Association of California Water Agencies
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March 2, 2011

VIA E-MAIL (deltaplancomment@deltacouncil.ca.gov)

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

RE: Delta Plan – 1st Draft, February 14, 2011

Dear Chairman Isenberg and Council Members:

The Association of California Water Agencies (ACWA) appreciates the opportunity to provide comments to the Delta Stewardship Council (DSC) on the draft Delta Plan (Plan), dated February 14, 2011. ACWA represents approximately 450 public water agencies throughout the state. Our members provide approximately 90 percent of the water used for agricultural, residential, and commercial purposes in California. Our members are located above the Delta, within the Delta and below the Delta. It goes without saying that the final Delta Plan and associated Environmental Impact Report (EIR) will likely have a profound effect on many ACWA members.

ACWA recognizes that this is the first of several drafts of the Delta Plan, and that the final Plan will most likely be quite different than the initial drafts. We look forward to participating throughout the process, providing input to the Council and staff, and contributing to a work product that ensures the advancement of the co-equal goals of water supply reliability and protecting, restoring, and enhancing the Delta ecosystem.

While we acknowledge that this is only the first draft, it contains critical foundational components that warrant further discussion and clarification to ensure consistency with the legislative direction set forth in the Sacramento-San Joaquin Delta Reform Act of 2009 (SBX7 1; "Act").

General Comments

First and foremost, the Delta Plan must clearly articulate the Council's authorities and limitations as established by SBX7 1. This is most crucial with regards to defining the scope of

the "project", i.e. Delta Plan, especially with regards to geographic and regulatory limitations. Frankly, we are concerned that the Council may over reach and assume far too much responsibility for itself. This was a fatal flaw for the Council's predecessor agency and it should be avoided at all cost. The Delta Plan must be absolutely clear about which actions will be taken under the Council's authority and which actions will be taken under the authority of other state and local agencies. The Council should respect the authority of other agencies consistent with the Legislature's intent. ACWA believes that the Plan should also clearly delineate what actions constitute a "covered action," consistent with Water Code Sections 85057.5 and 85225 et seq., so agencies will know in the future when they are expected to comply with the consistency determinations required by the Act.

We understand that there may be a need analyze areas outside the Delta to evaluate specific recommendations or actions that advance the co-equal goals within the Delta, but the Plan must clearly differentiate between analysis and limits on implementation to ensure any proposed recommendation or action does not exceed the DSC's legal authority. It would be beneficial to specifically recognize actions recommended in the Plan that will defer to other state and/or federal agencies to implement under their statutory authorities. For example, if the Plan recommends actions to mitigate specific contaminants that are affecting the beneficial uses of the waters within the Delta, the Plan should state that the authority to implement those recommendations lies with the state water boards and the U.S. Environmental Protection Agency. Likewise, if the Plan recommends the development of Delta stream flows, it needs to clearly state the authority to address stream flows rests with the State Water Resources Control Board (Water Board).

The Delta Plan needs to discus that the goals, objectives and actions set forth in the plan will be achieved over a period of decades, and during that period conditions will change, perhaps dramatically, and information will be more robust thus requiring periodic modifications to the Plan. The Plan should clearly define a process for acquiring and analyzing new information, and for making necessary revisions to the Plan, and the associated EIR, if necessary. Furthermore, as we recommended in our comments during the development of the Interim Plan, it would be extremely beneficial if the Plan could identify immediate or short-term actions that can demonstrate success. Such success will promote continued support and encourage increased collaboration and cooperation.

The Delta Plan needs to include an assessment of the fiscal costs and economic impacts of the proposed actions. While we recognize that the accuracy of any such analysis will be tested the further into the future the planning horizon extends, we believe it is essential to provide the public an understanding as to the potential costs and benefits associated with each of the alternatives, even if in relative terms. To the extent feasible, the Plan and EIR should also disclose potential impacts (favorable and unfavorable) of each alternative on local, regional and

statewide economic stability. The Plan should promote actions that, to the greatest degree feasible, encourage local and regional solutions.

Finally, critical to the successful long-term implementation of the Delta Plan will be well-designed program to monitor actions as they are being implemented, evaluate their contribution to advancing the co-equal goals, and provide for timely modifications to the Plan, when warranted.

Comments Specific to the Draft Delta Plan (February 14, 2011)

Chapter 1: The Delta Plan

Page 1-2, lines 20-37. While the language sufficiently defines the "Primary Zone" and the "Secondary Zone", the draft Plan fails to discuss the DSC's authorities, and responsibilities, and limits with regards to each of the two zones. The language in lines 36-37 which states, in part, … the Delta Plan will **address** statewide actions, including water management practices **as they relate to** the Delta" (emphasis added) is extremely vague.

