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June 12, 2012

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

RE: Final Staff Draft Delta Plan

Dear Chairman Isenberg and Council Members:

Butte County offers comments on the Final Staff Draft Delta Plan (Draft Plan) released on May 14, 2012. In providing comments, we acknowledge the enormous undertaking the Delta Stewardship Council and staff have in developing a viable Delta Plan. The Delta Reform Act of 2009 (SB1X 1, Simitian) created a once in a generation opportunity to resolve California's water challenges through the coequal goals of "*providing a more reliable water supply for California and protecting, restoring and enhancing the Delta ecosystem.*" The Delta Stewardship Council's Delta Plan should be a driving force in shaping a long-term solution for the Delta. While the Draft Plan has gone through an extensive public process, we find that it remains seriously flawed and inconsistent with the Draft Environmental Impact Report.

Butte County appreciates some of the positive elements of the Draft Plan. We support the inclusion of statutory language that honors existing area of origin, watershed of origin, county of origin and water right protections pursuant to Water Code section 85031. While adding this important statutory language was a welcome step, the intent of the statutory language should be strongly incorporated throughout the Delta Plan and the DEIR. Without full analysis of, and accountability for, project consequences north of the Delta, the Draft Plan will be incapable of delivering on the Delta legislation's cornerstone promise, codified in Water Code section 85031, not to "diminish, impair, or otherwise affect in any manner whatsoever" area of origin or any other water rights protections. To avoid potentially devastating consequences for Butte, and other counties and communities north of the Delta, the Delta Plan must safeguard that promise and apply it to both surface water and groundwater. The Draft Plan should have emphasized that a healthy and vibrant California north of the Delta is an important foundation for achieving the coequal goals. A disruption to the delicate balance to the north of Delta watershed would not only be disastrous for the region but will undermine any likelihood of achieving the coequal goals. The protection of the Delta watershed and area of origin water rights are foundational to a

healthy Delta.

We support the Draft Plan's recognition of the importance of increased surface water storage. The Draft Plan calls for the completion of the feasibility studies associated with the CALFED water storage projects (Recommendation: WR R13). We heartedly agree that it is time to increase the overall water supply within California and the completion of new surface water storage projects that have appropriate safeguards is long overdue. New surface water projects should have appropriate safeguard that protect local socioeconomic and environmental conditions. New surface water storage facilities must not weaken the protection of water rights and beneficial uses north of the Delta. To avoid this unintended result, storage projects, like other water supply elements, require a commitment to environmentally sound construction and operation, and cannot disregard the consequences for existing rights and beneficial uses, including those within areas of origin. We offer these considerations based on Butte County's experience with Lake Oroville. The Draft Plan identifies Lake Oroville Dam as the state's "single largest" storage facility and the "keystone feature" of the State Water Project. Lake Oroville is more than a water supply source for the state. While Lake Oroville has many positive benefits, Butte County has suffered for 50 years from the failure of the State to address and mitigate the impacts of Lake Oroville on Butte County. The negative experience that Butte County faced from Lake Oroville should not be repeated in other communities.

Although the Draft Plan has some positive attributes, it and the accompanying DEIR remain flawed, inconsistent and legally suspect. Butte County continues to express concern that the DEIR "fails to either acknowledge or assess" the Draft Plan's "impacts upstream of the Delta." The Draft Plan continues that avoidance, ignoring potential interference with water rights and potential devastation of the groundwater basin and waterways critical to the economic and ecosystem health north of the Delta. Avoiding full accountability of the Draft Plan's north of Delta impacts would also undermine any hope of delivering on statutory commitments relating to water reliability and ecosystem protection. (See, e.g., Wat. Code, §§ 292702, 85022, 85054, 85302.). A disruption of the delicate balance to the north of Delta watershed would not only be disastrous for the region but will undermine any likelihood of achieving the coequal goals. The protection of the Delta watershed and area of origin water rights are foundational to a healthy Delta. The inconsistency and the shortcomings of the DEIR raise serious questions about compliance with the California Environmental Quality Act (CEQA). As the Delta Stewardship Council contemplates final approval of the Delta Plan, we recommend that the DEIR be revised.

Butte County is concerned with a number of areas of the Draft Plan. The Draft Plan has expanded its scope beyond its authority, would undermine regional sustainability and could lead to redirecting impacts to the Delta watershed.

The legal and geographic scope of the Delta Stewardship Council is well established in the Delta Reform Act. Over the course of the development of the Delta Plan, the Delta Stewardship Council has repeatedly tried to expand its geographic reach. The Draft Plan has dramatically shifted course from the previous drafts to once again cover areas not authorized. In the Draft Plan, recommendations were changed to cover areas that "received water from" the Delta watershed rather than language from previous drafts that identified water "diverted and exported

from” the Delta watershed. While the changes only involve unenforceable recommendations, the altered language speaks volumes to the underlying intent of the Delta Stewardship Council to ignore the will of the Delta Reform Act and those that worked for its enactment.

Although existing levels of exports south of the Delta are recognized as unsustainable, the Draft Plan misuses the coequal goal of “water supply reliability” to facilitate an increase in these exports. The Draft Plan must not simply become the latest opportunity for those users south of the Delta to match or exceed existing unsustainable levels of exports at the expense of north of the Delta water rights holders and area of origin rights. The Delta Plan must not seek to achieve “water supply reliability” in a way that ignores the statutory requirement for reducing the reliance on Delta exports and increasing regional water supplies.

