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January 3, 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) Recirculated Draft Delta Plan, Program Environmental Impact Report. The Tuolumne Utilities District supplies water to over 44,000 customers within the County of Tuolumne. 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 that group's 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 only in the Recirculated DPEIR[1]. Therefore, will focus our comments accordingly to the Council's request. However, we make specific reference to our comments previously submitted on the Draft Delta Plan Program Environmental Impact Report earlier this year. Due to the similarities between the "Revised Project" and the previous "Proposed Project" many of those comments are applicable to this proposal as well. We expect those comments, as well as the comments contained in this letter, to be responded to by the Lead Agency in accordance with the CEQA Guidelines section 15088 (PRC

[1] Recirculated Draft Delta Plan, Program Environmental Impact Report, Volume 3, pg. EDS-11, November 2012

§ 21803). We have provided our earlier comments along with these comments to make your review process a bit easier.

It is our intention to provide the Council with comments on the Recirculated Draft Environmental Impact Report (DEIR or EIR) that will provide insights and direction to the Council to produce a legally adequate Final Environmental Impact Report (FEIR) and a Plan that will be understandable, sustainable and can practically be implemented so as to achieve the coequal goals as defined in statute[2]. We consider this duty to be a serious matter both due both our local agency status (PRC, §21062) and also as a responsible agency under CEQA (PRC, §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 the Delta Watershed[3] (not withstanding 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 present Proposed Project. Therefore, our interests in the proposed Plan and the attendant CEQA document are significant. For the purposes of our long-term planning responsibilities it is of critical importance that the Plan and its analysis is accurate and clear.

Given the general nature subject matter of the Recirculated Draft EIR, the previous extensive comments we submitted on the original Draft EIR, and the specific request of the Council in responding narrowly to the Recirculated Draft EIR (as referenced earlier), our comments on the subject document will be significantly abridged.

Specific comments provided below cite EIR Page number and appropriate section, or by line or other identifier.

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

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[2] California Water Code Section 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

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 with through an Instream Flow Incremental Methodology (IFIM) process dealing first with local stream reach needs and only then downstream objectives. There is evidence 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. That 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 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.

Page 3-7, lines 27-33. See comments on page 2-10, lines 23-27. Absent an adequate assessment of the proposed flows on the 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 upstream Delta areas the relatively rural nature of the landscape and low-density population makes the collection of storm water economically infeasible. The use of recycled wastewater is difficult to accomplish due to the "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 capable of being implemented.

Page 4-6, lines 13-14. There should be no presumption that upstream conserved water would be dedicated to 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. This is especially the case if the 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

[6] CWC §1011

stated mission of the DSC – to achieve the coequal goals. Further, it would similarly reduce the ability to upstream agencies to implement new filings for water rights under the area of origin statutes and conflict with CWC §85031.

Significant unavoidable impacts of the Proposed Project will include an increase in the cost and reliability of municipal and agricultural water supplies to many areas within the Sierra Nevada Ecosystem due to decreased existing supplies and a loss of new water supply project opportunities. This loss of cost effective water supply availability will 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.

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

Sincerely,

Jim Grinnell
Vice President, Board of Directors
Tuolumne Utilities District

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

February 1, 2012

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) Delta Plan Draft Environmental Impact Report. The Tuolumne Utilities District supplies water to over 14,000 customers within the County of Tuolumne. 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 that group's Alternate Draft Plan as submitted to the DSC previously. We will focus our comments on the treatment by the DEIR in its analysis of the Proposed Project but also 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 the Council with comments on the Draft Environmental Impact Report (DEIR or EIR) that will provide insights and direction to the Council to produce a legally adequate Final Environmental Impact Report (FEIR) and a Plan that will be understandable, sustainable and can practically be implemented so as to achieve

the coequal goals as defined in statute[1]. We consider this duty to be a serious matter both due both our local agency status (Public Resources Code §21062) and also as a responsible agency under CEQA (PRC, §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 the Delta Watershed[2] (not withstanding 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 Plan and the attendant CEQA document are significant. For the purposes of our long-term planning responsibilities it is of critical importance that the Plan and its analysis is thorough, accurate and clear.

