



El Dorado County Water Agency

Ron Briggs
Board of Supervisors

Richard Englefield
Grizzly Flats C.S.D.

James R. Jones
South Tahoe P.U.D.

Ray Nutting
Board of Supervisors

Vacant
Board of Supervisors

Dave Eggerton
General Manager

January 14, 2013

Cindy Messer
Delta Plan Program Manager III
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Subject: Recirculated Draft Delta Plan, Program Environmental Impact Report, November 2012, SCH #2010122028

Dear Ms. Messer:

Thank you for the opportunity to review and comment on the Delta Stewardship Council's (DSC or Council) Recirculated Draft Delta Plan, Program Environmental Impact Report (DPEIR). El Dorado County Water Agency exists to ensure that those who live, work and recreate in the County of El Dorado have continuous access to safe, reliable water resources today and for the future. Our agency has participated in the DSC process through the review of previous documents, draft plans and DSC meetings and workshops. Additionally, our agency is a participant in the Ag-Urban Coalition and worked in the development of its Alternate Draft Plan as submitted to the DSC previously.

We note the Council's request that comments on the subject document be limited to the analysis contained in the Recirculated DPEIR¹. Therefore, we will focus our comments accordingly to the Council's request. However, we make specific reference to our comments previously submitted on the DPEIR earlier this year. Due to the similarities between the "Revised Project" and the earlier "Proposed Project," many of our prior comments on the DPEIR are also applicable to this

¹ Recirculated DPEIR, vol. 3, p. EDS-11, November, 2012.

proposal. Under CEQA Guidelines section 15088 (PRC §21803), we expect that the DSC, as Lead Agency, will respond to all of our applicable comments, including those contained in this letter and our earlier correspondence (copy enclosed).

Our comments are intended to provide the Council with insights and direction that will assist in the production of a legally adequate Final Program Environmental Impact Report (FPEIR) and Delta Plan that are understandable, sustainable and can be practicably implemented so as to achieve the coequal goals as defined in statute.² We consider this duty to be a serious matter both due to our local agency status (PRC §21062) and fact that we are a responsible agency under CEQA (PRC §21069).

As a responsible agency it is highly likely that in the future our agency will carry out water supply, water quality, water use efficiency and other similar projects. Due to our agency's location within the Delta Watershed³ (notwithstanding the California Water Code, for environmental analysis and resource purposes, the specific geographic area in which our agency is located is more accurately described as the Sierra Nevada Ecosystem)⁴ it is possible that there may be occasions under which local management actions by our agency may be influenced by proposals within the current Proposed Project. Therefore, our interests in the proposed Delta Plan and the attendant CEQA document are significant. For purposes of our long-term planning responsibilities, it is critically important that the Delta Plan and its analysis be accurate and clear.

Given our extensive comments on the original DPEIR and the Council's specific request for a narrow response to the Recirculated Draft EIR, the contents of this letter are significantly abridged. Specific comments provided below cite DPEIR page numbers and section or line numbers.

Page ES-2, lines 10-15. The description of a "reliable water supply" fails to mention the development of local and regional water supply projects.⁵

Page 2-10, lines 23-27. This descriptive action within the project is too broad and generalized to allow for proper analysis. The specific upstream tributaries should be analyzed through an Instream Flow Incremental Methodology (IFIM) process dealing first with local stream reach needs and only then downstream objectives.

² CWC §85054.

³ CWC §85060.

⁴ *Sierra Nevada Ecosystem Project, Final Report to Congress, vol. 1, Assessment Summaries and Management Strategies* (Davis: University of California, Centers for Water and Wildland Resources, 1996).

⁵ CWC §85021.

There is no evidence to suggest that the development of flow criteria and objectives by the SWRCB will lead to local and regional water supply projects within the areas upstream of the Delta. To the contrary, the far more plausible outcome is the resulting inability of upstream areas to develop local water supply projects in the absence of sufficient available water for diversion. The water dedicated to the Delta will most likely come at the expense of upstream water users. There is no recognition that by committing Sierra Nevada Ecosystem river flows to meet new criteria and flow objectives, upstream water supply sources will be diminished. Thus increased flows would appear to frustrate, if not prohibit, achievement of one of the statutory coequal goals - improving water supply reliability.

Page 3-7, lines 27-33. See prior comments regarding page 2-10, lines 23-27. Absent an adequate assessment of the impacts of the proposed flows on upstream rivers and streams, there may be significant unmitigated, redirected impacts to upstream fisheries. The Delta is not the only venue in which adverse environmental impacts may occur as a result of this proposal.

Page 3-9, lines 18-24. The document concludes that, *"In other areas where additional surface water or groundwater supplies are not feasible, implementation of conservation programs and/or recycled wastewater and storm water facilities could be implemented."* This is incorrect. In many areas upstream of the Delta, the rural nature of the landscape and low-density population makes the collection of storm water economically infeasible. The ability to use recycled wastewater is limited by "down slope/downstream" locations of wastewater treatment plants relative to local populations. Therefore, in many cases (for upstream agencies) neither of these two offered proposals are a feasible alternative source of additional supply.

Page 4-6, lines 13-14. There should be no presumption that upstream conserved water would be dedicated for instream uses within Delta tributary streams.⁶ It is far more likely that any conserved water would be used to help meet increasing demands for local water customers, particularly if options for new supply projects are reduced by demands for more flows downstream for Delta purposes.

Page 4-14, lines 6-15. This section fails to recognize that updated flow requirements on Delta tributary streams would also result in a reduction in the available water for use in upstream watersheds. This could conflict with the stated mission of the DSC - to achieve the coequal goals. Further, it would similarly reduce the ability of upstream agencies to implement new filings for water rights under the area of origin statutes and thus conflict with CWC §85031.

⁶ CWC §1011.

Significant unavoidable impacts of the Proposed Project would include increased costs and lower reliability of municipal and agricultural water supplies for many areas within the Sierra Nevada Ecosystem due to reduced existing supplies and loss of new water supply project opportunities. The reduced availability of cost-effective water supplies would deter the development of agricultural land uses as planned by local communities, thus resulting in commensurate ecosystem losses as agricultural lands are converted to other uses that can afford to pay higher water rates such as a full-range of municipal customer classes. The function of the Delta's watershed would be significantly impacted.

We thank you for the opportunity to comment on the Recirculated DPEIR and look forward to the release of the Final EIR by the Council.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dave Eggerton", with a long horizontal flourish extending to the right.

Dave Eggerton
General Manager

Encl.



El Dorado County Water Agency

Ron Briggs
Board of Supervisors

Rich Englefield
Grizzly Flats CSD

James R. Jones
South Tahoe P.U.D.

Ray Nutting
Board of Supervisors

James R. "Jack" Sweeney
Board of Supervisors

Dave Eggerton
General Manager

February 2, 2012

Sent via US Mail and Email

Delta Stewardship Council
Attention: Terry Macaulay
980 Ninth Street, Suite 1500
Sacramento, CA. 95814

Subject: Draft Delta Plan, Program Environmental Impact Report, SCH #2010122028

Dear Ms. Macaulay:

Thank you for the opportunity to review and comment on the Delta Stewardship Council's (DSC or Council) Delta Plan Draft Environmental Impact Report (DEIR or EIR). El Dorado County Water Agency exists to ensure that those who live, work and recreate within the County of El Dorado have continuous access to a safe, reliable supply of water today and in the future. Our agency has participated in the DSC process through the review of previous documents, draft plans and DSC meetings and workshops. Additionally, our agency is a participant in the Ag-Urban Coalition and worked on its development of the Alternate Draft Plan previously submitted to the DSC. We will focus our comments on the DEIR's analysis of the Proposed Project with particular attention to Alternative 1B (the proposed Ag-Urban Coalition draft plan), which our agency worked on jointly with a number of other public local and regional water agencies, local governments and other interests.

It is our intention to provide meaningful comments on the DEIR that will enable the Council to produce a legally adequate Final Environmental Impact Report (FEIR) and a Delta Plan that will be understandable, sustainable and can practically be implemented so as to achieve the coequal goals as defined in statute¹. We consider this duty to be a serious matter both due to our local agency status (Public Resources Code §21062) and as a responsible agency under CEQA (Public Resources Code §21069).

As a responsible agency it is likely that in the future our agency will be carrying out water supply, water quality, water use efficiency and other similar projects. Due to our agency's location within

¹ Water Code §85054

the Delta Watershed² (notwithstanding the California Water Code, for environmental analysis and resource purposes the specific geographic area in which our agency is located is more accurately described as the Sierra Nevada Ecosystem)³ it is possible that there may be occasions under which local management actions by our agency may be restricted in some fashion or even prohibited by proposals within the present Proposed Project. Therefore, our interests in the proposed Delta Plan and the attendant CEQA document are significant. For purposes of our long-term planning responsibilities, it is critically important that the Delta Plan and its analysis are accurate and clear.

