

March 26, 2012

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

Re: Delta Plan – Proposed Revision of Recommendation WR R5

Dear Mr. Isenberg:

Our communities and agencies all rely on water diverted from our local rivers and streams – many of which are tributaries of the Delta and the Delta itself – to meet our needs. We do not have the luxury of importing water from other sources. Many of our agencies accordingly have opposed the fifth draft Delta Plan’s proposed recommendation WR R5, which would propose to the State Water Resources Control Board that it not approve changes to water rights on which our agencies rely unless we have “evaluated and implemented all other feasible water supply alternatives.” Many of our agencies also submitted related comments on the Council’s draft Delta Plan EIR.

Initially, it is important for the Council to understand the role that existing water rights and area of origin laws play in our communities’ planning for our futures. Our already-established water rights establish the baseline amount of water for which we can plan to meet our local needs. Having this baseline, we compare whether the projects that would be needed to use increased amounts of water under those rights, or under new rights that the area-of-origin laws allow us to obtain, make sense – economically or environmentally – relative to other options. Communities throughout the Delta watershed are committed to conservation, as demonstrated by numerous 2011 urban water management plans that commit to the full 20% conservation by 2020. As you may know, the 2009 conservation law (SB 7) also allowed some communities to commit to less than 20% conservation, but urban communities in our regions generally are committed to the full 20%. Farms in our regions frequently use the same water multiple times and provide, with their fields, migratory bird habitat. Some advocates of recommendation WR R5 may assume that our water use is inherently wasteful, but the reality of our water use demonstrates that we are careful stewards of the resource. Incorrect assumptions about our water uses may be one reason we are thus far not able to reach agreement on an alternative mutually satisfactory approach. We would like to try again to explain some of the grounds for our very serious concern.

We have been seriously concerned about recommendation WR R5 in the fifth draft Delta Plan because it would impede or prohibit changes to our water rights that will be necessary to allow our communities to evolve, and to address issues such as groundwater contamination. This is an essential feature of the area of origin protections, which could be undone by the proposed recommendation WR R5.

Last week, the Council’s staff provided the Council with proposed revisions to recommendation WR R5. The staff’s materials state that the proposed revisions were intended to address “concerns about how this would apply to upper watershed, pre-1914 rights; [and] concerns about impacts on water rights and water transfers.” As a result, the staff’s materials propose that recommendation WR R5 be revised to state:

In order to reduce reliance on the Delta, consistent with Water Code section 85021, the State Water Resources Control Board and the Department of Water Resources should require that proponents requesting a new or changed point of diversion, place of use, or purpose of use that results in new or increased long term average use of water from the Delta watershed should demonstrate that they have evaluated and implemented all other feasible water supply alternatives, consistent with their Urban Water Management Plans, Agricultural Water Management Plans, Integrated Regional Water Management Plans or other plans that provide equivalent information.

Unfortunately, this revised language does not effectively address our concerns about recommendation WR R5 and the impacts it would have on our water rights, our rights under the areas of origin laws and the enormous investments our communities have made based on existing water rights and facilities. In fact, it may worsen the situation. We reiterate that we are committed to conservation, conjunctive use, and other measures to make water use more effective. However, our ability to accomplish even such measures may be burdened or prevented by recommendation WR R5 as proposed.

The proposed revision of WR R5 has at least the following significant problems:

- It fails to explain how our communities – which are, by necessity, 100% reliant on water from the Delta watershed – should reduce our reliance on our local water sources;
- Read in the context of Water Code section 85021, it is circular because that law says that regions that depend on “water from the Delta watershed” shall improve their “regional self-reliance” by investing in projects that probably would require water-right changes, which proposed recommendation WR R5 would impede;
- It would conflict with the area-of-origin laws that give our communities the right to use our local water sources to meet our future needs (see, for example, Water Code §§ 10505, 10505.5, 11128, 11460-11463, 12200-12220);
- It would conflict with the Delta Reform Act, which explicitly says 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” and that it does not affect “[a]ny water right” (Water Code §§ 85031(a); 85032(i));
- It does not define the term “feasible,” apparently leaving that term to be defined by future State Water Resources Control Board policies or decisions, creating significant uncertainty for our communities;
- It appears to incorporate our urban and agricultural water management plans and integrated regional water management plans, which contain many projects that may only be cost-effective if supported by state grant funds;
- It does not acknowledge the billions of dollars that our communities have invested based on our existing water rights and potentially undermines our ability

Mr. Phil Isenberg

March 26, 2012

Page 3

to plan for our futures by suggesting that we must prioritize new sources of water to meet future needs;

- It is unsupported by environmental analysis in the Council’s draft EIR, which did not analyze the water-supply and environmental impacts that recommendation WR R5 specifically would cause, if implemented; and
- It effectively recommends that the State Water Resources Control Board adopt an underground regulation that would impose a new generally-applicable condition on water-right changes.

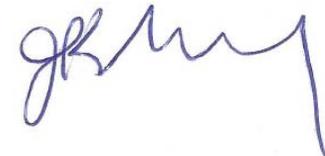
Unfortunately, the Council will not further the coequal goals of “providing a more reliable water supply for California” – all of California – and “protecting, restoring and enhancing the Delta ecosystem” if the Delta Plan’s recommendations would undermine the bedrock of our planning, namely our ability to use our local water sources under existing water and the area of origin laws. We respectfully request that the Council delete proposed recommendation WR R5 from the draft Delta Plan.

Very truly yours,

REGIONAL WATER AUTHORITY

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Executive Director

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SACRAMENTO AREA COUNCIL OF  
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CITY OF ROSEVILLE

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Mr. Phil Isenberg

March 26, 2012

Page 4

CITY OF SACRAMENTO  
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NORTH DELTA WATER AGENCY

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BROWNS VALLEY IRRIGATION DISTRICT

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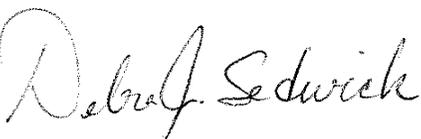
CALAVERAS COUNTY WATER DISTRICT

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By:   
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DEL PASO MANOR WATER DISTRICT

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EL DORADO IRRIGATION DISTRICT

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FORESTHILL PUBLIC UTILITY DISTRICT

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ORANGE VALE WATER COMPANY

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Mr. Phil Isenberg

March 26, 2012

Page 5

RANCHO MURIETA COMMUNITY RECLAMATION DISTRICT NO. 2068  
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By:   
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Cc: Randy Fiorini  
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