The EIR is excessively voluminous, and yet it still provides the reader with no 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 approximate, what is or is not proposed. This confounds the very foundation of an adequate CEQA analysis since without that 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. (3) 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 the reader being confronted with a plethora of nonessential information about potential impacts

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[1] California Water Code Section 85054

[2] California Water Code Section 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)

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. Additionally the reader is challenged to determine if the project being assessed in the document is comprised of the *"twelve binding policies"* (which are proposed to become regulations), or also consists of one or more of the *"sixty-one non binding recommendations"* or is also found within the lengthy and conflicting narrative. (DSC DEIR, Executive Summary pg. ES-1)

The sixty-one non binding recommendations are apparently things the Council advises other agencies it would like to see occur. 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 fails to adequately do so. Again, we must declare 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 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 implemented[4]. Absent that critical information any reasonable assessment of impacts is quite difficult if not impossible[5]. 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 CEQA[6] 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.

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[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

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 1B[7].

The Proposed Project advocates 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, either on the Delta or its watersheds.

Specific comments provided below cite EIR Page number and appropriate section, 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 results in increased water supplies. These 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 is not an increase in water supply reliability. The conclusions that such efficiency measures would *"improve regional self-reliance and reduce reliance on the Delta"* is inaccurate. The term "regional self-reliant" for our agency and others on the west slope of the Sierra within the Sierra Nevada Ecosystem is meaningless. Our agency imports no water from any other region, as do many other similar agencies. Thus, while the EIR's assertion may be correct in some export areas south of the Delta, it is meaningless to water systems within the Sierra Nevada Ecosystem, which locally sourced water. Water conserved by our agency only adds to our cost and reduces revenue, while adding additional water to our portfolio for future commitments.

Page 2A-5, lines 34-38. The addition of an additional Water Supply Reliability Element will not provide any improvement to 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

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[7] Section 21083, Public Resources Code; Reference: Sections 21061 and 21100, Public Resources Code; *San Francisco Ecology Center v. City and County of San Francisco*, (1975) 48 Cal. App. 3d 584.

supply reliability is unsupported in the record. The reader is being misled about the characteristics of the Proposed Project almost immediately in the DEIR.

Page 2A-5 and 2A-6. The conclusion is 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."* this 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 able to be 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 projects could move ahead absent a water rights permit and the ER P1 is in conflict with the conclusion in the DEIR. The reader is being misled about the characteristics of the Proposed Project.

It should also be noted that ER P1 is inconsistent with C.W.C. §85031(a) regarding water rights protections. The DEIR does not evaluate the impacts to local communities through implementation of this action. The DEIR cannot accurately predict or analyze the impacts to the environment of unknown property.

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 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 being misled about the characteristics of the Proposed Project. We must repeat that that ER P1 is inconsistent with C.W.C. §85031(a) regarding water rights protections.

Page 2A-17, lines 5 - 44. It must be noted that on western 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, 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 our agency serves. Our water supplies 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. That would indicate, to a reasonable person, 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 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 actions 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 and not on just a "more flows" basis.

The fundamental difference between directives and recommendations (authoritative vs. advisory terms) is not captured either in the Project description or Alternatives comparison sections in this EIR. That fact confounds the reader in determining those things that will 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 only with these 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 as; in-delta land uses, dredging, levees, tides, point and non-point source pollutants, in-delta water use, export water use and diversions. However, once again the Plan ignores those factors and proposes a focus on increasing flow patterns for Sierra Nevada Ecosystem and other upstream rivers, the impacts to which is not at all analyzed in the document.

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. That would then mean that the term coequal is meaningless under the proposed Plan. That should be so stated in the EIR accompanied by an explanation why the Council would propose a plan that abandons their mission to achieve those goals.

Page 2A-44, lines 9-12. The stated uncertainty that the DWR *"...will follow the recommendations of the EIR..."* is then followed by the conclusion that this EIR assumes the DWR will follow the recommendations. Unfortunately no explanation of the recommendation process or why the DWR would do so is provided. If this implies that all recommendations are expected to be follow, the analysis should explain the underlying logic. Please provide supporting reasoning for this conclusion

Page 2A-45, lines 16-39. This is a listed series of things that could happen. The use of the term "could" only indicates a possibility or casual relationship between proposal and implementation. This is highly speculative and the reader has no basis or information upon how to determine if the conclusion is valid. There is no evidence presented in the EIR to support the conclusion.

Page 2A-46, lines 9-31. It is not clear exactly what the Delta Stewardship Council's process is to encourage actions. Specifically how does the Council intend on communicating and implementing its encouragement?