Unfortunately, the EIR is excessively voluminous, and yet still provides the reader with little meaningful, reasonable assessment of environmental impact analysis. The description of the Proposed Project lacks basic details for the reader, such that one cannot determine exactly, or even approximately, what is or is not proposed. This confounds the very foundation of an adequate CEQA analysis since without such descriptive foundation to build upon any attempt at forecasting and analysis is reduced to a level of vague concerns. (CEQA Guidelines §15124.) This is no small matter and must be remedied by the Lead Agency in the final document.

“A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance. An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.” *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185.

We find that this flaw in the document is further compounded by a plethora of nonessential information about potential impacts regarding general classes of projects that is neither helpful in separating fact from fiction, nor the impacts of the proposed plan from a catalog of off-the-shelf boilerplate narratives. The reader is challenged to determine if the project being assessed in the document is solely comprised of the “*twelve binding policies*” (which are proposed to become regulations) or also includes one or more of the “*sixty-one non-binding recommendations*” or, further, is found within the lengthy and conflicting narrative. (DSC DEIR, Executive Summary p. ES-1)

The sixty-one non-binding recommendations are apparently things the Council advises other agencies it would like to see occur, or, as described by DSC staff during a public workshop on the subject of covered actions, are just “good ideas” for other agencies to consider. These recommendations may or may not ever be accepted and implemented and therefore are speculative in nature. Thus, rather than achieve the primary purpose of CEQA, to inform decision makers (which in this case are not just the lead agency but also responsible agencies), this document provides little meaningful analysis. Again, we must reiterate that this is fundamental to the purpose of preparing the document. The purpose of CEQA analysis is to, “Inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities” and to “Prevent significant, avoidable damage to the environment

² Water Code §85060

³ *Sierra Nevada Ecosystem Project, Final Report to Congress, vol. 1, Assessment Summaries and Management Strategies* (Davis: University of California, Centers for Water and Wildland Resources, 1996)

by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible.” (State CEQA Guidelines §15002)

At a minimum, the reader must be able to conclude what the Proposed Project is and what is, or is not, likely to take place if the project is implemented⁴. Absent that critical information any reasonable assessment of impacts is quite difficult if not impossible to perform⁵. We believe this lack of clarity is not only of concern to the public and local agency members attempting to make sense of the EIR but also the Council itself. Indeed, the Council must have a clear picture and understanding of what their own project is if they are to make a reasoned decision in the record about what the environmental impacts are and to what degree they may occur.

Adding to the confusing aspects of this EIR is that the comparison of alternatives as required by CEQA⁶ is inaccurate and therefore inadequate for its intended purpose. An accurate portrayal of the likely outcome of selecting one alternative over another is essential to guiding the Council in making a reasoned decision. If the comparison of alternatives is flawed then a decision by the Council based on that information would similarly be flawed.

It is our assertion, and we shall detail this in our comments, that the EIR mischaracterizes the functional details of Alternative 1B and the Proposed Project so that the predicted outcomes are inaccurate. This must be corrected with an accurate comparison of the Proposed Project and Alternative 1B⁷.

The Proposed Project advocates for the application of “*a more natural flow regime*” throughout the Delta Watershed as a cornerstone to the ecosystem restoration of the Delta. However, there is no qualitative or quantitative analysis anywhere in the EIR of what impacts would result from the imposition of such a flow regime.

Specific comments provided below cite EIR page numbers and appropriate sections, or by line or other identifier.

Page 2A-5, lines 2-4. There is no evidence in the EIR supporting the claim regarding the detailed outcomes of the Proposed Project. There are no metrics or data to support the claim and, lacking such supporting information, the reader is left with speculation rather than a supported conclusion.

Page 2A-5, lines 25-38. None of these stated actions result in increased water supplies. They are simply additional demand side actions that will increase the marginal cost of water to the customers of local water agencies and reduce revenues to local agencies. This does not increase water supply reliability. The conclusions that such efficiency measures would “*improve regional self-reliance and reduce reliance on the Delta*” are inaccurate. The term “*regional self-reliant*” for our

⁴ State CEQA Guidelines §15124

⁵ *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185

⁶ State CEQA Guidelines §15126.6

⁷ See Public Resources Code §§21061, 21083 and 21100; *San Francisco Ecology Center v. City and County of San Francisco*, (1975) 48 Cal. App. 3d 584

communities and others on the west slope of the Sierra within the Sierra Nevada Ecosystem is meaningless. Our communities do not import water from any other region, as do many other agencies. Thus, while the EIR's assertion may be correct in some export areas south of the Delta, it has no meaning to water systems within the Sierra Nevada Ecosystem with locally sourced water.

Page 2A-5, lines 34-38. The inclusion of an additional Water Supply Reliability Element will not improve existing water supply reliability above that already provided by the completion of Urban Water Management Plans as required by the Department of Water Resources. Thus, the conclusion regarding improved water supply reliability is unsupported in the record. The reader is misled about the characteristics of the Proposed Project almost immediately in the DEIR.

Page 2A-5 and 2A-6. The conclusion reached on the first two lines of page 2A-6 that (policy) "*ER P1 could result in the development of local and regional supplies and less reliance on Delta water*" is not factually correct. ER P1 proposes "*...that the State Water Resources Control Board cease issuing water rights permits in the Delta and the Delta Watershed...*" It is impossible to imagine a new water supply project for new surface storage being constructed absent the project proponent acquiring a water right permit from the SWRCB. To be precise, the Proposed Project would have the opposite effect from "*encouraging development of storage projects*" (Page 2A-6, line 3). No surface storage project could move ahead absent a water rights permit, and thus, ER P1 is in conflict with the conclusion in the DEIR. Again, the reader is misled about the characteristics of the Proposed Project.

It should also be noted that ER P1 is inconsistent with Water Code §85031(a) regarding water rights protections.

Page 2A-6, line 3. WR R5 is a proposal to require that "*The State Water Resources Control Board and/or the Department of Water Resources should require that proponents requesting a new point of diversion, place of use or purpose of use that results in new or increased use of water from the Delta Watershed should demonstrate that the project proponents have evaluated and implemented all other feasible water supply alternatives.*" (Emphasis added.)

This would place agencies such as ours in the position of not selecting the most cost effective or even the most environmentally appropriate project, but to rather exhaust through implementation of all feasible (capable of being done) alternatives irrespective of relative benefit, cost, or environmental consequence.

The combined effect of WR R5 and ER P1 is to render the protections offered to source areas under the State's Area of Origin statutes meaningless. This is not a water supply reliability proposal, but the exact opposite. The reader is again misled about the characteristics of the Proposed Project. We must repeat that ER P1 is inconsistent with Water Code §85031(a) regarding water rights protections.

Page 2A-17, lines 5 - 44. It must be noted that within west slope Sierra Nevada foothill and mountain areas the potential for groundwater storage facilities is not feasible due to the fractured rock nature of the geological formations. There are only a few, scattered ground water basins within the entire region - none of any significance within the west slope of El Dorado County -

and for the most part ground water supplies in this region are unreliable and vary dramatically based on location as to their yield, depth and quality of ground water. Please clarify for the reader so that there is an understanding of the differences within the Sierra Nevada Ecosystem and that of the Sacramento and San Joaquin Valley.

Page 2A-23, lines 16-17 and 39-40. The term “regional self-reliance” is unclear in its applicability to upstream Sierra Nevada Ecosystem areas such as El Dorado County. Our water supplies on the western slope of the county are derived from water collecting as snow melt and rainfall in this region and are acquired from diversions from within this region for use in this region. This would reasonably indicate that where these conditions occur a local agency would be “regionally self-reliant”. However, that is not clarified in the document, and therefore, the reader is left guessing as to the meaning of the term as it applies to the Sierra Nevada Ecosystem. Please clarify.

Page 2A-24, lines 33-37. This descriptive action within the Project is too broad and generalized to allow for proper analysis. The specific tributaries should be analyzed through an Instream Flow Incremental Methodology (IFIM) process dealing first with local stream reach needs and only then downstream objectives. Further we note the submitted Alternative 1B at pages 26 through 37, which addresses both ecosystem restoration and water quality. There are 11 actions that are directives (and not recommendations as in the Proposed Project) for action that are further divided into short, medium and long term time periods. Further, these actions approach ecosystem restoration and water quality management in a more comprehensive, integrated resources fashion as opposed to strictly a “more flows” position.

