Bill George – *President*
Division 3

John P. Fraser – *Director*
Division 2

Alan Day – *Director*
Division 5

El Dorado Irrigation District

George W. Osborne – *Vice President*
Division 1

George A. Wheeldon – *Director*
Division 4

Jim Abercrombie
General Manager

Thomas D. Cumpston
General Counsel

In reply refer to: L2012-041

September 12, 2012

VIA EMAIL AND U.S. MAIL

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

Re: Final Draft Delta Plan

Dear Chairman Isenberg and Members of the Council:

I am writing on behalf of El Dorado Irrigation District to comment upon the Final Draft Delta Plan, which the Council will be considering on September 13. Though the time to review it has been unduly limited, the Final Draft appears to be a substantially improvement over earlier drafts. Unfortunately, it was not realistic for the Council to release the draft on September 5 and expect thoughtful and comprehensive public comments barely a week later. Following are the comments the District has been able to develop to date. As an active member of the Association of California Water Agencies, the North State Water Coalition, the Mountain Counties Water Resources Association, and the Regional Water Authority, the District also endorses and adopts any comments those organizations manage to submit by September 13.

Chapter 3 -- A More Reliable Water Supply for California

At page 90 of the redline version, the Final Draft inserts text stating that the 500,000 acre-feet per year of trans-Delta exports by the Hetch-Hetchy and East Bay Municipal Utility District water systems represent about 1.6 percent of "the flow from the Delta watershed." In the next sentence, a similar phrase is deleted and replaced with "inflows to the Delta." It is unclear whether these metrics are the same. Regardless, measuring depletions in this way understates their relative magnitudes. Those magnitudes would be better expressed as a percentage of all upstream diversions in the Delta watershed.

2890 Mosquito Road, Placerville, California 95667 • (530) 622-4513

In the first paragraph, second sentence of Policy WR P1, the words "per-capita" should be inserted before the phrase "amount of water used." Agencies like the District may well increase their ***total*** water used from the Delta watershed to serve growing populations over time, but if they show a ***per-capita*** reduction, then they are effectively reducing their reliance upon the Delta. The other metric offered in this policy, which measures ***percentage*** of water used from the Delta watershed, reflects this understanding, and the two metrics should be consistent.

The final sentence of Recommendation WR R4 states that all Urban Water Management Plans and other, similar plans "should include a plan for possible interruption of Delta water supplies up to 36 months due to catastrophic events." This recommendation is obviously inapplicable to agencies like the District that do not take any of their water supplies from the Delta. The recommendation should be modified to clarify that this recommendation applies only to agencies that take some portion of their water supplies from the Delta.

At page 124 of the redline document, the third bullet under "Issues for Further Evaluation and Coordination" specifies performance measures for reduced reliance on the delta. The first performance measure should be modified to insert "per-capita" in the same way and for the same reasons as discussed above in connection with Policy WR P1.

Chapter 8 -- Funding Principles to Support the Coequal Goals

At page 322 of the redline version, the Final Draft states that user fees "are essential and should be established to support the coequal goals and the implementation of the Delta Plan." It is unclear whether the Council intends that these user fees would be imposed only upon the beneficiaries or stressors associated with ***projects undertaken to implement the Delta Plan***, or if the Council intends such fees to be imposed *a priori* and broadly, as a free-standing funding source that can then be accessed for Plan implementation. Appendix O suggests that it is the latter. If so, it is the District's opinion that this vision exceeds the jurisdiction granted to the Council by the legislature.

Appendix O -- Funding and Financing Options

Page O-3 of the redline document includes a discussion of diversion fees, including factors that limit their feasibility. Besides the factors listed, the practical and legal constraints imposed by Proposition 26 should be discussed.

At page O-4, the redline document discusses hydropower fees. Because hydropower is a non-consumptive use and all sizeable reservoirs used for hydropower in California are also associated with other beneficial uses, it would be questionable at best to assert that hydropower operations benefit from or stress the Delta, or benefit from any Delta Plan implementation actions. Further,

as this discussion rightfully notes, the state fees currently collected on licensed hydropower projects are dedicated by law to the State Water Resources Control Board's Water Rights Program -- and the validity of the state's water rights fees continue to be the subject of legal challenge. For all of these reasons, hydropower fees should not be discussed in Appendix O as a possible funding source.

Proposition 26 is mentioned in the discussion of other stressor fees at pages O-4 and O-5 of the redline document. The text correctly notes that under Proposition 26, any stressor fees could only be spent for a very limited range of activities, but it omits another important Proposition 26 constraint -- the need to prove that the fee revenues do not exceed the reasonable costs of the corresponding benefit provided.

The discussion of water marketing fees at page O-5 of the redline document is unclear. Would such fees apply to all water transfers, or just transfers through the Delta? As the text implies, water marketing is already very difficult in California, notwithstanding numerous state policies that favor it. Imposing an additional fee on water transfers further contradicts those state policies, as well as the legislature's and the Delta Plan's policies of water use efficiency. Imposing a fee would also, for most potential transfers that do not involve the Delta, contradict the goal of improving regional self-reliance. Water marketing remains a valuable but underutilized tool that the Delta Plan should seek to incentivize, not further burden with additional fees and costs.

A statewide water resources fee is discussed at page O-5 of the redline document. As envisioned, it would be imposed at the retail level, yet collected and administered by the State Board of Equalization. Its proceeds would fund statewide, interregional, and regional projects. Frankly, this vision is so replete with administrative, practical, political, and legal pitfalls that it is difficult to critique it succinctly. Here are a few questions: Would the legislature impose this fee, or would it simply mandate it and leave it to local agencies to impose (and take the blame)? How would Proposition 26 compliance occur? Would Proposition 218 compliance be necessary, and if so, how would it occur? Why is a "top-down" approach, in which the state extracts money at the retail level, and then requires local agencies to compete to recover a fraction of it for regional projects, preferable to a "bottom-up" approach, in which local agencies take all necessary actions to finance and build their projects, individually or cooperatively?

Both the water resources fee and the public goods charges discussed immediately below it seem intended primarily to fund activities and projects with statewide benefits. Rather than brainstorming new fees and contorting legal principles governing fees for these purposes, the Delta Plan and its financing plan should advocate that those costs be paid out of the state's general fund and supported by the state's broad power to tax. Appendix O should be revised to delete the discussions of the water resources fee and the public goods charge, and instead

forthrightly discuss raising sufficient tax revenue (if the legislature or the voters will allow it) to provide funding from the state's general fund.

We appreciate this opportunity to provide what comments the District could develop in the few days made available to review this Final Draft. We hope they will prove helpful to the Council. Wwe also encourage the Council to allow more time for public comment on this Final Draft before proceeding further toward Delta Plan adoption.

Sincerely,

Thomas D. Cumpston
General Counsel

TDC:pj

cc: Board of Directors
Jim Abercrombie, General Manager
Mary Lynn Carlton, Director of Communications and Community Relations
Brian Poulsen, Deputy General Counsel
Dave Eggerton, El Dorado County Water Agency General Manager
Senator Ted Gaines
Assembly Member Alyson Huber
Assembly Member Beth Gaines
Robert Reeb, Reeb Government Relations, LLC
Association of California Water Agencies
John Woodling, Executive Director, Regional Water Authority
David Guy, Executive Director, Northern California Water Association
John Kingsbury, Executive Director, Mountain Counties Water Resources Association