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

Page 2A-48. The page contains a series of things that could happen or could be implemented or could include something. The term "could" implies a degree of

uncertainty rendering a possibility. It would be helpful in analyzing the Proposed Project if terms were used more similar to the actual text of Alternative 1B. That is a descriptor of how the Council would make recommendations and collaborate with other agencies. How the Council would provide incentives to programs. Terms such as are used in the Alternative 1B text such as "Direct" and "Recommend" are easily distinguishable as things that will occur and may occur and even for those that may occur there is some clarity provided in how the governance structure of the DSC would take those actions. The Proposed Project description simply leaves the reader wondering. The EIR compounds the problem further by failing to describe how these actions may take place.

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" things to occur. Please compare the relative vagueness in the Proposed Project to the specific activities called out in Alternative 1B that indicate things the Council would do to either direct an outcome or otherwise bring it to fruition. The EIR should note that significant difference in the description and analysis of the Proposed Alternatives.

Page 2A -50. Please see use of the term "could" as a descriptor as in our previous comments referring to Page 2A-48.

Page 2A-51, lines 32-37, Page 2A-52 lines 1-8. How, or under what circumstances is this "encouraged" outcome for reoperation of reservoirs believed to 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 have been more informative if the range of potential impacts had included the likely impacts to Sierra Nevada Ecosystem water supply reliability. This assessment should include potential impacts to communities served by existing projects, the increased costs and reduced reliability of developing alternate groundwater supplies in areas of unreliable groundwater supplies (fractured rock groundwater sources are not a reliable source of groundwater supplies in general), a reduction in water available for hydroelectric generation (leading to a greater dependence on fossil fuel plants or significantly higher and less reliable wind and solar plants), a loss in water supply reliability in the Sierra Nevada Ecosystem would result in a loss in agricultural production due to reduced

water available for those customers. None of these impacts are addressed in the EIR, but must be, to meet the minimum requirements of CEQA.

Page 2A-65, line 1. The Proposed Project has only one water quality policy (ER P1) and it is a more broadly stated policy 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 having no recommendations regarding specific conveyance options. The fact is that Alternative 1B recognizes that the BDCP should be completed by January 1, 2014 and that the BDCP is the place 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 that is one factor there are comprehensive ecosystem actions that must be taken to achieve 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 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. Please 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 has no proposed actions to carry something out. In contrast Alternative 1B contains specific actions that can be identified as they are started with the word "Direct". Page 19 of Alternative 1B also gives specific direction regarding assessing and promoting additional water efficiency measures, while the analysis in the DEIR concludes exactly the opposite. This analysis must be corrected to reflect the actual content of Alternative 1B as opposed to the existing project if the reader is not to be led astray by the current analysis.

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 will 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. That is clearly a significant redirected impact to those upstream areas that would 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 nearly adjacent to large reservoirs and canals from which no water supplies are available. Those 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 and not just in late summer and fall months. 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 there will be reduced flows over those anticipated resulting from the single effect of 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 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 by any planning, or lack thereof, for the Delta. Please explain and expand in order to more clearly distinguish between Sierra Nevada Ecosystem, other upstream 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 which contains the alternate descriptor "shall". Please see submitted Alternate Plan (Alternative 1B in the EIR). Examples in that submitted Alternate Plan (Alternative 1B in the EIR) include page 6, paragraph 1, page 7 first bullet, page 10 science plan, page 18, 19, 20 regarding information management, conservation, transfers and conveyance as well as pages 22 (storage) and 24 (funding). These are not *"recommendations only"*. The reader is being 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 along under *"...the aggressive schedule..."*. Please explain the likelihood and feasibility of reasonably completing the *"...aggressive schedule..."*. It should be noted that completing things under an aggressive timeframe might increase the opportunities for mistakes, leading to management decision errors. It would be more informative to the reader to understand if the Proposed Project can reasonably be expected achieve what is being proposed, or if this is more of just 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 take place?

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. Hence, reducing potential impacts to Sierra Nevada Ecosystem communities, populations and agriculture.

Page 2B-2, lines 15-19. The reference to the Council's potential influence on the Consumnes 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 are called for in Alternative 1B) then those actions are much less speculative in nature than the sixty plus recommendations as 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, then any equitable and reasonable analysis of alternatives must grant the same leniency to the alternatives, lest the analysis be biased. We have identified a number of areas in this comment letter that indicate that this is not the case, but rather it is only the Proposed Project given this leniency. This misleads the reader regarding the differences between the Proposed Project and the Alternatives.

Page 2B-2 footnote #3. This example illustrates that the Council fully intends on attempting to extend their authority over projects beyond their own definition of a covered action by contesting the authority of other agencies. We believe this calls into

question the lack of clarity over what is, or is not, exactly a covered action yet again. We have raised this issue almost continuously with the Council throughout the various iterations of the development of the Proposed Project (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 and 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 2B-6.