The fundamental difference between directives and recommendations (authoritative vs. advisory terms) is not captured either in the Project description or Alternatives comparison sections of the DEIR. This confounds the reader in determining those things that will actually happen as a result of the Proposed Project or Alternative 1B.

Page 2A-25, lines 5-6. The implausible conclusion is reached on the referenced lines that the development of flow objectives and criteria will lead to additional projects as described in Section 2.2.1. There is no clear nexus between increased flow objectives and criteria by the SWRCB and the described projects. The reader is left to speculate why these projects would be implemented with only such flows in place. Please explain and clarify.

Page 2A-39, Section 2.2.2.4.1. We are confused by the continued single action approach described here. The Delta Plan (pages 133-134) identifies other factors influencing water quality, such as, for example: in-Delta land uses, dredging, levees, tides, point and non-point source pollutants, in-Delta water use, and export water use and diversions. However, once again, the Delta Plan ignores these other factors and proposes a singular focus on increasing flow patterns for Sierra Nevada Ecosystem and other upstream rivers.

While we agree with the conclusion in lines 35-37 that there may be reductions in available water supplies in export areas, there is no recognition that by committing Sierra Nevada Ecosystem river flows to meet new criteria and flow objectives there will also be a reduction in upstream water supply sources. Thus, increased flows would appear to frustrate if not prohibit achievement of

one of the coequal goals - improving water supplies. As a result, the term "coequal" is rendered meaningless under the proposed Delta Plan. This should be so stated in the EIR accompanied by an explanation of why the Council would propose a plan that essentially abandons the statutory mission of the Council to achieve those goals.

Page 2A-44, lines 9-12. The stated uncertainty that DWR "...will follow the recommendations of the EIR..." is followed by the conclusion that the EIR assumes DWR will follow the Council's recommendations. However, there is no explanation of how this recommendation process would take effect through DWR. If this implies that all recommendations are expected to be followed, the analysis should explain the underlying logic. Please provide supporting reasoning for this conclusion.

Page 2A-45, lines 16-39. This provides a list of things that "could" happen. Use of the term "could" indicate a mere possibility or casual relationship between proposal and implementation. This is highly speculative, and the reader has no basis or information upon which to determine if the conclusion is in fact valid. There is no evidence presented in the EIR to support the conclusion.

Page 2A-46, lines 9-31. It is not clear what the DSC's process is to encourage actions. Specifically, how does the Council intend to communicate, implement or otherwise perform encouragement?

Page 2A-46, lines 32-43. We do not understand how the identified agencies will do what the EIR claims they should do based solely on some undefined method of DSC encouragement. Why is the assumption valid?

Page 2A-48. This page contains a series of things that could happen or could be implemented or could allow for the inclusion of something else. The term "could" implies a degree of uncertainty rendering a mere possibility. It would be helpful in analyzing the Proposed Project if the terms used by the DSC were more similar to the actual text of Alternative 1B. Alternative 1B describes how the Council would make recommendations and collaborate with other agencies and incentivize programs. It uses terms such as "direct" and "recommend" to articulate easily distinguishable actions that will occur or are likely to occur given performance of the Council's governance structure as described in Alternate 1B. Contrastingly, the Proposed Project description leaves the reader wondering what, if any, actions would materialize. The EIR further compounds this problem by failing to explain how the possible actions described in the Delta Plan would be implemented.

Page 2A-49. It would be helpful to the reader to understand what the actual processes are that the Council would use in their governance to interact with other agencies to "encourage" action. Please compare the relative vagueness in the Proposed Project to the specific activities called out in Alternative 1B by which the Council would either directly achieve an outcome or otherwise bring it to fruition. The EIR should note this significant difference in the description and analysis of the Proposed Alternatives.

Page 2A -50. Please see our comments above regarding Page 2A-48 and use of the term "could" as a descriptor.

Page 2A-51, lines 32-37; Page 2A-52, lines 1-8. How, or under what circumstance, would this “encouraged” outcome for reoperation of reservoirs occur? Currently, this analysis is not even informed speculation as to a fairly significant outcome. Some of the reservoirs in question are the sole source of municipal and irrigation supply for Sierra Nevada Ecosystem communities. Actions that could occur should at least be given some estimate of the significance of one or both variables.

Page 2A-64, section 2.3.1.4.1. Given the nature of the coequal goals it would be more informative if the range of potential impacts included the likely impacts to Sierra Nevada Ecosystem water supply reliability. This assessment should include potential impacts to communities served by existing projects such as, for example: the inability of Sierra Nevada communities such as those on the western slope of El Dorado County with fractured rock groundwater to develop alternative public groundwater supplies (fractured rock groundwater, in general, is not a viable source of public water supply); the reduction in water available for renewable hydroelectric generation (threatening the very existence of hydroelectric operations that benefit numerous environmental and societal interests under collaboratively developed license agreements approved by the Federal Energy Regulatory Commission (FERC) and leading to a greater dependence on fossil fuel plants or significantly more expensive and less reliable wind and solar power); and the loss of agricultural production and family farms dependent on continued access to reliable public water supplies. None of these impacts are addressed in the EIR, which is required to meet the minimum requirements of CEQA.

Page 2A-65, line 1. The Proposed Project has only one water quality policy (ER P1), which is broadly stated rather than a specific water quality policy. We refer you to the more effective and specific language in the submitted Alternative 1B on its pages 34-37.

Page 2A-72, Reliable Water Supply. It is inaccurate to simply portray Alternative 1B as providing no recommendations regarding specific conveyance options. The fact is that Alternative 1B recognizes that the BDCP should be completed by January 1, 2014 and is the venue to develop a specific conveyance strategy.

Page 2A-73, Delta Ecosystem Restoration. It is inaccurate to define ecosystem restoration within the single metric of a “*More Natural Flow Regime*”. While flow is one factor to consider, there are comprehensive ecosystem actions that must be taken to achieve environmental restoration as one of the two equal goals. Alternative 1B includes a much richer and more vibrant, comprehensive ecosystem restoration and management proposal. (See pages 26-32 of the submitted Alternative 1B, which contains 9 directed actions.)

Page 2A-74, Delta Ecosystem Restoration. The comparison between the Proposed Project and Alternative 1B tends to diminish the importance of the clarity in focus of actions identified in Alternative 1B. Effective ecosystem restoration is premised on knowing what should be done. Adaptive management is a system of acquiring and using knowledge gained to modify management actions when necessary, so as to carry out the correct implementation actions. (See the submitted Alternative 1B, pages 9-11 and the 7 directives contained therein.)

Page 2A-75, Policy Elements. The comparison between the Proposed Project and Alternative 1B is inaccurate and misleads the reader. The Proposed Project contains no proposed actions to achieve any results. In contrast, Alternative 1B provides specific, identifiable actions highlighted by use of the word "Direct". In addition, and directly opposite to the conclusions reached in the DEIR, Alternative 1B, at page 19, provides specific direction regarding assessing and promoting additional water efficiency measures. The DEIR's misleading analysis must be corrected to reflect the actual content of Alternative 1B.

Page 2A-81, Flood Risk Reduction. The comparison between the Proposed Project and Alternative 1B is inaccurate and misleads the reader. The presented analysis fails to report that Sierra Nevada Ecosystem reservoirs also provide local and regional flood protection and that there is a responsibility to also protect lives and property outside the Delta first, especially for those projects built with that operational responsibility. Quite the opposite is true in the Proposed Project under which there would likely be an increase in local, upstream flood risk to people and property as operations are modified solely to protect the Delta from flooding. In short, the Proposed Project would shift flood risks to upstream, local populations, communities and farms to protect the Delta. This is clearly a significant redirected impact to those upstream areas that would be forced to place lives and property at risk.

Page 2A-83, lines 38-42. The phrase "*provide a more reliable water supply for California*" is a very general term. A water supply is a very localized attribute. It should be recognized that there are regions in which lands are located practically adjacent to large reservoirs and canals from which no local water supplies are available. These reservoir and canal supplies are dedicated for use elsewhere, sometimes in another region far away. Thus, gains in water supply, or for that matter reductions in supply, should be evaluated with an eye towards where the actual gain or loss would take place in relation to the subject facility.

Page 2A-85, lines 33-34. Reservoirs are filled and provide deliveries for supply to agencies within the Sierra Nevada Ecosystem 12 months of the year, not just late summer and fall. Please correct.