Recommendation: We suggest the Plan contain language that clearly defines and distinguishes the role and authority of the DSC with regards to both the Primary Zone and Secondary Zone.

Page 1-5, lines 41-43. The language "… will require resolution of conflicts through effective use of California's water rights law, including reasonable use doctrine and public trust principles" implies that current Water Board's procedures and policies are inadequate. Furthermore, it could be misconstrued that the DSC has the authority to define, modify and subsequently enforce such policies.

Recommendation: We suggest that the language be rewritten to recognize that existing water rights law, the reasonable use doctrine and the public trust principles are important doctrines to be considered in furthering the co-equal goals , and that the Council recognizes that the State Water Resources Control Board has responsibility, under its existing statutory authorities, to ensure these are properly implemented.

Chapter 2: Purpose and use of the Delta Plan

Page 2-1, lines 9-11: The language in the draft Plan, "… will require proposed plans, programs and projects that **impact the Delta** will be carried out, approved or funded by a state or local agency **are consistent with the Delta Plan**." This language is inconsistent with the language set forth on Page 2-3, at lines 5-9 which provides, in part, that "… state or local public agencies that propose to undertake a **covered action** [will] determine if the **covered action** is **consistent** with the Delta Plan. The term 'covered action' is defined in Water Code Section 85057.5(a) generally as '*a plan, program, or project … that … [w]ill* ***occur, in whole or part, within the boundaries of the Delta or Suisun Marsh***.'" Emphasis added.

Recommendation: The language on page 2-1, lines 9-11 should be rewritten to be consistent with the law as quoted on Page 2-3. The words "impact the delta" should be replaced with "occur, in whole or part, within the boundaries of the Delta or Suisun Marsh".

Page 2-3, lines 13-28: Again, we believe the Delta Plan should distinguish the responsibilities and authorities of the DSC with regards to the Secondary Planning Area as compared to the Primary Planning Area. We believe that the Legislature intended to create such a distinction when it crafted the specific language set forth in Water Code Sections 85020(d), 85302(b), 85303, 85304, and 85307(a) by using verbs such as "promote", "may include", and "may identify" to describe the role of the DSC in the Secondary Planning Area.

Page 2-4, lines 23-29: The Delta Plan should include language that clearly states that the California Department of Fish and Game has sole responsibility to determine whether the Bay Delta Conservation Plan (BDCP) should be incorporated into the DSC's Delta Plan.

Recommendation: We suggest the Delta Plan include additional language beginning on line 29, Page 2-4 that quotes Water Code Section 85320(e), "[i]f the Department of Fish and Game approves the BDCP as a natural community conservation plan…and determines that the BDCP meets the requirements of this section, and the BDCP has been approved as a habitat conservation plan pursuant to the federal Endangered Species Act …, the council **shall** incorporate the BDCP into the Delta Plan." Emphasis added.

Chapter 5: Manage Water Resources

Page 5-1, lines 34-35: While we recognize that the beneficial and reasonable use of water is the cornerstone of water law in California (Article X, Section 2 of the California Constitution), we are concerned that this sentence could be read to mean that California is currently failing to put water to beneficial and reasonable use, and that we grossly wasting water.

Recommendation: We suggest that either the sentence be deleted, or that it is crafted in a manner that more clearly articulates the law. Consider language such as, "As provided by Article X, Section 2 of the California Constitution, the waters of California shall be put to beneficial use and the waste or unreasonable use of water shall be prohibited. Responsibility for ensuring compliance with Article X, Section 2 of the California Constitution lies with the State Water Resources Control Board."

Page 5-4, lines 27-33: The finding inaccurately implies that nothing has been done in the past 40 years to improve urban and agricultural water-use efficiency and conservation. We would suggest a more proactive approach. In reality the crucial factors that have contributed to increased water use over time are California's rapidly growing population, and expanding agricultural industry that has contributed to California's economic prosperity.

Recommendation: Restate the Finding to emphasize the increasing demand on water in the past half century is the result of a burgeoning population and prosperous agricultural industry. These factors increase the need for ongoing research and advanced practices to constantly improve water conservation and water-use efficiency.

Page 5-5, lines 4-5: We do not agree with the conclusion that the reuse of water, water recycling, sea water desalination, etc. are not likely to be major factors to improve water supply/reliability for **several decades or more**. To the contrary, if there are demonstrated benefits to the environment and water supply reliability , and the political will, ACWA believes that many of these opportunities can be implemented in a much timelier manner and provide major contributions to the advancement of the co-equal goals.

