



DELTA STEWARDSHIP COUNCIL
A California State Agency

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September 21, 2011

John Kingsbury, Executive Director
Mountain Counties Water Resources Association
P.O. Box 251
Placerville, CA 95667

Dear Mr. Kingsbury:

I am writing in response to your letter of Sept. 17, 2011 to Chair Phil Isenberg regarding the Council's work session the prior Thursday on "covered actions". I'm glad you found the session helpful and productive and I look forward to a continuing constructive dialogue as we develop the Delta Plan.

In particular, following up on the discussion regarding upstream water users, you asked whether the Council and staff views as potential "covered actions", diversions and use of water within the Delta watershed that are entirely upstream of the statutory Delta and Suisun Marsh (including any associated changes in water rights for those diversions and use).

As you know, the statutory definition of a "covered action" requires, among other things, that the proposed action "will occur, in whole or in part, within the boundaries of the Delta [meaning the statutory Delta] or Suisun Marsh" (Water Code Sec. 85057.5(a)(1)). Consistent with this definitional requirement, Water Resources Policy 1, contained in the 5th Staff Draft Delta Plan, pertains to "a covered action to export water from, transfer water through, or use water in the Delta [meaning the statutory Delta and Suisun Marsh]." Consequently, by its own terms, WR P1 does not, nor is it intended to, apply to the diversion and use of water in the Delta Watershed that is entirely upstream of the statutory Delta or Suisun Marsh. By contrast, if that water diverted upstream were transferred through the statutory Delta or Suisun Marsh (pursuant, for example, to a water transfer longer than one year in duration), for use either in the statutory Delta or Suisun Marsh or export areas to the South, then the action would be a covered action and must be consistent with WR P1.

The following language in the Preface to the 5th Staff Draft Delta Plan (at pg. 6, lines 42-43 to pg. 7, lines 1-2) reiterates this point:

"In the Delta Reform Act the Legislature gave the Council specific authority that did not include the ability to regulate those who exclusively use water upstream of the Delta. Although these users clearly influence the system, the Delta Plan's policies are only recommendations for these upstream users."

CHAIR

Phil Isenberg

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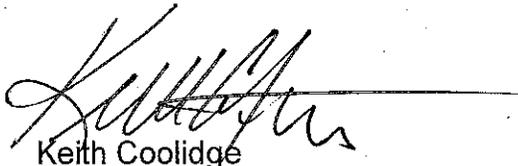
P. Joseph Grindstaff

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Finally, consistent with the Delta Reform Act, none of the provisions of the 5th Staff Draft Delta Plan," diminishes, impairs, or otherwise affects any area of origin, watershed of origin, county of origin, or any other water rights protections." Moreover, the granting of a new water right, or change to an existing water right, by the State Water Resources Control Board would fall within the statutory exemption from a "covered action" for a regulatory action of a state agency (Water Code sec. 85057.5(b) (1)). Note, however, that the underlying action necessitating the new or changed water right can be a covered action (provided it otherwise meets the statutory definition).

Thank you again for your participation in the Council's work session on covered actions, and for your follow-up letter.

Sincerely,



Keith Coolidge
Executive Manager, External Affairs
Delta Stewardship Council

cc: Delta Stewardship Council Board Members
Joe Grindstaff, Executive Officer, DSC
Chris Stevens, Chief Legal Counsel, DSC
MCWRA Board Members
Tim Quinn, ACWA Executive Director
David Guy, NCWA Executive Director
John Woodling, RWA Executive Director
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