Page 2A-85, lines 35-43. This discussion of climate change fails to recognize the significant effect that the combination of climate change and dense forest vegetative cover within the Sierra Nevada Ecosystem is having on spring flows. In some areas of the Sierras a dense forest cover of small conifers and brush result in a reduction in spring runoff. This is caused by the combination of spring growth occurring within the forest vegetation at the same time as spring runoff. The spring growth of the dense cover however, sculpts the hydrograph by consuming water through evapotranspiration and reducing the spring runoff. As climate conditions change to less snowmelt and more rainfall events and warming temperatures, this effect will increase. Absent an improved and more effective forest thinning program in the Sierra Nevada Ecosystem, flows will be reduced above and beyond the anticipated effect of just climate change on snow melt. The Sierra Nevada Ecosystem is a complex network of interrelated natural systems and any attempt at directly linking warming temperatures to increased spring runoff without accounting for forest condition will fail.

Additionally, as runoff conditions change as a result of climate change there is likely to be a change in operation of reservoirs within the Sierra Nevada Ecosystem to an operation that is more conservative towards water supply reliability. That is, one in which fewer spills take place during times when they do now, as facilities owner/operators firm up year-to-year reliability in lieu of a higher percentage of gross yield from the reservoir.

Page 2A-86, lines 1-4. Please reflect the fact that there are also many Sierra Nevada Ecosystem water users served by locally funded, constructed and operated water facilities. These facilities operate as compact, non-interregional, self-sufficient systems. In short, they are already regionally self-sufficient and do not depend on a vast network of interregional storage and conveyance facilities and pumps to deliver water. Additionally, many of these systems are gravity fed, renewable energy producers.

Page 2A-86, lines 26-27. Please correct to read, "*...local and regional water supplies in export areas and improved water conservation...*". As written this statement is not universally true.

Page 2A-88, lines 7-8. Correct to more accurately read, "*...in communities in the Delta and in export areas served from the Delta.*"

Page 2A-88, lines 21-25. It is not intuitively clear in reading this paragraph why locally initiated and funded water treatment facilities would not take place under the No Project Alternative. We are currently under a No Project condition and the main challenge to developing water treatment facilities is fiscal rather than any planning, or lack thereof, for the Delta. Please explain and expand in order to more clearly distinguish between Sierra Nevada Ecosystem, other upstream communities and Delta export areas.

Page 2A-95, lines 16-19. This statement is factually incorrect. Alternative 1B does not contain "*recommendations only*" as is alleged, but rather contains some 40 directed actions and 1 action that contains the alternate descriptor "shall". Please see submitted Alternate Plan (Alternative 1B in the EIR). Examples in Alternative 1B include page 6, paragraph 1; page 7, first bullet; page 10 (science plan); pages 18, 19 and 20 regarding information management, conservation, transfers and conveyance; and pages 22 (storage) and 24 (funding). They are not "*recommendations only*". The reader is misled by the EIR.

Page 2A-95, lines 31-33. Please see comment immediately preceding. EIR statement is factually incorrect.

Page 2A-96, lines 36-40. The primary difference between the Proposed Project and Alternative 1B is that the Proposed Project would not allow for the completion of studies on a reasonable schedule, but instead would rush them under "*the aggressive schedule*". Please explain the likelihood and feasibility of reasonably completing the "*aggressive schedule*". It should be noted that completing important work under an aggressive timeframe may increase the likelihood of mistakes, leading to management decision errors. It would be more informative to the reader to understand if the Proposed Project can reasonably be expected to achieve what is proposed or if it merely presents a hoped for outcome.

Page 2A-96, lines 44-46. It is difficult to determine what the functional difference is between Alternative 1B's continuation of a successful voluntary program vs. the Proposed Project "*which encourages mandatory participation*". How, exactly, does encouraged mandatory participation work?

Page 2A-98, lines 8-9. Please note that the reduced emphasis on modifying Sierra Nevada Ecosystem reservoir operations would avoid potential impacts to those areas that receive water from the subject reservoirs, e.g., Sierra Nevada Ecosystem communities, populations and agriculture.

Page 2B-2, lines 15-19. The reference to the Council's potential influence on the Cosumnes River-Mokelumne River Confluence habitat restoration project and the highly speculative nature of the incremental change is systemic to much of this document's analysis of the Proposed Project as well as the comparison of alternatives. However, where there are clear distinctions between directed actions over specific time frames (as called for in Alternative 1B) those actions are much less speculative in nature than the sixty plus recommendations presented in the Proposed Project. Please clarify.

Page 2B-2, lines 24-27. If the analysis is to accord the Proposed Project the benefit of presumed desired outcomes, any equitable and reasonable analysis of alternatives must grant the same leniency, lest the analysis be biased. Yet, we have identified a number of areas in this comment letter that indicate this is not the case and that only the Proposed Project is granted such leniency. This misleads the reader regarding the differences between the Proposed Project and the alternatives.

Page 2B-2, footnote 3. This example illustrates the Council's intention to extend their authority over projects beyond the statutory definition of a covered action by contesting the authority of other agencies. Yet again, this calls into question the lack of clarity over exactly what is, or is not, a covered action. We have raised this issue almost continuously with the Council throughout the various iterations of the development of the Delta Plan, and yet, even now, the issue remains unclear and unresolved. It is impossible for the reader to determine what is, or is not, a covered action or just how far the Council will go in its attempt to extend its authority. Please clarify.

Page 2B-6, Delta Ecosystem Restoration, Potential Facilities or Actions. It is not clear exactly why or how flow objectives that lead to a more natural flow regime will result in new storage projects in the Sierra Nevada Ecosystem. It is much more likely that the creation of a more natural flow regime will have the exact opposite effect in that more water will be taken from Sierra Nevada Ecosystem rivers and streams for use in the Delta leaving less available for upstream use including new storage projects.

Page 2B-16, Delta Ecosystem Restoration, Potential Facilities or Actions. Please see immediately preceding comment regarding page 2B-6.

Page 2B-17, Water Quality Improvement, Potential Facilities or Actions. There is no evidence that Alternative 1B would result in the development of fewer water treatment plants. Water quality

treatment plants throughout the State are not dependent upon a Delta Plan for directives or recommendations. These plants are generally financed, constructed, owned, and operated by local agencies and built, as they are needed - locally.

Page 3-13, Surface Water Use, lines 37-40. It should be noted that not all diverters from within the Sierra Nevada Ecosystem have return flows into the Delta or even Sierra streams. Notable examples of such projects are the San Francisco P.U.C. diversions and those of the East Bay Municipal Utilities District as well as the southern portion of the Friant Unit of the Central Valley Project.

Page 3-16, Delta Watershed. This section is lacking an assessment of the relative role played by the water diversions within the Sierra Nevada Ecosystem in providing significant socioeconomic benefits. Significant early water development within the Sierras took place during the era immediately following the discovery of gold up through the late nineteen forties. Most of these early diversions and reservoirs were relatively small and with few exceptions served local communities within the source watersheds. This early development, secured by pre-1914 or senior water rights, however, was cumulatively small compared to the water resource development era commencing after 1950. A full 80% of the present reservoir capacity in the Sierra Nevada was completed after 1950⁸.

A key aspect of the Sierra Nevada Ecosystem is its relative health compared to the downstream Delta Ecosystem. *"The history of the Sierra Nevada and recent ecological assessments suggest that Sierra biodiversity could be maintained by ecologically sound management of lands designated for renewable resource extraction, in combination with a moderate system of areas specifically reserved for native biodiversity."*⁹ This illustrates a Sierra Nevada Ecosystem in significantly healthier condition than the Delta. Thus, while there have been historic environmental impacts through human use of the Sierra Nevada Ecosystem, they do not approach the current poor condition and trend of the Delta. This points to a more robust, sustained resource management pattern within the Sierra Nevada Ecosystem than has occurred in the Delta. There may be resource management strategies - learned and applied in the Sierras - that could translate into a more sustainable Delta Ecosystem.

It must also be noted with regard not only to existing conditions, but any financial strategy to fund the Council's activities, that the downstream benefits derived from water resources produced by the Sierra Nevada have not had a commensurate direct reinvestment in the Sierra Ecosystem and its complex tapestry of institutions that produce those benefits.

Sierra streams produce a downstream irrigation water use annual resource value (all values are in 1998 dollars) of \$450 million. Downstream municipal water is equal to \$290 million/yr. and energy generation accounts for some \$610 million/yr. There is no commensurate reinvestment in the Sierra except for the relatively low assessments on power plants (water rights are untaxed). Thus, while the Sierra Nevada generates over \$1.3 billion (1998 dollars) per year in downstream benefits there is no reinvestment in the Sierra Nevada Ecosystem to improve or even maintain

⁸ *Sierra Nevada Ecosystem Project, Final Report to Congress, vol. 1, Assessment Summaries and Management Strategies* (Davis: University of California, Centers for Water and Wildland Resources, p 26, 1996)

⁹ IBID

that ecosystem.¹⁰ Any discussion of beneficiary fees and stressor fees must focus on the already inequitable situation within the Sierra Nevada as a starting point. It would be much more appropriate to discuss how much in revenues should be spent on investment in improving the Sierra Nevada Ecosystem rather than asking for local agencies within the Sierras to send money to the Delta. The EIR should so note this situation. Please include these factual corrections to the EIR.

