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Building Alliances in Northern California

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Associates

El Dorado County Water Agency
Sacramento Municipal Utility District
Sacramento Regional County Sanitation District

February 2, 2012

Mr. Phil Isenberg
Chair, Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, California 95814

also transmitted via email to:
eircomments@deltacouncil.ca.gov

Re: Regional Water Authority's Comments on Draft Delta Plan EIR

Dear Mr. Isenberg:

The Regional Water Authority ("RWA") appreciates the opportunity to comment on the Delta Stewardship Council's draft Delta Plan Program Environmental Impact Report (the "DEIR") and is providing the comments below.

1. Introduction

RWA is a joint powers agency that serves and represents 21 water suppliers that provide clean, reliable water to two million people residing in Sacramento, Placer, El Dorado and Yolo Counties. RWA's mission is to help its members protect and enhance the reliability, availability, affordability and quality of water resources. RWA has launched significant programs and services on a regional scale, including ongoing water conservation and water use efficiency programs, a conjunctive use program to protect and enhance local groundwater supplies, and one of the state's first integrated regional water management plans. Through their effective water management actions, members of RWA have assisted water-short regions of the state and the Environmental Water Account by transferring water to them in dry years. RWA also supports and assists in implementing the objectives of the Sacramento Area Water Forum ("Water Forum"), a nationally recognized project that brings together 40 local utilities, business leaders and the environmental organizations to preserve the lower American River's environmental values and ensure a sustainable, local water supply. The Water Forum Agreement, signed in 2000, has been promoting and balancing the coequal objectives of reliable water supplies and protection of environmental values for more than a decade.

In keeping with RWA's mission and historical involvement in developing and implementing the coequal goals of water supply reliability and protection and enhancement of environmental values in this region, RWA supports the Delta Council in applying those goals on a statewide basis. But, the Council must ensure that both goals are provided equal treatment and that all of its actions comply with the law, including the California Environmental Quality Act (CEQA). In providing these comments, RWA is offering its assistance to the Council to ensure that it develops an EIR for the Delta Plan that complies with CEQA.

Although RWA's comments focus in some detail on the American River, which is the second largest tributary to the Sacramento River, some RWA members also rely directly on the Sacramento and Cosumnes Rivers, for which we have similar concerns. Additionally, RWA participated in a letter on behalf of more than two dozen signatories in northern California that have formed an alliance to participate collaboratively in a delta solution that protects the economy, environment, and quality of life of the north state.

2. Summary of RWA's Comments

The DEIR confirms that the draft Delta Plan's primary ecosystem tool would be an attempt to accelerate the implementation of a "more natural flow regime." Neither the draft Delta Plan nor the DEIR, however, contain any explanation of what this term means or how it would apply in practice. This failure makes the DEIR's project description illegally vague. The DEIR then compounds this failure by failing to analyze, in any significant way, the impacts that implementing a "more natural flow regime" would have on fisheries and the water supplies of RWA members and other water users in the areas of origin upstream of the Delta, including the possibility of increasing peril to protected salmonids and irreparable damage to groundwater supplies. The DEIR attempts to assume away the water-supply impacts that implementing a "more natural flow regime" would cause by claiming that water suppliers have and would be able to develop new water supplies. Finally, the DEIR fails to analyze how the draft Delta Plan's terms, particularly Policy ER P1 and Recommendation WR R5, could prevent RWA's members from implementing new water projects to address the impacts that a "more natural flow regime" would cause. As a result of these deficiencies, RWA believes that the DEIR's analysis of the Council's proposed project is fatally flawed and that the Delta Stewardship Council must revise the draft Delta Plan's policies and recommendations to avoid impairing the historic regional self-sufficiency developed by RWA's members.

