.ca.gov/docs/delta-stewardship-council-april-27-28-2017-meeting-agenda-item-9-attachment-1-redline-version>.

Outcome 3.4 discuss a performance metric for reliability of exports, without any mention of reduced reliance. This completely contravenes the Ruling's holding against the State Water Contractors that the DRA was meant to reduce reliance on the Delta for export areas (see Ruling, pp. 40-41), as well as the portion of the Ruling requiring metrics for reduced reliance (see Ruling, pp. 9-12). According to the Trial Court:

Respondent simply states that it is looking for a "significant reduction"; however, that does not provide a quantified or otherwise measurable target when no definition is provided as to what constitutes a "significant reduction". Respondent highlights the target of "progress toward" the statewide conservation goal. However, one is left without any understanding of how much progress, if less than the goal, constitutes success. As Petitioners persuasively argue, there is no measureable reduction of reduced water reliance that must occur in connection with the Delta in the statewide objective.

Finally, WR RI is not an enforceable policy and does not describe how progress will be measured. It only recommends that "progress" should be made. If using the word "progress" was sufficient, the Delta Reform Act would not have required the Delta Plan to "describe the methods by which the Council shall measure progress toward achieving the coequal goals." (§ 85308(d).)

(Ruling, p. 11.) The performance measures must include metrics for reduced reliance, in conformity with both the 2009 Delta Reform Act and the Trial Court's Ruling on the Delta Plan. To propose amendments that actually *remove* language regarding metrics for reduced reliance is unconscionable given the clear direction from the Trial Court.

Agenda Item 14: Conveyance, Storage and Operations Recommendations

The draft of the conveyance amendments clarifies that the amendments will only be recommendations, not policies or regulations.<sup>4</sup> The draft states that:

These provisions are recommendations; they are not regulations. They are intended to provide guidance to agencies implementing projects but do not control a project's consistency with the Delta Plan under Water Code section 85225, or any appeal to the Council of a certification under Water Code sections 85225.5 et seq.

*(Ibid.)*

The Ruling, however, required the Council to amend the Delta Plan and regulations to “promote conveyance options.” Developing unenforceable recommendations that need not be formally considered in a covered action consistency review does not satisfy this requirement. In fact, the Ruling noted that several “recommendations” in the now invalidated Delta Plan failed to “promote conveyance options.” (See Ruling, pp. 37, 49.) An agency that ignores every single one of these newly proposed recommendations will face no repercussions under the DRA. If enacted via a rulemaking process, some of these recommendations, such as those related to reverse flows, may satisfy the Ruling’s mandate that the Delta Plan and its regulations “promote conveyance and storage options.” Mere recommendations fail to do so.

In addition, as explained previously, it is not the Council’s role to promote any one conveyance, storage or operation. (See, e.g., Wat. Code, § 85212.) Moreover, the DRA has many provisions relating to the content of the Delta Plan, the focus of the Delta Council and Delta policy. (See, e.g., Wat. Code, § 85020-85023.) It is essential that the Council maintain its focus as a public body on that broader statutory mandate in order to be both responsible to the Legislature’s direction and to the public that funds its existence.

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<sup>4</sup> Delta Stewardship Council April 27-28, 2017 Meeting Agenda Item 14 Attachment 1 Revised Discussion Draft Delta Plan Amendment for Conveyance, Storage Systems, and the Operation of Both, p. 19, *available at* <http://deltacouncil.ca.gov/docs/delta-stewardship-council-april-27-28-2017-meeting-agenda-item-14-attachment-1-revised>.

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LAND believes that it is a waste of public resources to go forward with Delta Plan amendments while the appeal of the Ruling is pending, and thus opposes the approval of additional funding for completing Delta Plan amendments at this time. LAND further requests that the Council staff revise the proposed amendments to ensure that they satisfy the Ruling's requirement that the Delta Plan and its regulations "promote conveyance and storage."

Very truly yours,

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