Page 3-76, lines 6 & 7. Proposed project policies ER P1 and WR P1 would combine to potentially prevent any filing of new water rights for an undetermined time and call for a new water conservation rate structure. The former would have a chilling effect on any new surface water supply projects requiring a water right while the latter would result in increased water rates, reduced supplies and redirected, disproportionate socioeconomic impacts to DACs (Disadvantaged Communities). The two policies would combine to create more, not less, uncertainty to local and regional water resource planners attempting to meet the State's future water needs. There are no proposed mitigation measures for these impacts to the Sierra Nevada Ecosystem's local water supply systems and the communities, farms and economies they serve.

Page 3-77, Section 3.4.2. ER P1 would place a moratorium on the issuance of water rights by the SWRCB under the various Area of Origin, County of Origin and Watershed of Origin statutes and thereby violate Water Code §§85031 and 85032(i). Such a disruption of the existing, historic water right protections to the Areas of Origin would prevent us from securing new water supplies, as planned and relied upon for many years by upstream communities, while simultaneously allowing the Bay Delta Habitat Conservation Program to move ahead with securing water supply assurances for both the State and Federal Projects. This confluence of events would upend the notion of Area of Origin protections and would constitute significant, socioeconomic impacts to those areas within the Sierra Nevada Ecosystem. The only possible mitigation measure that seems reasonable is to remove that portion of ER P1 pertaining to this matter.

Page 3-77, lines 25-26. The Proposed Project would have the direct opposite effect in Sierra Nevada Ecosystem areas. Water supplies would be unnecessarily reduced and new projects prevented per our comments regarding Section 3.4.2 above. The reader is misled as to the actual results of the Proposed Project on water supply.

Page 3-79. New water supply facilities that include diversions to storage will be subject to the requirements of the SWRCB's water rights process and, unless relatively small, subject to the completion of an EIR. Such CEQA documentation would assess a host of potential impacts, including, but not limited to: aquatic species and habitat, terrestrial species and habitat, archaeological and historical resources, recreation, aesthetics, public safety, energy consumption during construction, erosion, and downstream water uses. Additionally, new storage projects must meet requirements of the U.S.D.A. Forest Service special use permit process if occurring within Forest Service managed lands. Water quality standards under the Clean Water Act section 401 process would also be imposed as conditions on a proposed storage project. Finally, should the storage project be associated with hydroelectric generation, it would be subject to the provisions of the Federal Power Act and FERC process. FERC licenses to be issued for projects on

¹⁰ IBID

lands subject to U.S. Forest Service or Bureau of Land Management control are subject to Federal Power Act requirements specific to that situation¹¹. These federal authorities in specific cases limit the authority of the SWRCB¹². Please include these factual corrections in the EIR.

Page 3-83, lines 22-45; Page 3-84, lines 1-15. Any discussion regarding the development of achieving “*a more natural flow regime*” in the Delta and its tributaries must take place within the context of the existing conditions of the Delta and the Sierra Nevada Ecosystem. Flows are not the only management tool either in the Sierras or the Delta to achieve ecosystem health.

Flow is an integrated piece of the Delta's multi-varied and dynamic habitat system. The potential benefit or restoration flow can provide to the Delta ecosystem is limited by the components of the ecosystem and the attributes of its waters. Water is one of the major habitat components of the Delta ecosystem. Its flow is but one of several attributes - other attributes of Delta waters include toxins and contaminants, predators, turbidity, and temperature.

Flow, and the ability of flow to contribute to restoring the Delta ecosystem, is interrelated and dependent on the varied attributes of Delta waters. For example, warm, non-turbid water filled with contaminants and predatory fish will provide limited ecosystem benefit, regardless of the rate and velocity of flow.

The flow of water is also limited by the Delta's existing ecosystem. Water is only one component of the Delta ecosystem. The ecosystem is also composed of the geography of levees and subsidence, geomorphology of Delta channels, water storage and conveyance facilities, and ocean or tidal influence. These ecosystem components greatly affect how water flows through the Delta. For example, the volume, velocity, and rate of flow are directly limited by levees, channels, diversions, tides, dams and reservoirs. Therefore, flow, and its ability to contribute to restoring the Delta ecosystem, is necessarily limited by the physical constraints of the existing ecosystem components. Simply calling for more natural flows absent a detailed assessment of the potential, relative benefit within the existing landscape is a waste of a valuable resource and a restoration opportunity squandered.

The Council's ultimate Plan must accept the fact that the current Delta ecosystem is no longer a natural system. Every component of the Delta ecosystem has changed significantly over the past 100 years: the geography has changed with reclamation, levees, and dredging; the geomorphology has changed with channelization and flood control measures; turbidity has changed with altered sedimentation and dams; the food web has changed due to nutrient ratios; the fish communities have changed due to introduced nonnative species, invasive species and predation; the quality of water has changed due to toxins and contaminants; the influence of the tides has changed due to levee infrastructure and climate change; and the flood plain and marsh habitat have changed due to development. In such a highly altered system, returning to a natural

¹¹ Section 4(e) of the Federal Power Act (FPA) requires FERC to solicit and accept conditions promulgated by the agency responsible for the protection and utilization of the land. 16 U.S.C. §797(e). *See Escondido Mutual Water Co. v. La Jolla Band of Mission Indians*, 466 U.S. 765, 772 (1984)

¹² *State Water Resources Control Board v. FERC*, 877 F.2d 743 (9th Cir.1989); *California v. FERC*, 495 U.S. 490 (1990)

flow regime without addressing the other systematic changes that have taken place over time cannot reasonably be expected to restore the ecosystem.

A good example of the limited efficacy of natural flows in an unnatural system is demonstrated by looking at how flow is affected by changes in geomorphology. The Delta was for many years a system of fairly shallow dendritic channels and sloughs. During high flow events, this system offered variable habitat in the form of shallow diverging sloughs and provided longer residence times for fish who navigated through twisting and winding waterways. Today, water moves through the Delta in large, deep, rip rapped channels that loop and turn such that they more resemble a water park slide than the pre-Columbian Delta. This change in geomorphology negates the variability that natural flow provided in the natural system; high flow events rarely over top the deep Delta channels to create shallow water habitat. For this reason, sending a variety of different flows down today's deep, hexagonal channels would likely produce little benefit to habitat, temperature, turbidity, predation, or the food web.

Simply returning to a truly natural flow regime with the expectation of a restored ecosystem is not scientifically supportable. A natural hydrograph includes critically dry years in which significant reaches of Delta tributaries would go dry, or nearly so, and provide little flow to the Delta or downstream water users, some of which dedicate those flows to environmental purposes. The extreme dry periods of a more natural hydrograph would not restore, but further degrade, the Delta ecosystem from its current condition.

Legitimate, effective restoration must focus efforts on optimizing the current, existing Delta ecosystem. Restoration of that ecosystem, consistent with the coequal goals, must provide a framework for determining how and to what extent the components of habitat such as flow, turbidity, predation, food, and contaminants can restore the Delta ecosystem and the extent to which changes in these components will effectuate restoration.

Any discussion of a natural flow regime must also recognize the existing regulatory tapestry that overlays the Delta, the Sierra Nevada Ecosystem and other upstream tributary ecosystems. Within limits, the State Water Resources Control Board is the regulatory body in charge of setting flow objectives and implementing those objectives through water rights hearings. The State Board has already adopted flow objectives - they are in place and being met. The State Board is required to review the flow objectives every three years, which they are currently doing for the San Joaquin River. This review requires the State Board to determine whether the current objectives provide sufficient protection for fish and wildlife in the South Delta. Setting new flow objectives can only occur after the State Board has balanced the various competing beneficial uses of water, including recreation, municipal water use, agricultural water use and obligations for flood protection for life and property. If the Board determines that the current flow objectives at Vernalis do not reasonably protect fish and wildlife, the Board may amend the objectives. If other reasonable and beneficial uses are determined to be of a "higher priority" or "greater significance," the State Board may set flow standards that alter the level of protection for fish and wildlife.

Moreover, other agreements and programs affect instream flow. For example, the Vernalis Adaptive Management Program (VAMP), the San Joaquin River Restoration Program, the Yuba

River Accord and the Water Forum Agreement for the Lower American River affect and control the flow of water for numerous beneficial purposes. Flow is further constrained by conditions on existing diversions imposed by the State Water Resources Control Board for upstream Clean Water Act (Section 401) requirements, as well as other upstream public trust values as listed in our comments regarding page 3-79.

