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February 2, 2012

Joe Grindstaff,
Executive Officer,
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814



Subject: Environmental Advocates Supplemental Delta Plan DEIR Comments & Supporting Materials (Hand Delivered)

Dear Mr. Grindstaff:

Thank you for the opportunity to comment on the Draft EIR for the Delta Plan program Environmental Impact Report. The undersigned groups (hereafter referred to as the Environmental Advocates) are supplementing previous comments we have provided in a separate transmission to the Council. As stated in our comments, the DEIR fails to address significant issues, analyze critical data, or disclose the plan's impacts on water quality, fish, wildlife and other estuarine-dependent species. In these supplemental comments, together with the referenced previous comments, we provide details of how the DEIR and proposed plan fail to achieve the project's objectives and meet statutory mandates. Information regarding these impacts has been provided and is reasonably and readily available. And yet the public record, your analysis, and the resulting plan appear to have disregarded critical information. To remedy these deficiencies, we are submitting, and in some cases re-submitting, information that was not adequately considered in the DEIR for the Delta Plan.

The following specific comments supplement the record:

1. Water Code § 85302 and the Legislature expected viable populations of native resident and migratory species, as well as, functional corridors for migratory species. As discussed in previous comments, the plan falls woefully short in meeting this mandate. We again provide information and comment regarding how present water diversions from the Delta and irrigation practices are sending harmful pollutants to the Delta-Bay Estuary and using the San Joaquin River as a de-facto drain. The pollutants are harming endangered species, violating water-quality standards, and degrading beneficial uses of water that are protected by the Constitution under prohibitions against waste and unreasonable use. (See Attachment f)
2. In accordance with Water Resources Code § 85302 d) (1) The council shall develop the Delta Plan consistent with all of the following... (B) Section 8 of the federal Reclamation Act of 1902.... (C) The federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.). The proposed plan is vague and assumes other agencies will ensure this consistency. As the attached documents (Attachments I & II.) demonstrate this is a false assumption.
3. As you can see from the documents provided (Attachment V.), various "south of Delta" water export interests, including Westlands Water District and Metropolitan Water District, have entered into the Delta Habitat Conservation and Conveyance Program (DHCCP) Funding Agreements. The purpose of the DHCCP is to fund the "costs for environmental analysis, planning and design of Delta conservation measures including Delta conveyance options." However, if the BDCP/ DHCCP is approved for construction, reimbursement is planned either through the \$11.1 billion taxpayer funded water bond or the Department of Water Resources (DWR) intends to issue revenue bonds in an amount sufficient to reimburse water

contractors for all funding.¹ Documents disclose how these funding agreements, which were created out of public view, rearrange operation and maintenance

¹ See Attachment IV: *"If the DHCCP is approved for construction, DWR intends to issue revenue bonds in an amount sufficient to reimburse Metropolitan for all funding."*

http://www.city.newportbeach.ca.us/pln/Banning_Ranch_WSA/Water%20Supply%20Assessment%20September_2010/Appendix%20B/MWD/MWD%20Bond%20Statement_2009.pdf

San Luis Delta Mendota Water Authority Board of Directors Mtg, 7/28/10, *"Nelson reported that we had initiated discussions with Dave Houston and Bond Counsel Dough Brown to secure funding and that we were looking at bonds that would mature 3/1/14 (date of maturity of original DHCCP bond financing). The expectation is the payments through maturation would be interest only and that the bond would be refinanced as part of the financing for the construction of the project."*

Dan Nelson [SLDMWA] 12/19/08 Memo on Key points of DHCCP Activity Agreement: *"Advanced O&M Funding Agreement: "allows the members of the SLDMWA to advance pay certain O&M expenses. Purpose: Allows Reclamation to re-direct federal appropriations to the DHCCP (up to \$10 Million)...provide contractor credit for payment of the O&M expenses, and ...ensure the contractor's water bills reflect the payment within a reasonable period."*

Santa Clara Water District 10-13-09 Workshop: *"The District along with other CVP contractors provided advanced funding to Reclamation in order to enhance the non-reimbursability aspect of the project. This advance will reduce ongoing rates paid for CVP water. DWR credits that are unrelated to the DHCCP will still be used to offset DHCCP costs."*

See also;

<http://www.mojavewater.org/home/about/calendars/20090127%20Agenda%20Packet%20PFS.pdf>

"The Department is willing to credit the Contractor and the other Participating SWP Contractors from 2008 excess revenue bond reserve funds an amount equal to the Contractor's allocation of the 2008 DHCCP Planning