3. RWA's Comments on the Draft EIR

RWA offers the Delta Council the following specific comments on the DEIR:

A. The DEIR Confirms that the Proposed Acceleration of a "More Natural Flow Regime" Is a Cornerstone to the Proposed Project, But Violates CEQA by Failing to Define that Key Project Element

Section 2.2.4.1 of the DEIR states that the proposed project includes, as proposed in Policy ER P1 (Appendix C, p. C-4), encouragement to the State Water Resources Control Board ("SWRCB") to complete "flow objectives and flow criteria by 2014 and 2018 [for the Delta and high-priority tributaries in the Delta watershed], respectively . . .." (DEIR, p. 2A-39.) The DEIR assumes that the SWRCB "will meet the recommended deadlines" and that proposed policy ER P1 "could encourage a more natural flow regime in the Delta." (DEIR, p. 2A-39.) The DEIR then states: (1) in numerous places, that the proposed project will accelerate the implementation of a "more natural flow regime;" (2) this fact distinguishes the proposed project from various project alternatives; and (3) "the No Project Alternative assumes that ongoing studies by the SWRCB to

evaluate future Delta flow objectives . . . would continue on their current courses." (DEIR, pp. 2A-68:7-8; 2A-68:25-26, 2A-73; 2A-87:35-36; 2A-93:27-31; 2A-95:35-36; 2B-6; 2B-11; 2B-15; 2B-16; 3-86:39 to 3-87:3; 3-94:27-30; 4-87:10-14; 4-87:23-24; 4-88:1-3; 4-88:21-25; 4-88:42 to 4-89:4; 4-89:40-41; 4-90:16-21; 4-91:6-8; 4-91:34-37; 4-94:36-38; 6-50:11-13; 6-64:39-41; 6-66:17.) In particular, the DEIR states the following in identifying the proposed project as the environmentally superior alternative:

> The biggest differentiators among the Proposed Project and alternatives, given their varying focus and the subject matter requirements of the Delta Reform Act, related to the long-term impacts to biological resources, flood risk reduction, water supply and water quality, and agricultural land . . .
>
> Alternatives 1A and 1B are inferior mostly because they would fail to arrest the increasing environmental deterioration of the Delta ecosystem. They fail to do so because they would result in fewer ecosystem restoration projects in the Delta and would be less aggressive in moving toward minimum standards for water flow in the Delta necessary for a healthy fishery and ecosystem.

(DEIR, pp. 25-10:36-38, 25-11:8-11 (emphasis added).)

The DEIR accordingly portrays acceleration toward implementation of a "more natural flow regime" as a fundamental part of the proposed project. (Fifth draft Delta Plan, pp. 112-114.) The DEIR also fails to define a "more natural flow regime." An enormous variety of streamflow schedules could be viewed as a "more natural flow regime." For example, implementation of a "more natural flow regime" could be limited to measures to reduce the extent to which Sacramento River water is drawn to the south Delta by CVP and State Water Project operations. Reducing these reverse flows is one of the goals of the Bay-Delta Conservation Plan. Alternatively, implementing a "more natural flow regime" could involve a complete restructuring of all water project operations in the Delta watershed if the streamflow criteria discussed in the SWRCB's August 3, 2010 report, Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem, were implemented.

Given this extreme variability in what might be considered a "more natural flow regime," the failure of the draft Delta Plan and the DEIR to define what they mean in proposing to accelerate the implementation of such a regime causes the DEIR to violate CEQA. The courts have long declared that "[a]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1448 (quoting *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199).)

B. The DEIR Fails to Analyze the Many Impacts that Implementing a "More Natural Flow Regime" Could Cause

Results of hydrologic modeling indicate that implementing a "more natural flow regime" could have severe impacts on the water supplies relied on by RWA's members, who serve water to one of the major economies in Northern California. The DEIR's approach of concentrating on river flows elevates the environmental value above all else and results in a failure of the DEIR to meaningfully address the coequal goal of continuing to provide reliable water supplies for northern California. Hydrological modeling of the kind necessary for the Council to at least generally analyze the impacts that implementing a "more natural flow regime" would cause has been available since at least early 2010, but the DEIR fails to consider it. For example, the DEIR ignores meaningful information that was discussed and cited to the Council by RWA and its members before the DEIR was made available for public review. Such information includes the analysis submitted by the Water Forum to the SWRCB, which describes the potential impacts to American River environmental resources and water supplies that might be caused by application of the advisory Delta flow criteria developed by the SWRCB in its 2010 proceedings.