It must also be noted that within the Sierra Nevada Ecosystem there are well over 100 hydroelectric projects licensed under the authority of the Federal Power Act by FERC. Some of the license periods extend 50 years and have, through extensive, collaborative planning processes with numerous stakeholders, set specific instream flow standards for each project.

Additionally, there are streams within the Sierra Nevada Ecosystem, such as the Middle Fork of the Stanislaus above New Melones reservoir, which are designated by the State of California as Wild Trout Streams. This designation¹³ requires specific flow standards for projects located on such rivers to maintain a healthy, self-sustaining wild trout population. Any proposed changes to these flows as a result of the Delta Plan would have to consider this management objective.

Similarly, the implications of Wild and Scenic River designation of rivers within the Sierra Nevada Ecosystem must be considered. For example, the largest tributary to the San Joaquin River, the Tuolumne River, carries such federal designation. Flows on the Tuolumne above New Don Pedro are established to preserve those conditions that existed at the time the river was designated as a Wild and Scenic River. This includes recreation, specific fish flows, aesthetics and access. Any proposed change to established Wild and Scenic River flows would have to meet the requirements of the Wild and Scenic Rivers Act.

The EIR as well as the Council's final Delta Plan should recognize the role of this regulatory tapestry that overlays the Sierra Nevada Ecosystem. The Council's Proposed Project must acknowledge the various responsibilities of the State and Federal agencies charged with managing and regulating these resources, as well as the legal constraints¹⁴ that exist upon the SWRCB regarding some of these river systems¹⁵ and project operations. We concede that the Delta is an ecosystem, but not that it is the only ecosystem in California. The EIR must reflect this fact in its analysis of the Proposed Project's advocacy for "*aggressive implementation of a more natural flow regime*", or risk detriment to other critically important ecosystems.

Page 3-84, lines 40-44. We agree with the assessment on this point, but find this conclusion to be inconsistent with other conclusions in the DEIR such as the assertion that water supply projects will result from the establishment of such flow objectives. There may be some specific locales, mostly in export areas, where this may occur, but for Sierra Nevada Ecosystem water suppliers there is no logical way to conclude water supplies will increase (locally) with more water from those tributary streams dedicated to non-supply uses for the benefit the Delta and downstream water users. Please correct.

¹³ Fish and Game Code §1726 et seq.

¹⁴ *State Water Resources Board v. FERC*, 877 F.2d 743 (9th Cir.1989), and by the United States Supreme Court in *California v. FERC*, 495 U.S. 490, 110 S.Ct. 2024, 109 L.Ed.2d 474 (1990)

¹⁵ Fish and Game Code §1726 et seq.

Page 3-85, lines 1-37. This section mischaracterizes the potential impacts to water supply in many Sierra Nevada Ecosystem water service areas. Reductions of available water for beneficial municipal and irrigation uses from source (in many cases Area of Origin) watersheds will not be a catalyst for other water projects. Within this region, many traditional downstream, valley, Delta and coastal water management strategies are not practical due to the physical conditions of the Sierra Nevada Ecosystem and foothills. Desalination is not an option; nor are conjunctive use projects in a landscape without groundwater basins, except in small and rare circumstances. The use of recycled wastewater and storm water may have some applicability, but unlike flat, less complex topography, moving wastewater back up hill in these areas for beneficial use would require significant amounts of energy for pumping at great cost. Further, the ability to capture and utilize storm water in most of the upstream more rural landscapes is severely limited by economy of scale (landscape scale vs. low resident population).

The unsupported conclusion (lines 31-37) of the EIR regarding the water systems of the Sierra Nevada Ecosystem is incorrect. Such communities primary, and in some cases exclusive source of water, are the rivers and streams in which on-stream diversions and storage facilities have been constructed with local financing and supported by a customer base that is dwarfed by downstream water user populations. This region is already self-sustainable and has no other tools to use within its water portfolio except to those streams: secured by senior and pre-1914 water rights and those as may be obtained in the future under Area of Origin¹⁶ protections.

Page 3-96, line 11. There is no evidence in the EIR to indicate that Alternative 1B would seek to impose a moratorium or otherwise restrict the local development of economically and environmentally feasible ocean desalination water supply projects. Provide evidence supporting the conclusion or revise.

Page 3-96, lines 12-16. To the contrary of the conclusion reached in the EIR, Alternative 1B specifically references the use of the Public Trust Doctrine (see page 31). In addition, there is no reason to believe that the SWRCB or any other regulatory agency would choose to ignore the Public Trust on any single or alternative-hybrid version of a Delta Plan.

Page 3-97, lines 8-20. The Delta Plan does not create by necessity an environment in which certain classes or types of projects are made less feasible. There is no such authority granted to the Council by statute, nor is any such proposal found in Alternative 1B. Therefore, the conclusion that Alternative 1B would somehow disrupt plans by local and regional agencies to develop feasible projects is a flawed conclusion that misleads the reader.

Returning again to the subject of flows, it will take time to adequately and accurately develop flow objectives and even then it would only be one component of Delta ecosystem restoration. Restoration must take place within the context of the larger ecosystem issues as previously detailed in our comments on pages 3-83 and 3-84. The ability to use flow to restore the Delta ecosystem is limited to the interrelated relationship flow has with all other components of the

¹⁶ California Water Code §§10505, 10505.5, 11128, 11460, 11463, and 12200-12220

ecosystem. Moreover, managing the flow of water through the Delta is hardly *terra incognita* - flow is highly regulated and controlled by the State Board and other existing programs. Taken together, these restrictions do not allow the Delta Plan to include specific requirements that mandate certain flow regimes.

However, this restriction does not mean the Delta Plan is without the ability to effectuate changes in flow that will result in a positive change to the Delta ecosystem. Both the Independent Science Board and the State Water Resources Control Board have struggled to determine how flow is integrated within the other interrelated components of the Delta ecosystem and how the ecosystem can be improved to provide sufficient habitat for native fish species.

A large part of this struggle is that there is no scientific tool to identify species responses to environmental conditions such as biological or life cycle modeling. The Delta Plan must include a vibrant science plan such as that proposed in Alternative 1B (see Chapters 2, 5 and 6). Alternative 1B would: (1) identify and synthesize statistical analyses to be undertaken of existing data and make recommendations on the need for additional data; (2) identify hypotheses that require testing, and (3) ensure adequate and reliable funding. Results from these efforts would provide agencies, like the State Water Board, with the scientific tools necessary to understand how the Delta ecosystem can be restored to protect fish and wildlife and other beneficial uses.

These efforts will take time, resources and money to accomplish. The imposition of an artificial and arbitrary deadline ("*aggressive*") such as in the Proposed Project is unsupported by evidence that it would be superior in achieving the coequal goals or lessening environmental impacts to the Delta Ecosystem and the Sierra Nevada Ecosystem. To characterize it as superior in this context to Alternative 1B is misleading to the reader and factually incorrect.

Page 4-7, lines 31 - 35. Please correct this section. Sierra Nevada Ecosystem water use includes municipal supplies to numerous communities as well as state and federal facilities.

Page 4-10, line 33. The first sentence appears to be incorrect regarding increasing California's air?

Page 4-62, lines 24-34. It is not likely given the uncertainties presented within the Proposed Project that proactive efforts to transfer water from north of the Delta to south of the Delta would take place. Additionally, proposed sanctions such as ER P1's moratorium on new water rights permits would not engender the likelihood of water transfers by Sierra Nevada Ecosystem agencies. To the contrary, such policies would likely create a general resistance to new water transfers in the areas upstream of the Delta.

Page 4-65, lines 8-10. Please note that Water Code section 1011 provides that conserved water is deemed equivalent to a reasonable beneficial use of water and thus no forfeiture of water occurs. Therefore, the only circumstance likely to result in conservation programs leading to more water releases downstream would be as compensated water transfers. It must also be noted that water conservation efforts cost money to implement. In many cases the marginal costs of water conserved is much higher than the marginal cost of water from other sources. This fact, combined with many Sierra Nevada Ecosystem areas status as disadvantaged communities, and combined

with the economy of scale for smaller systems, means that the expansion of water conservation programs impact the fiscal viability of small and medium sized upstream water providers and burden many of their customers whose incomes are well below the state average.

Page 4-70, lines 26-28. The predicted reductions in water supply for export from the Delta would also be a likely outcome to Sierra Nevada Ecosystem communities. Such reductions would impact both agricultural and municipal supplies. Please make this change.

