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June 5, 2012

Mr. Phil Isenberg, Chair
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814
Via: deltaplancomment@deltacouncil.ca.gov

Re: Sixth Staff Draft of the Delta Plan (May 14, 2012)

Dear Chairman Isenberg and Members of the Delta Stewardship Council:

On behalf of the thirty-one member counties of the Regional Council of Rural Counties (RCRC) I appreciate the opportunity to submit comments on the sixth staff draft (sixth draft) of the Delta Plan. As you know, RCRC has submitted comments on each of the previous five drafts of the Delta Plan as well as on the PEIR. RCRC is also a member of the Ag-Urban Coalition (Coalition) and has been a signatory on several Coalition comment letters.

The sixth draft is a marked improvement over the previous five drafts. RCRC appreciates the efforts of the Delta Stewardship Council (DSC) and DSC staff to address a number of the issues of concern previously raised. For example, the sixth draft now makes it clear that the diversion and use of water in the Delta watershed that is entirely upstream of the statutory Delta or Suisun Marsh is not a “covered action”.

That said RCRC still has several serious concerns. One of the issues of greatest concern to RCRC is the misinterpretation of Section 85021. This misinterpretation is the result of combining in one sentence two separate requirements contained in the law i.e. improved regional self-reliance and reduced reliance on the Delta. Other issue areas raised include water transfers and groundwater, as well as what we believe to be misinterpretation of the law relating to water conservation. Please see specific comments below.

Chapter 2, The Delta Plan

Page 53, lines 34-35.

Concerns have been raised that in the discussion of actions that are not covered actions because they will not have a significant impact, that the inclusion of “*exempted from CEQA...*” will result in through-Delta short-term pre-1914 water transfers now being considered a covered action. RCRC believes that this would be contrary to the stated intent of the DSC relating to short term water transfers. The language of the fifth staff draft is, we believe, preferable.

Chapter 3. A More Reliable Water Supply for California

Page 68, box between line 7 and 8.

The draft states that “*Regions that use water from the Delta watershed (emphasis added) will reduce their reliance on this water for reasonable and beneficial uses and improve regional self-reliance, consistent with existing water rights and the State’s area of origin statutes and Reasonable Use and Public Trust Doctrine.*” RCRC urges that this statement be re-written as it is confusing despite the mention of the area of origin statutes.

Regions north of the Delta are dependent on local water supplies to meet present and future water needs - they cannot reduce their reliance on this source of water for reasonable and beneficial uses, although they can and will improve regional self-reliance as required by law.

Additionally, the statement is made that “*This will be done by improving conveyance in the Delta and expanding groundwater and surface storage both north and south of the Delta to optimize diversions in wet years....*”. North of the Delta groundwater is one of the regions local sources of water supply, and it is utilized in the region. This statement seems to imply that this groundwater storage is a source of water that can be diverted south in wet years. RCRC urges that this sentence be re-written to clarify what we believe is the intent – that groundwater storage south of the Delta be expanded to optimize diversions in wet years.

Page 69, lines 17-18.

Please see previous comments relating to north of the Delta and reducing reliance on the regions local sources of water.

Page 69, line 24.

Please see previous comment regarding north of the Delta groundwater storage and wet year diversions.

Page 78, lines 7-8.

The statement that “*State law now requires all water suppliers who use water from the Delta or the Delta watershed to reduce reliance on these supplies...*” misinterprets Section 85021. The second sentence of Section 85021 states that each region that depends on water from the Delta watershed shall improve its regional self-reliance. That is understood and accepted by all. The first sentence of Section 85021 which contains the phrase “*reduce reliance on the Delta*” clearly does not apply to north of the Delta area of origin water users who do not rely on the Delta.

Page 87, lines 17-18.

Please see previous comments regarding north of the Delta groundwater storage.

Page 95, lines 8-17

The discussion of the State’s 20% by 2020 conservation requirements combined with the statement that “*The SWRCB should be encouraged to use its authority to prevent waste and unreasonable use by seeking enforcement of the State’s requirements*” misinterprets SB x7 7. The inference that the 20% by 2020 conservation requirements should be utilized as a rule to determine if use is reasonable or unreasonable has no basis in law, nor is it realistic.

The law does not require water suppliers to individually reduce water use by 20%. Section 10608.16 states “*The state (emphasis added) shall achieve a 20-percent reduction in urban per capita water use in California on or before December 31, 2020.*” Additionally, Section 10608.20 (a) (2) states “(2) *It is the intent of the Legislature that the urban water use targets described in*

paragraph (1) cumulatively (emphasis added) result in a 20-percent reduction from the baseline daily per capita water use by December 31, 2020.”

A review of Water Code Section 10608 et seq. (Section 10608-10608.64) to determine the basis for the statement *”The potential for this type of action was anticipated in the Water Conservation Act of 2009 (SB x7 7), which explicitly recognized that the failure of urban water suppliers to reduce urban per capita water demand consistent with the State’s 20 percent by 2020 conservation requirements could result in unreasonable use proceedings before the SWRCB, starting in 2021 (Water Code section 10608 et seq.)”* revealed nothing with the exception of a “finding” 10608. (a) which states *“(a) Water is a public resource that the California Constitution protects against waste and reasonable use.”* RCRC suggests that the specific code section to justify this statement be cited, or in the alternative that the statement be deleted.