The available information demonstrates that implementing the SWRCB's flow criteria could have very significant impacts on the American River's fishery, including its populations of Chinook salmon and steelhead. In fact, as discussed in the 2010 testimony submitted by the Water Forum, implementation of the SWRCB's flow criteria could unacceptably alter flows and raise water temperatures at critical times for salmonid reproduction and health by altering the carefully analyzed and negotiated Lower American River Flow Management Standard ("LAR FMS"). Reclamation has been operating to the LAR FMS since 2007 and the key elements of the LAR FMS were incorporated into the 2009 OCAP Biological Opinion on salmonids ("Salmon BO"). The available information also shows that implementing a "more natural flow regime" could significantly impair diversions of water by senior water rights holders such as Carmichael Water District, the City of Sacramento, City of Folsom, Placer County Water Agency, Rancho Murieta, and San Juan Water District. These altered flows and reduced diversions in turn would have the significant negative impacts discussed below.

i. <u>Implementing a "More Natural Flow Regime" Could Have Severe Impacts on the LAR's Fishery</u>

While it is not possible to determine the impacts of the "more natural flow regime" proposed by the draft Delta Plan given its lack of definition and lack of any meaningful analysis, information available to the Council prior to the DEIR's preparation shows how severe the resulting impacts to fisheries could be. During the SWRCB's 2010 Delta flow criteria proceeding, the Sacramento Water Forum presented testimony concerning the potential negative impacts of significant changes in the existing flows required by the LAR FMS.[1] According to that testimony, such a flow regime would:

[1]All of the testimony and exhibits presented to the SWRCB by the Sacramento Water Forum are available on the SWRCB's Web site (and have been posted there since 2010) at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/sac_wtr_frm.shtml.

- Significantly reduce storage and the available cold water pool in Folsom Reservoir below levels specified as necessary in the Salmon BO; and
- Significantly alter streamflows in the lower American River, resulting in probable violations of water flow and temperature standards set to protect listed fish species and potentially causing significant losses of those species.

The DEIR, however, fails to consider, even in the most general terms, any of the available hydrologic modeling that estimates such impacts. This failure alone demonstrates that the DEIR does not adequately analyze the draft Delta Plan's hydrological impacts and the potential consequences of those impacts to the fishery in the lower American River.

ii. The DEIR Fails to Adequately Analyze the Water-Supply Impacts in the Sacramento Region From Implementing a "More Natural Flow Regime"

Water storage in Folsom Reservoir is crucial for the overall water-supply reliability of the Sacramento metropolitan region because it ensures that there are sufficient water supplies during California's annual dry season and that regional groundwater aquifers can be stabilized so that they can be used in dry cycles without causing permanent problems. As discussed above, the Water Forum's modeling demonstrates that implementation of a "more natural flow regime" would significantly impact Folsom Reservoir's storage of water.

Concerning the water-supply impacts resulting from the proposed project's implementation of "more natural flow regime," however, the DEIR states:

> Under the Proposed Project, the SWRCB would be encouraged to modify Delta flow objectives in order to place more emphasis on creating a natural flow regime in the Delta. Such objectives would likely reduce the amount of water available for municipal, agricultural, and industrial water uses within the Delta and outside the Delta . . .
>
> Because the SWRCB would consider all beneficial uses during the development of Delta flow objectives, it is anticipated that Delta water would continue to be available for municipal, agricultural, and industrial water uses, but at a reduced amount.

(DEIR, pp. 3-84 to 3-85.)

The DEIR then concludes that these impacts would be less than significant because the proposed project would trigger the implementation of additional local and regional projects that would compensate for the "reduced amount" of available "Delta water." (DEIR, pp. 3-84 to 3-85.) There is, however, no attempt in the DEIR to quantify the potential scope of water supply reductions or what projects could be carried out and their potential for success in producing replacement supplies. The DEIR also fails to define the term "Delta water," so it is impossible to

determine whether the DEIR contains any analysis of the impacts that implementing a "more natural flow regime" would have on American River and other area of origin water supplies. The Council's unsupported conclusion in the DEIR simply is not adequate to satisfy CEQA's requirement that an EIR analyze a sufficient level of analysis to inform the Council and public about the proposed project's environmental impacts.