Page 4-89, Section 4.4.6. The conclusory initial statement on line 33 is factually incorrect and unsupported by any evidence in the EIR. Please see the submitted Alternative 1B for details regarding water transfers (page 19), groundwater (pages 20 and 21) and reservoir operations (page 22).

Line 40 of the same page is factually incorrect as under Alternative 1B flow objectives would be premised on more accurate parameters (see Alternative 1B page 31).

Page 4-90, lines 28-34. There is no evidence in the EIR that Alternative 1B would have greater significant impacts on sensitive natural communities than the Proposed Project. To the contrary, Alternative 1B could have fewer and less severe impacts because flows would be predicated on complete information regarding the various factors influencing the effectiveness of flows in improving ecosystem condition and trend.

Page 4-91, lines 6-10. The premise of accelerating flow objectives (Proposed Project) based on inadequate information and the characterization that it is superior in terms of improving current conditions is unsupported in the document. Alternative 1B would seek out reasonable, species lifecycle data, conduct analysis and then rank the efficiency of flows to other management actions (see Alternative 1B page 31).

Page 4-91, lines 17-18 and 38-41. There is no evidence presented to support the conclusion that Alternative 1B would result in greater impacts than the Proposed Project.

Page 6-3. The Proposed Project could result in significant redirected impacts on Sierra Nevada Ecosystem area local governments due to the imposed flow objectives and water rights limits resulting from WR R-5 and ER P1 (Appendix C, page C-9). Such reductions in water supply could inhibit the ability of local governments and water agencies to supply water to people, farms and communities as planned in their long-term General Plans and Specific Plans. Without other viable alternatives, communities such as those on the western slope of El Dorado County could be left without a reliable public water supply to support basic human needs.

Page 6-45. Proposed Project policies and recommendations that would restrict upstream Sierra Nevada Ecosystem supplies could result in more dispersed development and groundwater use (to the limited extent available from fractured granitic rock). Groundwater within the Sierras is generally found in fractured bedrock formations that is far less reliable, has lower water quality (containing minerals and other contaminants) and is more expensive to access than existing surface water sources. This would inhibit sustainable economies and the environmental use of

water in the Sierra Nevada Ecosystem. Instead, such policies and recommendations would redirect essential resources to support Delta ecosystem actions and stimulate economic growth outside of the Sierra Nevada Ecosystem. This constitutes a significant redirected impact to the environment and the socioeconomic values of the Sierra Nevada. Please provide analysis.

Page 6-46, Section 6.4.3. The Proposed Project will not provide for more reliable water supply and the construction of more treatment facilities as is claimed in line 7-11. Instead, proposed policies and recommendations such as WR R5 and ER P1 will have the opposite effect. Please correct.

Page 6-48, Section 6.4.3.1.2. See immediately preceding comments.

Page 6-50, lines 8 - 17. This section of the report continues to assert that actions such as the SWRCB halting the issuance of all water rights permits as described in ER P1 would result in the development of new water supply projects. This is illogical as new storage, and in some cases upstream conveyance facilities, could not be pursued without the issuance of a water right from the SWRCB. Please correct.

The assertion in the report on this matter is consistently incorrect. To wit, a moratorium on new water rights permits will inhibit, not enhance, new supply development within the Sierra Nevada Ecosystem. The loss of water to create a more natural flow regime will act to lower reliable supplies in Sierra Nevada Ecosystem reservoirs and reduce water supply reliability in those areas. Please correct.

Page 6-51, lines 29-30. We agree there will be significant impacts, but not all significant impacts are identified. Many significant impacts to Sierra Nevada Ecosystem watersheds, communities and agricultural operations will occur as their supplies are reduced as described in our comments. Please correct.

Page 7-1, lines 27-28. Please correct here and throughout the document that the Sierra Nevada Ecosystem exists and is a more scientifically accurate description of this land area than "Delta watershed"¹⁷.

Page 7-14. Please note that in some Sierra Nevada Ecosystem areas lands in agricultural production are increasing, as is the dedication of water supplies for irrigation use. For example, within the County of Calaveras projections call for agricultural irrigation water deliveries to increase significantly. The increase from current irrigation deliveries to deliveries in year 2035 is projected to be 37,507 acre-feet per year.¹⁸ This reflects the dedication of large tracts of open space to agricultural production consistent with the County General Plan and the demand for agricultural irrigated lands. Within the County of Tuolumne current irrigated agricultural water demand is projected to increase from 2,366 acre feet per year to 3,505 acre-feet per year.¹⁹

¹⁷ *Sierra Nevada Ecosystem Project, Final Report to Congress, vol. 1, Assessment Summaries and Management Strategies* (Davis: University of California, Centers for Water and Wildland Resources, 1996)

¹⁸ Urban Water Management Plan 2010, Calaveras County Water District, June 2011.

¹⁹ Urban Water Management Plan 2010, Tuolumne Utilities District, June 2011

Similarly, in accordance with its County General Plan, El Dorado County agricultural irrigation demand is projected to increase by as much as 39,000 acre-feet per year by the year 2050.²⁰

It should be noted that statewide generalizations about trends in either urban or agricultural development have little if any relevance to local conditions. Land use, like water supply, is a very localized characteristic of the landscape. Please correct.

Page 7-18. Please note that the Proposed Project could result in the absence of available, reliable, affordable agricultural water supplies. This could result in both a loss of existing agricultural production and a limit to the potential for new agricultural irrigated lands.

Page 7-19, Section 7.4.3.1. Please note that if ER P1 or WR R5 is implemented as proposed, it will be very difficult to improve water supply reliability and affordability to agricultural lands in many Sierra Nevada Ecosystem areas. These impacts will be significant both to the productivity associated with agriculture as well as many important ancillary benefits to the environment resulting from agricultural land use. Thus, existing and anticipated ecosystem benefits associated with such agricultural lands could be lost. Cumulatively, these impacts could be significant to the Sierra Nevada Ecosystem. The EIR should so state and quantify these impacts.

Page 7-20, lines 42-47. It is unlikely that either the listed potential projects or other Sierra Nevada Ecosystem surface water storage projects would be permitted under the provisions of WR R-5 (which does not appear to account for economic feasibility or marginal costs of water) or ER P1 (which would halt any issuance of water rights permits). Please correct.

Page 7-29, lines 24-33. Reduced supplies within the west slope Sierra Nevada Ecosystem could result in reduced agricultural water supplies both now and in the future. This would be inconsistent with both local agency urban water management plans as well as county general plans as is noted in our comments on page 7-14. Please correct.

Page 7-59, Section 7.4.6. The statements in this section generally fail to accurately reflect a realistic outcome due to the misunderstanding within the document of California's water service community. Water supplies are all local, irrespective of source of water or method of delivery. The water is either available or not. Similarly, many water management decisions are also locally made by independent agencies - not state or federal managers. Customers and/or the local officials they elect to govern those systems must vote to approve their rate structure thereby setting a threshold for affordability.

This document consistently mischaracterizes the likely outcome of the Proposed Project and Alternative 1B as the authors seem to presume that the state's water is delivered through a network of agencies operating under a federal model of organization. This is factually incorrect.

Therefore, the analysis presumes incorrectly that if an action is not identified as a component of either the Proposed Project, or one of the alternatives, it will not occur. This could not be further

²⁰ Water Resources Development and Management Plan, El Dorado County Water Agency, December 2007 (measured from base year of 2000).

from the truth. Throughout the state, each day, water is delivered through a system of independent, locally managed water systems, each for the most part, operating without coordination to the actions of other similar agencies. Some of these systems have been continuously operating - albeit with regular improvements - successfully since the earliest days of this State's history.

California has a dispersed system of water supply with the exception of the State Water Project and the Central Valley Project. Even in those cases local agencies are ultimately responsible for treating and/or delivering the water to communities and agricultural lands. California's water network is more of a dispersed governance model of cooperative, independent local agencies, than a "top down" federalist model. California does not have centralized governance of its local water delivery systems, and therefore, much of the activity, progress and management of these systems is either missed or mischaracterized in this analysis.

This error is systemic to the analysis and biases its view of the likely outcome from each alternative. Whereas the authors of Alternative 1B recognize that not every water management action need be listed in the Delta Plan to be implemented, the DEIR incorrectly concludes that if something is not so identified in the DEIR it does not exist, nor would it ever occur. This is factually incorrect. Such a misunderstanding within the DEIR fatally damages the analysis contained therein and calls for a more realistic and legally adequate analysis. Please correct.