The Draft Plan undermines the state policy of promoting regional water supply sustainability and reducing the reliance on exports from the Delta. Promoting regional water supply reliability and reducing the reliance on the Delta watershed are two important policies established in the Delta Reform Act. The Draft Plan embodies these policies in its recommendations and enforceable policies. Although the Legislative directive is clear, some areas of the Draft Plan undermine these policies. First, the Draft Plan calls for evaluating groundwater storage and conjunctive use programs in the Delta watershed that could lead to incorporating region’s groundwater basin to enhance the reliability of the state’s water supply. The Draft Plan reference in Chapter 3, page 88, to the “legacy of both overdraft and water quality contamination has compromised groundwater storage” fails to recognize the magnitude of risk that this approach would pose to the watershed. Additionally, the integration of the Delta watershed groundwater basins into the state’s water supply runs counter to Water Code Section 85031 related to the protection of area of origin water rights. By opening the door to exploration of groundwater sources that would be ultimately exported from the Delta is inconsistent with the policies of reducing the reliance on the Delta and promoting regional water supply sustainability. The promotion of increase storage and conjunctive use should be focused on enhancing local and regional water supplies. Butte County opposes groundwater banking or conjunctive use programs intended to meet statewide water supply demands as recommended in the Draft Plan.

Another troubling recommendation is the streamlining of water transfer programs (Recommendation: WR R15). Water transfer programs can and do play an important role in meeting water supplies especially during critical dry years. However, water transfer “streamlining” efforts have typically involved preempting local ordinances and environmental reviews. We understand the desire to streamline the transfer process but we cannot be more vehemently opposed to any preemption of local government authority. The reason why many counties adopted ordinances to regulated groundwater exports was due to real failures on the part of the state to manage these programs adequately.

Butte County’s experience may be helpful to frame the importance of local groundwater management. In 1996, Butte County voters overwhelmingly adopted the Groundwater Conservation Ordinance, Chapter 33 of the Butte County Code. This ordinance requires a permit for water transfers that include a groundwater substitution component. The primary purpose of the Groundwater Conservation Ordinance is to ensure that an adequate independent

environmental review occur and to assure that groundwater resources would not be adversely affected (i.e., overdraft, subsidence, saltwater intrusion) or result in uncompensated injury to overlying groundwater users and others. Additionally, the process of the Groundwater Conservation Ordinance brings a measure of transparency and public involvement that should be part of any water governance process. The Delta Stewardship Council lacks the authority to preempt county authority by regulation.

The Groundwater Conservation Ordinance was adopted in direct response to failures and shortcomings of the Drought Water Bank of the 1990s. The rationale justifying the Groundwater Conservation Ordinance remains as valid today as it was over a decade ago. For example, the 2009 Drought Water Bank did little to provide assurance that an adequate environmental review and mitigation would be carried out under that program. We cannot underscore enough the severe economic, social and environmental consequences that a poorly conducted water transfer program can have on a community. The assurance of having an independent environmental review conducted at the local level is the most reasonable approach to assure that water transfer programs would not result in unmitigated impacts or unanticipated consequences. Through local ordinances, the heightened integrity of water transfer programs should also be viewed as beneficial to those who participate in water transfer programs. Preempting the authority of local agencies will increase the likelihood of creating overdraft conditions in the northern Sacramento Valley, further jeopardizing state water supply reliability and conflict statutory area of origin water right protections. The expediency of having decisions be made at a state level will do little to solve the problems facing the Delta and will cause irreparable economic, ecological and social harm to our region.

Lastly, protecting, restoring and enhancing the Delta ecosystem is one of the most complex environmental challenges facing California. The Draft Plan continues to take a simplistic approach by overemphasizing the need to establish Delta flows as a foundation to the Delta ecosystem regardless of other stressors. While the Draft Plan improves the explanation of Delta flows, the Draft Plan continues to overemphasize the immediacy of establishing enforceable flows. The emphasis in the Draft Plan on implementing enforceable flow criteria creates an inconsistency between the Draft Plan and the DEIR. The DEIR fails to take into account any implication of the Project Plan to the northern portion of the Delta watershed. One can only surmise that the intent of the Project Plan is not to affect these areas. However, the Project Plan is either silent on the limitations of regulatory actions of other agencies or discretely encourages actions by those agencies outside of the Delta. The DEIR cannot ignore the impacts direct and indirect on areas outside of the Delta based on the Project Plan. The DSC could reconcile these shortcomings by following its statutory authority and by supporting a healthy north of Delta by adherence to the protections in Water Code section 85031. Policy ER P1 proposed in the Draft Plan sets deadlines for the State Water Resources Control Board (SWRCB) to adopt and implement flow objectives. The Delta Stewardship Council should evaluate whether they have the legal jurisdiction over the SWRCB. If not, Policy ER P1 should be changed to a recommendation. The Draft Plan should support the SWRCB efforts to update the Bay Delta Plan without dictating a deadline. The importance of getting the Bay Delta Plan done correctly should supersede artificial deadlines intended to meet bureaucratic needs. Most importantly, the SWRCB needs the authority to constrain unsustainable levels of exports so that implementation

adheres to the protections of Water Code section 85031.

Although the Final Staff Draft Delta Plan contained some improvements, we are mystified as to the changes that expand the scope, undermine regional sustainability and redirect impacts to the Delta watershed. We find that the DEIR and the Draft Plan remain inconsistent, incomplete and unclear. Failure to resolve these shortcomings will ensure that the pattern of failed attempts to resolve the Delta will be repeated. Further, the adoption of the Delta Plan that jeopardizes the sustainability of Butte County's economy, communities and environment will not go unchallenged.

The Delta Stewardship Council has a wealth of comments and recommendations to remedy the Draft Delta Plan and fulfill its important mission. We implore the Delta Stewardship Council to direct changes to the Final Staff Draft Delta Plan and the DEIR.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Lambert". The signature is written in a cursive, flowing style with a large initial "S".

Steve Lambert, Chair  
Butte County Board of Supervisor