ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7
100 NORTH CANYONS PARKWAY, LIVERMORE, CA 94551-9486 • PHONE (925) 454-5000

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

[submitted via email to eircomments@deltacouncil.ca.gov])

Subject: ***Comments on the Draft Program Environmental Impact Report for the Fifth Draft of the Delta Plan***

Dear Chairman Isenberg and Members of the Council:

Zone 7 Water Agency (Zone 7) writes to express our significant concerns with the 5th draft Delta Plan and the Delta Plan Draft Program Environmental Impact Report (Draft EIR) that the Delta Stewardship Council (Council) released on November 4, 2011. We are concerned that the Draft EIR has deficiencies under the California Environmental Quality Act (CEQA) and we have policy concerns with provisions of the draft Delta Plan. Zone 7 generally concurs with the comments filed by the State Water Contractors and the San Luis & Delta-Mendota Water Authority and adopts them here, but wishes to emphasize a few key points as well.

Zone 7 is the wholesale urban water supplier to businesses and approximately 200,000 residents in Livermore, Pleasanton, Dublin, and parts of San Ramon. Zone 7 also provides flood protection to the people of Eastern Alameda County and distributes untreated water directly to agricultural customers. Approximately 80 percent of Zone 7's supply comes from the State Water Project and 90 percent is ultimately conveyed through the Delta, making the Delta and its future extremely important to Zone 7.

In the Delta Reform Act of 2009 the California Legislature declared that the policy of California would be to pursue the coequal goals of a more reliable water supply for California and the protection, restoration, and enhancement of the Delta ecosystem. Then it went further and created the Council to develop a Delta Plan that would pursue both of these goals. Zone 7 has serious concerns that the Fifth Draft Delta Plan still fails to plan for a more reliable water supply for Californians. Moreover, the Draft EIR does not provide sufficient information to allow the public or the Council to assess whether the proposed project—the fifth draft of the Delta Plan—or any alternative will accomplish the Legislature's purpose. The Draft EIR is lacking in every critical substantive area.

Draft Delta Plan Concerns

First, we wish to address WR P1, the first policy in Chapter Four, A More Reliable Water Supply for California. It is extremely troubling that the plan attempts to review and regulate local water management decisions on everything from rate structures to recycling targets. The California Legislature did not establish the Delta Stewardship Council to micromanage local water management decisions by scores of public agencies throughout the state. It was

established to create a plan that could serve to coordinate the many local, state and federal efforts in the Delta. The Council should redirect its energy to the Delta, improving the reliability of water supplies and the ecological recovery of the estuary consistent with its legislative mandate.

Second, the draft does not clearly and unambiguously support a key objective of the Bay Delta Conservation Plan (BDCP) – the recovery of water supplies lost due to regulatory restrictions facing a water conveyance system that the BDCP intends to dramatically improve. BDCP is further threatened by the draft Delta Plan's proposal to require virtually every significant future BDCP action to undergo an unnecessary review process by the Council rather than to embrace BDCP actions as being consistent with the Delta Plan.

Third is the failure to adequately address export reliability. The draft Delta Plan seems to imply that in the future, less water will need to be conveyed through the Delta area. The public water agencies that use water conveyed through the Delta are considering investing billions of dollars under the BDCP to restore water reliability while working towards Delta ecosystem recovery efforts. The draft Delta Plan and the Draft EIR seem to be assuming that the water agencies and the public they serve will be willing to make significant investments that will actually decrease export reliability.

Feedback from water agencies has echoed these concerns in voluminous comments, including an alternate Delta Plan approach proposed by various agricultural and urban interests throughout the state. The overly regulatory approach that permeates this fifth draft of the Delta Plan will threaten the success of the Council in achieving its mandate and detract from prospects of a successful, collaborative approach. The Council owes it to the People of the State of California to get the Delta Plan right for the sake of our water supply, economy and environment.

Draft EIR Concerns

Failure to Pursue a More Reliable Water Supply or Discuss Practical Impacts of Reducing Water Supply. The Draft EIR supports a proposed project that would impede, rather than further, the achievement of the coequal goals. Of great importance to Zone 7 is how the proposed project will achieve the "water supply reliability" element of the coequal goals. The draft EIR clearly states that the proposed project will result in reduced water supplies compared to the status quo (no project alternative). The proposed project encourages substantial reductions in the water supplies developed in the watersheds of the Sacramento and San Joaquin Rivers that are beneficially used for municipal, industrial and agricultural purposes. The draft EIR assumes those reductions will be offset by "programs and projects that will improve self-reliance." (Delta Plan Draft Program EIR, p. 2A-6, lines 10 through 12.) The impacts of that paradigm are not adequately presented in the draft EIR and are difficult to reconcile with the legal mandate that the Delta Plan "include measures to promote a more reliable water supply that [meets] the needs for reasonable and beneficial uses of water." (Water Code, § 85302(d)(1).) Simply put, water supplies conveyed through the Delta were developed because local and regional water supplies were insufficient to meet then existing or projected uses. Zone 7 has long maximized local water supplies through conjunctive use, artificial recharge and careful management of its local groundwater basin (including demineralization of more brackish groundwater to optimize local water supplies). There is no basis to assume sufficient actions can be taken, particularly within the time periods suggested, to offset the water supply reductions or to

meet the needs of reasonable and beneficial uses of water, specifically to "sustain the economic vitality of the state." (Water Code, § 85302(d)(2).)

Defective Project Objectives. The objectives of the proposed project do not adequately reflect the Legislature's requirement that implementation of the Delta Plan further the restoration of the Delta ecosystem ***and*** work toward a more reliable water supply—the coequal goals. The Delta Plan is a key document to achieving the coequal goals, yet the Draft EIR explicitly avoids any analysis as to how the alternatives in this document would or would not achieve the coequal goals. This is a glaring omission, leaving Zone 7, other stakeholders, and the Council itself without information to determine if the proposed project can meet its legislatively-driven objectives.

Defective Project Description. The Council is proceeding with the Draft EIR knowing the description of the proposed project is subject to change and therefore misleading. The Council plans to release two more staff drafts in the coming months. Therefore, elements of the proposed project may be modified and the proposed project may no longer satisfy the project description.

Defective Impact Analysis. The draft EIR fails to properly assess how the proposed project will impact resources. The analysis should be focused on the strategies, policies, and recommendations in the Delta Plan as an integrated management plan. Instead, it focuses on project-specific examples of existing EIRs to demonstrate project-level physical impacts. In this way, the draft EIR fails to evaluate the environmental consequences of the proposed project (or the alternatives) as a whole.

Defective Structure. The draft EIR is stuffed with over 2,000 pages of information, but that information is disorganized, inordinately repetitive, and hard to follow. Neither a general reader nor a water expert can gleam from this document the information necessary to determine the environmental impacts of the proposed project.

Zone 7 understands that the Council intends to release a sixth staff draft Delta Plan for public comment sometime this spring. We have seen progress since the first draft and we offer these comments in the hope that the sixth draft will promote a water supply that meets the needs for reasonable and beneficial uses of water at the same time that it promotes a healthier Delta ecosystem. Given the changes to the draft Delta Plan that are needed, we believe the Council must also release a new amended draft EIR that reviews these changes. As the Council begins drafting the next documents, Zone 7 asks the Council to focus on the key areas mentioned in this letter and in the comments submitted by the State Water Contractors and the San Luis & Delta-Mendota Water Authority. Zone 7 appreciates the tremendous effort to get the Delta Plan drafting process to this critical stage and hopes to be an enthusiastic supporter of the final product.

Sincerely,

G.F. Duerig
General Manager