Page 14-3, lines 38-46. The United States Department of Agriculture (Forest Service) manages significant portions of the landscape within the state. Besides their normal resources management duties, the Forest Service also provides wildland fire protection both independently and cooperatively with the California Department of Forestry and Fire Protection. In addition, the United States Department of the Interior (National Park Service and Bureau of Land Management) similarly hold resource management and fire protection responsibilities of significance in the state. Please note these corrections.

Page 16-9, Section 16.3.3.1. The populations of many areas within the Sierra Nevada Ecosystem vary greatly due to significant recreational use. Many recreationists visit State Parks, National Parks, Regional Parks as well as State and National Forest Lands and private lands. In some communities in the Sierra Nevada Ecosystem, the resident population may be significantly smaller than the peak (winter and/or summer) recreational population. This dynamic alters the standard estimates for adequate public services such as police, fire, hospitals and many others including public water supplies and wastewater treatment. Therefore, use of resident-only populations for these high recreational use areas does not reflect the actual population. Please correct.

Page 20-17, Section 20.4.6. The characterization in this section is factually incorrect. Please see our earlier comments on these points. There is nothing in the EIR to support the conclusions presented. Provide specific supporting evidence or revise.

Page 21-4, Section 21.4.1.2. The Proposed Project, which calls for a "more natural flow regime" in upstream rivers and streams within the Sierra Nevada Ecosystem, would result in modifications

to reservoir and powerhouse operations. Such modifications would reduce the current production of clean, renewable hydroelectric power. The lost power, particularly peaking power production (12 p.m. to 6 p.m. weekdays), would have to be replaced. The current preference for new peaking power generation facilities is the gas turbine plant. New (more expensive and less efficient) gas turbine plants would result in an increase in greenhouse gas emissions and a greater dependence by the State on nonrenewable fuels. The resulting impact is neither noted, nor quantified. Please correct.

Page 21-8, Section 21.5.2. Notwithstanding Appendix G of the CEQA Guidelines, the EIR must recognize and adequately address the displacement of clean, renewable hydroelectric energy with nonrenewable, more expensive and polluting gas turbines (see comments above). This impact would be directly attributable to the focus in the Proposed Project on achieving a *"more natural flow regime"* in the Sierra Nevada Ecosystem and other upstream areas. This single purposed objective of the Plan must be identified as an impact to current energy generation from less expensive, renewable, clean, hydroelectric projects. This impact is not present in Alternative 1B, which proposes a more effective, comprehensive and multifaceted approach to Delta ecosystem restoration. Please correct.

Page 22-19, Section 22.2.19. The Proposed Project Policy ER P1, unlike Alternative 1B, calls for a *"more natural flow regime"* in the Sierra Nevada Ecosystem and other upstream areas. This area includes well over one hundred small to large hydroelectric generation facilities. These facilities alter the pre-Gold Rush era flows by diverting and storing water (in most cases) and generating clean, renewable hydroelectric energy when needed to meet California's energy demands. The objective of a *"more natural flow regime"* would result in the loss of water available for such energy generation, especially within the Sierra Nevada Ecosystem. Lost hydroelectric generation must be replaced with alternate sources, most likely gas turbines, which are more expensive, less efficient, higher polluting and use nonrenewable fuel. The complete cost of: lost energy generation capacity, increased greenhouse gas emissions, increased energy costs to customers, and greater dependence on fossil fuels should be captured in the analysis of the impact of ER P1.

Page 24-2, Section 24.1.2.1. We have raised this point numerous times. The EIR continues to portray the Proposed Project as promoting additional local and regional water supply projects without supporting data within the EIR to support this claim. We refer you to our numerous and earlier comments on this topic. Please correct this conclusion, or provide evidence supporting the assertion.

Page 24-8, Section 24.1.3.3. These points are addressed repeatedly herein. Nevertheless, we believe it is important to reemphasize that the EIR mischaracterizes Alternative 1B without evidence to support its conclusions. Please correct the conclusions, or provide evidence supporting the assertions.

Page 24-17, Table 24-1. Significant unavoidable impacts of the Proposed Project include increased costs and reduced reliability of municipal and agricultural water supplies to many areas within the Sierra Nevada Ecosystem due to a decrease in existing supplies and the loss of new water supply project opportunities. The loss of cost effective water supply options would act as a

deterrent to increasing agricultural irrigated lands within this region and result in commensurate ecosystem losses as agricultural lands are converted to other uses that can afford to pay higher water rates. Such uses are anticipated to include a full-range of municipal customer classes.

Page 25-2, line 12-16. This text mischaracterizes the coequal goals as defined in statute. We refer you to Water Code section 85054, which provides, "*Coequal goals means the two goals of providing a more reliable water supply for California and protecting, restoring and enhancing the Delta ecosystem...*". Please note the terms in the Plan "*arrest*", "*decline*" and "*generally*" do not appear in the definition of coequal goals in Section 85054. Please cite the actual definition to avoid confusing the reader and misquoting the statute.

Page 25-2, lines 26-28. The term "*aggressive*" as a descriptor in setting minimum water flow standards is misleading to the reader. Sound scientific evidence is the precursor to setting flow standards and even then is done within the context of the Public Trust Doctrine. Informed, prudent action is much more desirable than uninformed, or poorly informed, "*aggressive*" action. Using this sort of terminology to describe a characteristic of the Proposed Project is also inconsistent with the public trust duty of the State, which must consider the effect of one factor (such as stream flow) on the various trust resources as well as its public interest duty to consider and protect other beneficial uses of the water such as municipal, industrial and agricultural uses. The need for balance in pursuing the State's duty under the public trust is consistent with the balance provided in Water Code section 85054. Thus, the language of the DEIR should be revised to provide greater accuracy and avoid unnecessary confusion.

Page 25-2, Section 25.4.1. The Delta does not supply water to a significant portion of the Delta watershed. In fact, it supplies no water to the Sierra Nevada Ecosystem and those communities located therein. The EIR inaccurately generalizes those areas the Delta supplies with water and those it does not. This is confusing to the reader and, when coupled with objectives such as "*reducing reliance on the Delta*", confounds the reader's ability to understand how an area that does not receive any water from the Delta can, nonetheless, further reduce its reliance on the Delta for water supplies. Simply put, there is no reliance on the Delta for water supplies within the Sierra Nevada Ecosystem. The EIR must clarify this point both within this section as well as the remainder of the document.

Page 25-3, lines 8 and 9. The document mischaracterizes Alternative 1B as "*more water-supply focused*" without any supporting evidence. Quantify or correct this assertion.

Page 25-3, Section 25.4.2. The EIR flatly states that biological resources have been in decline in the Delta and are expected to continue to do so. Given the mission of the Council and the coequal goals relative to biological resources, the lingering question is why? Does the Proposed Project not meet the coequal goals?

Page 25-3, Section 25.4.2. The preoccupation with more natural flows again permeates the conclusions in this section. As we have stated in more detail previously, flows are not the only metric of a healthy ecosystem nor should they be the single metric for measuring success within

the Delta ecosystem. The EIR's continued use of this non-quantified metric as the definitive measure of ecosystem condition and trend is not supported by any evidence in the document.

Page 25-11, lines 8-15. This section is not factually supported in the EIR. A more scientifically sound strategy for Delta restoration founded on good science and adaptive management (as proposed in Alternative 1B) would be superior to the Proposed Project, which relies on using a *"more natural flow regime"* to cure all the ills of the Delta ecosystem. There is no need for the application of additional regulations and policies absent evidence in the EIR to support their imposition. No such evidence is presented in the EIR.

Page D-18, Section 2.0 and Page D-52, Section 4.0. These entire sections appear to leave out any reference to the various federal statutes, which regulate a significant portion of the lands²¹ managed within the Sierra Nevada Ecosystem. These include, but are not limited to, the National Forest Management Act, the National Environmental Policy Act, the Wilderness Act of 1964, the Multiple Use-Sustained Yield Act of 1960, the Wild and Scenic Rivers Act, the Forest and Rangeland Renewable Resources Planning Act of 1974, the National Forest Management Act of 1976, and the Federal Land Policy and Management Act. To accurately portray the complete regulatory tapestry that overlays the Sierra Nevada Ecosystem, please include reference to these various federal statutes.

Thank you again for this opportunity to comment on the Draft EIR. We look forward to working with you to make necessary changes in the Draft Delta Plan to achieve the critically important coequal goals enacted in 2009.

Sincerely,



David P. Eggerton
General Manager

²¹ As examples, the County of Tuolumne encompasses 1,456,000 acres of which over 75% are public lands. The County of Calaveras contains 657,920 acres of which over 23% are public lands. The County of El Dorado contains 1,144,480 acres of which approximately 48% are federally owned lands. Some Sierra Ecosystem counties consist of over 80% publicly owned lands.