Phase costs and to credit additional reserve funds in 2009 as provided by Article 50 of the Water Supply Contract;"

Pp13 pg2 document

See also: <http://sgpwa.com/pdfs/Agenda-2008-Nov-10-900.pdf> *"Funding of the DHCCP will be by advance payments by Participating Contractors.... Funding for 2008 will be accomplished through a DWR rebill and a credit equal to the DHCCP funding amount on the rebill from the bond funds released by the Springing Amendment. Funding for 2009 and 2010 will be on the DWR bills and collected in the same manner as the Transportation Minimum Component. Attached is a draft DHCCP Funding Agreement". (10-30-08 pg 2)*
"Advancing contractors to be repaid when DWR sells bonds when the project goes ahead..."

See also: <http://www.water.ca.gov/publications/financials/docs/dwr09fn.pdf> *"The increase of \$35.7 million for consulting fees is primarily due to \$21.1 million in expenses for environmental and engineering services for the Delta Habitat Conservation and Conveyance Program (DHCCP) and \$5.6 million for expenses related to the Lodi Energy Center project."*

payments owed the taxpayers, contract payments, and obligate others to fund the environmental costs of the water exporters while concentrating the water benefits to a few districts. This is in direct contradiction of Water Code §85089:

“Construction of a new Delta conveyance facility shall not be initiated until the persons or entities that contract to receive water from the State Water Project and the federal Central Valley Project or a joint powers authority representing those entities have made arrangements or entered into contracts to pay for both of the following:

(a) The costs of the environmental review, planning, design, construction, and mitigation, including mitigation required pursuant to Division 13 (commencing with Section 21000 of the Public Resources Code), required for the construction, operation, and maintenance of any new Delta water conveyance facility.

(b) Full mitigation of property tax or assessments levied by local governments or special districts for land used in the construction, location, mitigation, or operation of new Delta conveyance facilities.”

The Legislature requires South of the Delta water exporters to fully fund the peripheral canal construction, studies and planning. The Delta Plan and DEIR do not adopt or consider policies necessary to carry out this legislative mandate.

4. Without rationale or legislative authority, the DEIR and Delta Plan [FP R6] suggests “revenue bond authority should be granted to implement the Delta Plan should a fiscal partner be found.” This proposal contradicts the mandate in both federal and state law, which require the State Water Project and Central Valley Project to fully fund and mitigate the adverse impacts from the projects, curb exports to meet required flow objectives, meet water quality standards, provide minimum flows necessary to meet the Salmon protections detailed in the 1995 Bay Delta Plan, and provide flows sufficient to reverse the adverse effects of water diversions. Instead, water exporters have leveraged paper water to fund interest-only debt so they can predetermine the conveyance configuration in order to demand even more exports—all of which they expect taxpayers to subsidize or ratepayers to buy back at exorbitant prices to pay off the debt. The deck is stacked and the decision making is stacked, all against the public good. The Delta Plan and DEIR perpetuates this financial collusion, whereby a few joint power authority members have leveraged political pressure to concentrate the benefits, while saddling ratepayers and taxpayers with the excessive costs. Documents included provide copies of these

financial agreements and minutes that describe the promised outcomes.
(Attachments IV & V)

5. The Delta Plan and DEIR perpetuate this stacked deck against the ratepayers and taxpayers by failing to disclose the impacts and known effects of climate change on water supplies. In a winner take all atmosphere, political influence is being used to leverage water that does not exist, to borrow money against this paper water, to assert “entitlements” to these water supplies, where benefits of public water delivery systems will flow to stockholders and concentrated landholders at the expense of other beneficial uses. The failure to adopt strong measureable ecosystem restoration perpetuates the goals of this concentrated political and financial class that substitutes public trust values for a winner take all profit value.

6. The Delta Plan proposes to adopt WR P2 Policy that directs that contracts “to export water from, transfer water through, or use water in the Delta...[must be]developed in a transparent manner consistent with Department of Water Resources’ revised policies...or comparable policies issued by the Bureau of Reclamation.” (Delta Plan at p. 95.) This is woefully inadequate. Again, as one can see from the documents provided, state and federal agencies, along with the contractors they serve, have created joint power authorities that thwart public participation, information, and transparency. The Delta Plan policies do little to combat these side bar agreements out of public view, contract abuses and a water contractor driven process that largely shuts out the public until decisions are baked in the cake. The reality is this:
 - Public record requests have been thwarted for years;
 - Electronic meeting materials of joint power authorities and government agencies, readily available to participating public agencies, have been denied unless fees are paid;
 - Documents available electronically to joint power board members [public agencies] instead require members of the public to travel hundreds of miles to ‘review’; and
 - Environmental documents routinely are approved or exempted without full disclosure or alternatives by the very agencies expecting to benefit from the proposed project that often has widespread environmental impacts and harms public trust values. (See Attachments VI.)