Recommendation: We suggest a more proactive approach that strongly recognizes the value of these opportunities, in terms of achieving the co-equal goals, and encourages accelerated pursuit of them.

Page 5-7, "Working Categories of Potential Policies and Recommendations"

Since there is little or no substance for the items listed, we cannot provide detailed comments at this time. Most items listed are recommendations that ACWA has supported. We do have some thoughts with regards to the following items:

- *Public Trust Flow Standards established by State Water Resources Control Board*: We suggest you either eliminate the words "public trust" or that you clearly define "public trust" to encompass both the co-equal goals.
- *Groundwater Management Requirements*: While the Council may find that any comprehensive water strategy for the Delta should include a discussion as to the role of and opportunities associated with groundwater management, the Delta Plan needs to recognize that groundwater management is best handled through local/regional planning. A top-down, one-size-fits-all approach will be counterproductive.
- *Application of Reasonable Use Criteria by the State Water Resources Control Board*: We are concerned that this bullet may imply that modifications should be made to the process currently undertaken by the Water Board to evaluate whether a specific use of water is "reasonable". Such a determination is very fact specific. ACWA believes that the current process provides adequate assurances that the Water Board will make accurate determinations as to the reasonable use of water.

Chapter 6: Restore Delta Ecosystem

Page 6-3, lines 31-40: ACWA believes it is a reasonable conclusion that the "Delta ecosystem is irreversibly changed." We believe that this is a critical point for managing expectations, and for developing a realistic strategy to further the co-equal goals in the Delta.

Recommendation: Additional discussion on this point in the final Plan may be beneficial to understanding limits for future actions and public expectations. This discussion could include what aspects of the Delta ecosystem can be reasonably restored and what aspects are unlikely to respond to reasonable restoration efforts.

Page 6-4, lines 13-17 and 18-24: The two findings set forth in these paragraphs are extremely important, and may warrant additional discussion in the final Plan.

Recommendation: We encourage the Council to explore early actions to improve coordination amongst the permitting agencies to expedite approval of ecosystem restoration projects. We also encourage the DSC to consider a scientific structure that can provide input to restoration projects design, ecosystem recovery strategies and oversee future adaptive management efforts. Perhaps a structure similar to the current Delta Independent Science Board.

Page 6-6, lines 21-31: Any reference to flow criteria (or "standards") in the Delta Plan should reiterate that such criteria should be designed to achieve both the co-equal goals and with full consideration given to how other factors ("stressors") are affecting ecosystem and species sustainability.

Recommendation: Revise the sentence on lines 30-31to reflect the need to address the co-equal goals and the influence of other factors on ecosystem and species viability, and that the authority to develop such criteria rests with the Water Board. Possible revise language: "Any effort to develop Delta flow criteria by the State Water Resources Control Board should be designed to further both a reliable water supply and a sustainable Delta ecosystem, taking into consideration the influence of other stressors on the health of the Delta ecosystem and species viability."

Chapter 8: Reduce Risks to People, Property and State Interests in the Delta

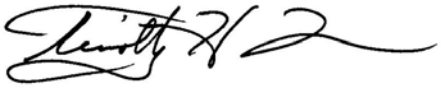
ACWA has no specific comments on this chapter at this time except to iterate that identifying measures to address Delta flood risks and levee failures should be one of the highest priorities for the Delta Plan. We encourage the DSC to continue to work closely with other entities such as the Central Valley Flood Protection Board, the California Emergency Management Agency and other appropriate agencies to identify actions to include in the Delta Plan that are designed to reduce the risk of floods and levee failures in the Delta. The Delta Plan should also discuss what identify actions may be necessary to ensure contingency plans are in place to provide quick and effective response to any such event, including the actions necessary to ensure water is provided to people who access to water is disrupted by such a catastrophic event.

Chapter 9: Protect and Enhance the Unique Cultural, recreational, Natural Resources, and Agricultural Values of the California Delta as an Evolving Place

ACWA has no comments on this chapter at this time.

This concludes our initial comments on the first staff draft of the Delta Plan, dated February 14, 2011. If you have any questions regarding our comments please feel free to contact either Mark Rentz, Director of regulatory Affairs, or myself at (916) 441-4545. We look forward to providing the Council with additional comments as the delta Plan continues to evolve over the next several months.

Sincerely,



Timothy H. Quinn
Executive Director