Page 100, lines 3-5.

This sentence discusses areas that rely upon water from the Delta watershed and the reduction of reliance on the Delta. RCRC suggests that *“For areas that rely upon water from the Delta watershed”* be deleted, and that the sentence read *“The failure of many water suppliers to identify and evaluate actions to reduce their reliance on the Delta is a significant impediment to achieving the coequal goals.”*

Page 100, WR P1, lines 23-25.

WR P1 states that *“...reducing reliance on the Delta and adequately contributing to improved regional self reliance”* means *“a significant (emphasis added) reduction in net water use, or in the percentage of water used, from the Delta watershed, which.....”*

As stated previously, the requirement to comply with existing law relating to water conservation, etc. applies to everyone. Again, the only source of water for the areas of origin is the “local” water from the Delta watershed. RCRC urges that this “enforceable” policy be rewritten to accurately reflect the language of Section 85021.

Page 101, WR R3, lines 13-22

This “recommendation” specifies how the DSC believes the State Water Board should conduct its evaluation of reasonable and beneficial use. It is one thing to recommend that the State Water Board evaluate certain applications and petitions – but another thing to tell the State Water Board “how” it should do so. RCRC suggests that the second sentence of WR R3 be revised.

Page 101, WR R4, lines 24-36.

RCRC suggests that this “recommendation” be rewritten to accurately reflect existing law. If it is the intent of the recommendation that water suppliers north and south of the Delta include an expanded Water Supply Reliability Element as part of its Urban Water Management Plan simply say so. RCRC would note, however, that north of the Delta water suppliers will be unable to include in a expanded Water Supply Reliability Element detailed information on how they are *“reducing reliance on the Delta”* and that a *“plan for possible interruption of Delta water supplies up to 36 months due to catastrophic events”* may not be relevant to those same north of the Delta water suppliers.

Page 102, WR R7, lines 10-15.

This recommendation suggests that priority for state grant and loans be given to water suppliers that include an expanded Water Supply Reliability Element in their UWMP’s, AWMP’s or IRWM’s. Please see comments on WR R4. If that recommendation were to be enacted, as

written, water suppliers north of the Delta would not be eligible to receive priority for state grant and loans as they could not meet the recommended requirements noted above i.e. provide detailed information on how they are reducing reliance on the Delta.

Page 104, WR R15, lines 33-36.

This recommendation relating to improving water transfer procedures raises some concern, as it relates to groundwater, as some may interpret “*reduce procedural and administrative impediments*” to mean local ordinances that regulate groundwater exports. RCRC suggests that this recommendation be revised to specifically apply solely to surface water transfers. Alternatively, this concern can be addressed by adding “local control” after “protecting” so that the sentence would read “...while protecting local control, water rights and environmental resources by 2014.”

Page 108, lines 13-18.

Please see previous comments relating to the language of Section 85021. This section should be rewritten to conform with existing law.

As an issue for future evaluation i.e. identifying and evaluating additional measures in the Delta and the upper watershed to benefit the Delta, RCRC suggests that the DSC investigate potential investments in the upper watershed for projects, such as meadow restoration, that would have multiple benefits (flood, environmental) in the watershed and the Delta.

Page 108, lines 32-35.

RCRC does not believe that the Delta Watermaster has existing authority to conduct an assessment of water diversions in the Delta watershed, nor would RCRC support such an expansion of the Delta Watermaster’s authority.

Page 109, lines 6-8.

Please see comments on WR R4.

Page 109, lines 22-23.

Please see comments on WR R4.

Chapter 4. Protect, Restore, and Enhance the Delta Ecosystem

Page 146, ER P1, Update Delta Flow Objectives, lines 1-18.

While the discussion of “flows” in the Sixth Draft is an improvement over previous versions, it is still in need of revision. For example, it would seem more appropriate that the references of dates certain for the adoption and implementation of updated flows by the State Water Resources Control Board (State Water Board) in ER P1 be a “recommendation” as opposed to a “policy”. As you know, the DSC does not have authority over the State Water Board.

Chapter 6. Improve Water Quality to Protect Human Health and the Environment.

Page 216, lines 20-41.

RCRC believes that the sixth draft of the Delta Plan has greatly improved as far as readability. RCRC does, however, question the inclusion of the discussion of X2. This rather long and technical discussion does not seem to serve a purpose.

In conclusion, RCRC requests your favorable consideration of the issues raised when considering changes to the sixth draft of the Delta Plan. Please feel free to contact me at (916) 447-4806 or kmannion@rcrcnet.org with any questions.

Sincerely,

A handwritten signature in black ink that reads "Kathy Mannion". The signature is written in a cursive, flowing style.

Kathy Mannion
Legislative Advocate

cc: Members, Delta Stewardship Council