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February 2, 2012

Delivered via email: eircomments@deltacouncil.ca.gov

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

**SUBJECT: Concerns Regarding Fifth Draft Delta Plan and Delta Plan Draft
Environmental Impact Report**

Dear Chairman Isenberg and Members of the Council:

On behalf of the Eastern Municipal Water District (EMWD) I am writing to follow-up on the testimony I provided at the Delta Stewardship Council (Council) field hearing on January 11, 2012. Specifically, we want to reiterate concerns EMWD raised in testimony regarding the fifth draft Delta Plan and the Delta Plan Draft Program Environmental Impact Report (draft EIR) which the Council released November 4, 2011. These concerns include deficiencies we believe exist under the California Environmental Quality Act (CEQA) and overall policy concerns with several provisions of the draft Delta Plan. Generally, EMWD concurs and endorses the comments on these documents filed by the State Water Contractors and the Ag-Urban Coalition; however there are several key points outlined later in this letter which we believe are important to emphasize.

As background, EMWD provides water, wastewater, and recycled water services to 687,000 residents in a 542 square mile region of western Riverside County and relies on the Delta for about fifty percent of its water supply. In 2009, EMWD actively supported the Delta Reform Act as it was moving through the legislature because it was a carefully crafted compromise that created the Council to help coordinate agencies actions in the Delta and develop a Delta Plan, offered a comprehensive package of measures to meet the co-equal goals of ecosystem restoration and water supply reliability, and created a clear path for a successful Bay Delta Conservation Plan (BDCP). EMWD has serious concerns that the draft Plan fails to pursue 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 critical substantive areas.

Draft Delta Plan Concerns

First, as an agency that prides itself on implementation of effective water use efficiency measures, we wish to address WR P1, the first policy in *Chapter Four - A More Reliable Water Supply for California*. It is troubling that the draft Delta Plan attempts to review and regulate local water management decisions on everything from rate structures to water recycling targets. The California Legislature did not establish or statutorily authorize the Council to micromanage local water agency 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 to simultaneously improve the reliability of water supplies and accomplish the restoration and ecological recovery of the estuary.

Second, the draft Delta Plan does not clearly and unambiguously support a key objective of the BDCP – the recovery of water supplies lost due to regulatory restrictions facing a water conveyance system that the BDCP intends to dramatically improve. The 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, we are concerned that the draft Delta Plan reflects a reduced commitment to export reliability. Specifically, the draft Delta Plan seems to imply that in the future, less water will need to be exported from the Delta area. The public water agencies that use water exported from the Delta are considering investing billions of dollars through the BDCP to restore water reliability while working towards Delta environmental recovery efforts. The draft Delta Plan and the draft EIR seem to be assuming that those investments will actually decrease export reliability.

A fourth and final concern is that Delta stressors, in general, have not received adequate attention in the draft Delta Plan. The Council is the entity with the authority to effect long-term change necessary for Delta sustainability and can be most effective by focusing on stressors that degrade the Delta ecosystem.

Feedback that we've reviewed from other water agencies echoes our concerns voluminous comments; including an alternate Delta Plan approach proposed by various agricultural and urban interests throughout the state. From our perspective, the "regulatory" approach that is embodied in this draft threatens the success of the Council and detracts from the prospect of a successful, collaborative approach. We simply must get the Delta Plan right for the sake of our water supply, environment and economy.

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 EMWD is how the proposed project will achieve the "water supply" element of the co-equal 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." (draft 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 (Water Code, § 85302(d)(1)) that the Delta Plan "...include measures to promote a more reliable water supply that [meets] the needs for reasonable and beneficial uses of water." Most simply put, water supplies conveyed through the Delta were developed because local and regional water supplies were insufficient to meet existing or projected uses. 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))

Concerns with Stated Project Objectives: The project objectives do not adequately reflect the Legislature's intent and requirement that implementation of the Delta Plan further the restoration of the Delta ecosystem and work toward a more reliable water supply—the co-equal goals. The Delta Plan is a key document to achieve the co-equal goals, yet the draft EIR explicitly avoids any analysis as to how the alternatives in this document would or would not achieve the co-equal goals. This is a glaring omission, leaving EMWD, other stakeholder, 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 not accurate or appropriate. The Council plans to release two more staff drafts in the coming months. Therefore, elements of the proposed project are not reasonably certain to occur and thus it is not likely to satisfy the project objectives.

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

Insufficient Alternatives: The draft EIR does not contain an adequate range of alternatives. In fact, it does not contain any true alternatives according to CEQA's definition of meeting the most project objectives, reducing significant environmental effects of the project as proposed, and being technically and institutionally feasible. The "alternatives" do not decrease significant environmental effects, but increase them, and the increased environmental effects that would occur as a result of reduced Delta exports have been entirely ignored. Specifically, the draft EIR assumes that other agencies will make-up lost Delta supplies as a result of the project by building desalination plants, recycled water facilities, and other local supply projects but makes no attempt to consider the significant environmental effects of these actions.

Need for Clearer Document Structure: The draft EIR is over 2,000 pages long, but the information in the document is not well organized, is somewhat repetitive, and is quite hard to follow. It is difficult for either a general reader or a water expert to glean from this document the information necessary to determine the environmental impacts of the proposed project.

EMWD appreciates the opportunity to comment on the draft EIR and understands that the Council plans to release a sixth staff draft Delta Plan for public comment 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

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Delta environment. Given the changes to the draft 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, we respectfully request the Council to focus on the key areas mentioned in this letter and in the comments submitted by the State Water Contractors and the Ag-Urban Coalition. We appreciated the tremendous effort to get the Delta Plan drafting process to this critical stage and we hope to support the final product with the same enthusiasm exerted to support the Delta Reform Act in 2009.

Thank you again for your attention. If you or your staff has any questions, please feel to call me at 951-928-6130, or e-mail me at jonesp@emwd.org.

Sincerely,

A handwritten signature in cursive script that reads "Paul D. Jones II".

Paul D. Jones, P.E.
General Manager

cc: Joe Grindstaff, Executive Director, Delta Stewardship Council