The DEIR's conclusion that the proposed project would result in less-than-significant water-supply impacts because water users would augment their water supplies by implementing more local and regional water projects is equally inadequate. (DEIR, p. 3-85.) In the four-county RWA region, local and regional water projects generally require some use of additional water supplies from the American and Sacramento Rivers. Unlike exporters outside the area of origin, these water supplies are this region's "local water supplies" which the draft Delta Plan assumes City of Folsom and San Juan Water District are situated in higher elevation areas where surface water is the only source of supply because there are no significant groundwater aquifers underlying their territories.

While conservation and reuse may help to offset the need for the development of additional surface water supplies, there is no evidence or discussion in the DEIR that demonstrates these strategies would produce sufficient "new" supplies to satisfy future demands. In fact, because water use in RWA's Sacramento region, like all upstream areas, results in net return flows to the Sacramento River system, it is unlikely that implementation of expensive and GHG-producing water reuse and recycling projects in this region would produce any significant net new water supplies for the Delta.

The DEIR simply fails to acknowledge these realities and account for differences in the water supplies available to areas of origin and those available to export areas. It would be impossible for water suppliers in RWA's region to significantly compensate for water-supply impacts caused by the implementation of a "more natural flow regime" when the available water sources essentially are all tributary to the Delta. As a result of these deficiencies, the DEIR's discussion of the proposed project's water-supply impacts fails to comply with CEQA.

iii. <u>The DEIR Fails to Adequately Analyze the Impacts of the Increased Reliance on Groundwater That Would be Required to Implement a "More Natural Flow Regime"</u>

If this region's surface water supplies are reduced by implementation of the Delta Plan, the only significant alternative water supply source that does not directly affect Delta flows is groundwater. Yet, the DEIR fails to provide any analysis of the potential impacts resulting from increased use of groundwater. Instead, the DEIR simply concludes that there would be no significant impact due to potential increased groundwater pumping because "the Proposed Project encourages the sustainable use of groundwater supplies to avoid adverse effects on groundwater supplies." (Draft EIR, at p. 3-84.) This unsupported conclusion is an illegal substitute for actual analysis of the potential impacts of the increased groundwater pumping that may result from implementation of the Plan's proposed flow regime.

The DEIR's inadequacy on this point is demonstrated by its failure to examine the wealth of available evidence concerning the impacts that would occur if this region were required to increase its reliance on groundwater. Such evidence is available from the Sacramento Groundwater Authority ("SGA"), which is jointly administered with RWA, regulatory agencies, and from RWA's members. For example, there is significant groundwater contamination in this region that limits the ability of water suppliers to increase their pumping without drawing contamination (for example, PCE, TCE and perchlorate) into currently potable wells. Also, the North American Groundwater Basin experienced declining groundwater levels until the late 1990s. Today, consistent with the Water Forum Agreement and a framework developed by SGA, RWA's members are conducting conjunctive use programs to stabilize and increase groundwater elevations and to protect against contamination by maximizing surface water use when it is available. Agencies with available surface water supplies, such as the City of Sacramento and Placer County Water Agency, are presently able to provide this valuable resource to other RWA members who have in the past relied primarily on groundwater. The proposed project's reduction of surface water supplies will cause a termination or significant reduction of conjunctive use programs that have been operating for more than a decade. This could result in even greater demand for surface water supplies as groundwater contamination migrates and the groundwater basins in the Sacramento region become overdrafted.

RWA's comments should not be interpreted as reducing its members' commitment to continuing water conservation and water use efficiency. RWA's members been implementing water efficiency and conservation programs since signing the Water Forum Agreement in 2000, including implementation of all CUWCC BMPs, and continue to develop innovative new programs to enhance existing efforts. RWA members are actively implementing compliance with the "20 by 2020" per capita water conservation requirements. Many members have already achieved or are making significant progress toward compliance. RWA's efforts, however, do not excuse CEQA's requirement that the DEIR and Delta Plan adequately analyze actual water supply sufficiency and the impacts associated with potentially significant reductions to water rights and supplies in the areas of origin tributary to the Delta.