Thank you for opportunity to comment. All the materials provided are in the public record, but not transparent or readily available. In reviewing the DEIR and proposed Delta Plan, consideration of these documents is not evident. We urge the plan be withdrawn, environmental impacts be clearly disclosed, and safeguards enacted so that public trust values and ratepayers are protected.



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Federation of Fly Fishers

Executive Director
Desal Response Group
Southern California Watershed Alliance

Frank Egger, President
North Coast Rivers Alliance

Attachments:

- I. **Extensive Comments Document the “Delta Double Whammy” Where Over 1.15 MAF Is Diverted to Irrigate Toxic Soils On the Westside of the San Joaquin Valley Resulting In Vast Ground and Surface Water Pollution, Harm To Beneficial Uses, Nuisance, Waste and Unreasonable Use—The Delta Plan and DEIR Fail to Consider These Impacts To Critical Fish and Wildlife Migration Corridors that Flow From the San Joaquin River and its Tributaries to the Delta.**
- II. **Extensive Comments Document the Failure to Comply With Federal and State Law Including Cursory Environmental Review that Sanction Water Transfers and Sales of Water—From or Thru the Delta—Without Mitigating the Impacts—The Delta Plan and DEIR Fail to Adopt Policies and Procedures to Ensure Laws Are Enforced and the Ecology of the Delta is Protected.**
- III. **DEIR and Draft Plan Fail to Adequately Consider Impacts of Climate Change on Public Trust Values and the Delta Ecosystem Along with Water Needed for Restoration and Water Conservation Strategies.**
- IV. **Four Dominant Controlling Water Contractors—Drive Finance and Delta Conveyance Alternatives:**
 - A. MWD Board of Directors Water Planning and Stewardship Committee 12-9-2008.[Delta Habitat Conservation and Conveyance Program (DHCCP) MOA]
 - B. Kern County Water District Conveyance and Sizing
 1. Curtis Creel/Larry Rodriguez (4-22-2010) Update on DHCCP Activities
 2. Curtis Creel/Larry Rodriguez (6-24-2010) Update on DHCCP Activities
 3. Delta Conveyance: Update on the Planning Process and Analysis of Water Supply and Costs 2-5-2010
 - C. State & Federal Contractors Water Agency Memos [BDCP Conveyance and Habitat Financing—Flexible Application of Delta Flow—Ammonium [Gilbert 300K –Off Balance Sheet Funding] June-July 2010
 - D. November 15, 2010 DHCCP Job Posting “one of the world’s large water conveyance programs with a capacity of 15,000 cfs.”

- E. Santa Clara Valley Water District 10-13-09 Workshop on Delta Planning, Decision Making and Outreach Related to Long Term Delta Solution. [Financing and Reimbursement Federal & State]
- F. State Water Project Contractors Authority, 10-30-08-- BDCP Environmental Analysis and Preliminary Engineering Funding Memo Plus Attachments.
- G. Westlands [WWD] & San Luis Delta Mendota Water Authority [SLDMWA]:
 - 1. 6-24-2010 DHCCP Minutes: (Bond Financing)
 - 2. 10-22-2010 DHCCP Steering Committee Mtg. Notes;
 - 3. Finance & Admin Comm. Mtg. 10-23-10;
 - 4. DHCCP Committee Special Board of Directors Mtg. 6-24-2010;
 - 5. Dan Nelson Memo 11-19-08 WRC: Summary of DHCCP Activity Agreement [Advance O&M USBR Description & Financing]
 - 6. Board of Directors 8-27-2008 BOD Mtg. DHCCP handouts & 11-9-2008 handouts. [Water Diversions & r Peripheral Canal]
- V. **United States Bureau of Reclamation and California Department of Water Resources Delta Habitat Conservation and Conveyance Funding Agreements**
- VI. **Scores of FOIA and Public Record Act Requests Take Years, Unreasonable Amounts of Travel and Costs, While Key Records Are Still Withheld and Access Denied.**
- VII. **Related News Articles**

Hard Copies Provided in Binders Labeled I & II.