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June 24, 2011

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

**VIA E-MAIL**  
**[deltaplancomment@deltacouncil.ca.gov](mailto:deltaplancomment@deltacouncil.ca.gov)**

Re: Comments on Fourth Draft of Delta Plan – Water Transfers and Covered Actions

Dear Mr. Isenberg:

As I discussed in my public comments on Chapter 4 of the fourth draft of the Delta Plan, the Delta Plan should recognize that: (1) one-year water transfers should not be “covered actions” that are appealable to the Council, whatever the type of water rights under which such transfers occur; and (2) the activities of water agencies that are transferring water should not become subject to Chapter 4's policies. This letter proposes edits to the fourth draft's relevant language that would address these concerns.

*Our Firm's Clients*

Our firm represents numerous water agencies that serve hundreds of thousands of residents, and ten of thousands of acres of agriculture, in Placer, Sacramento, Yolo and Yuba Counties. Our clients store and deliver water under some of the oldest water rights in California and have been central in developing innovative regional water solutions like the Yuba River Accord and the American River's Water Forum Agreement. Our clients also include the agencies that have been most active in transferring water to water-short areas of the state in dry years.

*Water Transfers*

On page 45, lines 9 through 10, the fourth draft effectively states that one-year water transfers that occur under water-right permits and licenses issued by the State Water Resources Control Board or a predecessor agency will not be considered “covered actions.” Such a determination should be extended to water transfers that occur under pre-1914 water rights because varying the type of water right that underlies a transfer will not cause any greater impacts on the Delta. The fourth draft's language exempting one-year water transfers from the class of “covered actions” therefore should be expanded to include water rights that are documented by the statements of water diversion and use that the 2009 legislation requires that pre-1914 water-right holders file. Accordingly, the fourth

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draft should be revised on page 45, lines 9 through 10, as follows (insertions underlined):

Temporary water transfers of up to 1 year in duration pursuant to Article 1 (commencing with section 1725) of chapter 10.5, part 2, division 2 of the Water Code or pursuant to water rights documented under part 5.1, division 2 of the Water Code.

*Cross-Delta Covered Actions – Agencies Subject to Appeals*

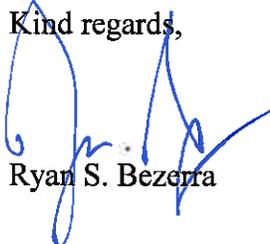
At the Council's June 23 meeting, the Council's staff stated that it was not their intent to expand, from the third draft to the fourth draft, the class of water agencies whose internal operations would be subject to consistency appeals as a result of participating in a transaction that involves exports from, or transfers through, the Delta. Accordingly, the fourth draft's language on page 62, lines 35 through 37, should be revised to clearly limit the class of agencies whose internal operations would be reviewed under Chapter 4's policies. The following revisions to that language are necessary to reflect such a limitation (deletions in strikeout, insertions underlined):

The covered action involves the export of water from the Delta or involves the transfer of water through the Delta, and the need for that covered action is significantly caused by the failure of ~~one or more water suppliers~~ the retail agency or agencies receiving the water to comply with policies WR P1, WR P2, and/or WR P3.

*Alternate Delta Plan*

Our clients support the Alternate Delta Plan that the Ag/Urban Coalition led by ACWA has submitted for the Council's consideration. We urge the Council to pursue the Alternate Delta Plan's approach of seeking to shepherd state agencies' actions in the Delta, rather than an approach under which the Council would seek to regulate local agencies' operations. The Alternate Delta Plan's approach is much more consistent with the Delta Reform Act's intent that the Council "establish a governance structure that will direct efforts across state agencies to develop a legally enforceable Delta Plan." (Water Code § 85001(c).)

Kind regards,



Ryan S. Bezerra

RSB:tmo

7021/Delta Council/L062411 Delta Plan.wpd

cc: (via e-mail) Martha Davis