C. <u>The DEIR Fails to Analyze the Impacts on RWA's Members of the Draft Delta Plan's Proposed Policy ER P1 and Recommendation WR R5</u>

The DEIR bases its environmental analysis on what it terms a "very conservative approach" of assuming that "the Delta Plan has the desired outcome" through other agencies' actions. (DEIR, p. 2B-2.) The DEIR then organizes its analysis "to address the types of actions, activities, and projects of other agencies, which the Council seeks to influence through the Delta Plan's Policies and Recommendations," stating:

> The types of expected projects, both covered actions and noncovered actions, fall into five categories that closely track the Delta Plan's general topical organization:
>
> - Reliable water supply
> - Delta ecosystem restoration
> - Water quality improvement

- Flood risk reduction
- Protection and enhancement of Delta as an evolving place.

(DEIR, p. 2B-3.)

Rather than conservative, this analytical approach is radically flawed and does not comply with CEQA because it fails to analyze the environmental impacts of specific proposed Delta Plan policies and recommendations that would be implemented assuming that, as the DEIR states, "the Delta Plan has the desired outcome." For RWA's members, this fundamental flaw is exemplified by the DEIR's failure to even identify, much less analyze, the impacts on areas of origin upstream of the Delta if the SWRCB were to implement the draft Delta Plan's proposed policy ER P1 and proposed recommendation WR R5.

Proposed policy ER P1 states, among other things, that: (1) the SWRCB should adopt and implement "updated flow objectives for the Delta" by June 2, 2014 and "flow criteria for high-priority tributaries in the Delta watershed" by June 2, 2018; and (2) if the SWRCB were to indicate, by June 30, 2013, that the above target dates could not be met, the Council will consider recommending that the SWRCB "cease issuing water rights permits in the Delta and the watershed." Proposed recommendation WR R5 states:

> The [SWRCB] and/or the Department of Water Resources should require that proponents requesting a new point of diversion, place of use, or purpose of use that results in new or increased use of water from the Delta watershed should demonstrate that the project proponents have evaluated and implemented all other feasible water supply alternatives.

The DEIR fails to analyze, in any way, the impacts that implementation of proposed Policy ER P1 and Recommendation WR R5 would have on the area of origin upstream of the Delta. If implemented, the "desired outcome" of the Delta Plan effectively would prevent RWA's members from using their local water sources to meet their increasing demands unless they first have implemented "all other feasible water supply alternatives." Among other things, the "desired outcome" of the draft Delta Plan would:

- Violate the area-of-origin laws ensuring that areas in the Delta watershed will be able to use their local water supplies to meet their growing needs (Water Code, §§ 1215-1222, 10505, 10505.5, 11128, 11460-11463, 12200-12220);

- Violate the 2009 Delta Reform Act, which states that it "does not diminish, impair, or otherwise affect in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections [or] limit or otherwise affect the application of Article 1.7 (commencing with Section 1215) of Chapter 1 of Part 2 of Division 2 [of the Water Code], Sections 10505, 10505.5, 11128, 11461, 11462, and 11463, and Sections 12200 to 12220, inclusive;"

- Force RWA's members to pump significantly more groundwater, potentially: (A) causing serious groundwater overdrafts; (B) inducing significant increases in GHG emissions associated with the increased electrical demands created by the additional groundwater pumping; and (C) contaminating a significant volume of available groundwater supplies by drawing existing contamination plumes into many currently contaminant-free municipal groundwater supply wells; and

- Induce urban and agricultural growth in other areas of the state as a result of imposing artificial water-based constraints on growth in this region, with associated impacts to air quality, traffic, housing, public services, wetlands, sensitive species habitat, noise and other environmental concerns in those other areas.

In short, CEQA does not allow the Council to issue specific policy proposals like Policy ER P1 and Recommendation WR R5 and then fail to analyze their specific impacts. By not analyzing the specific impacts of Policy ER P1 and Recommendation WR R5 on the communities represented by RWA's members, which, unlike other parts of California, have always relied solely on their local water sources to meet growing demands, the DEIR violates CEQA.

Sincerely,

REGIONAL WATER AUTHORITY

By: _____
John Woodling
Executive Director