Page 2B-17, Water Quality Improvement, Potential Facilities or Actions. There is no evidence that Alternative 1B would result in less water treatment plants being developed. The fact is that 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 those sorts of 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 era from 1950 on. A full 80% of the present reservoir capacity in the Sierra Nevada was completed after 1950[8].

A key aspect of the Sierra Nevada Ecosystem is it's relative health compared to the downstream Delta Ecosystem. *"The history of the Sierra Nevada and recent ecological assessments suggest that Sierran 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 regards not only to existing conditions, but any financial strategy to fund the Council's activities, that the benefits derived from water resources in the Sierra Nevada do not have a commensurate direct reinvestment to 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 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 to the Sierra Nevada Ecosystem to improve or even maintain that ecosystem.[10] Any discussion of beneficiary fees and stressor fees would do well to 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 would 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.

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[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
[10] IBID

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 will 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 in the EIR for these impacts to the Sierra Nevada Ecosystem 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 water rights being issued by the SWRCB under the various Area of Origin, County of Origin and Watershed of Origin Statutes and thereby violate W.C. §85031 and §85032(i). Such a disruption of the existing, historic water rights protections to the Area or Origin would prevent these areas from securing new water supplies while simultaneously the Bay Delta Habitat Conservation Program would move ahead to secure water supply assurances for both the State and Federal Projects. This confluence of events would stand on it's head the notion of Area of Origin protections and would constitute a 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 that pertains to this matter.

Page 3-77, lines 25-26. The Proposed Project would have the directly 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. The reader is being misled as to the actual result 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. That CEQA document 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 they take place within Forest Service managed lands. Water quality standards under the Clean Water Act 401 process will also be imposed as conditions on a proposed storage project. Finally, should the storage project be associated with hydroelectric generation the project would be subject to the provisions of the Federal Power Act and the Federal Energy Regulatory Commission

(FERC) process. FERC licenses to be issued for projects on lands subject to U.S. Forest Service or Bureau of Land Management control are subject to Federal Power Act requirements specific to that situation[11]. These federal authorities in specific cases limit the authority of the SWRCB[12]. Please include these factual corrections to the EIR.

Page 3-83, lines 22-45 and Page 3-84, lines 1-15. Any discussion regarding the development of achieving *"...a more natural flow regime..."* in the Delta and the Delta tributaries must take place within the context of the existing conditions of the Delta and the Sierra Nevada Ecosystem. Flows are not the singular 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 water. Water is one of the major habitat components of the Delta ecosystem. The flow of water is one of several attributes of water - other attributes Delta waters include toxins and contaminants, predators, turbidity or clarity of water, 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 of the components 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 the ability of flow to contribute to restoring the Delta ecosystem is necessarily limited by the existing physical restraints of the existing ecosystem components. Simply directing for more natural flows absent an detailed assessment of any potential, relative benefit within the existing landscape, is a waste of a valuable resource and a restoration opportunity squandered.

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[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. Sec. 797(e). See Escondido Mutual Water Co. v. La Jolla Band of Mission Indians, 466 U.S. 765, 772, 104 S.Ct. 2105, 2110, 80 L.Ed.2d 753 (1984)

[12] *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)

The Council's ultimate Plan must accept the fact that 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 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 used to be 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 produces little, if any, 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 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 as well as other upstream tributary ecosystems. Within limits the State Water Resources Control Board is the regulatory body in charge of setting flow objectives and implementing these objectives through water rights hearings to the extent necessary. The State Board has previously adopted flow objectives - they are in place and being met. The State Board is required to review these objectives every three years and is currently reviewing the San Joaquin River flow objectives. 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 be done 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, then the Board may amend the flow 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 do not fully protect fish and wildlife.

Although they are not regulations of flow, there are several agreements and programs that affect instream flow. For example, the Vernalis Adaptive Management Program (VAMP), the San Joaquin River Restoration Program, and Yuba River Accord and the American River's Water Forum Agreement are all programs that affect and control the flow of water. 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 on 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 the Federal Energy Regulatory Commission. Some of those license periods extend 50 years and have through an extensive planning process set specific instream flow standards for those projects.

Additionally, there are streams within the Sierra Nevada Ecosystem such as the Middle Fork of the Stanislaus above New Melones reservoir, which is designated by the state of California as a Wild Trout Stream. This designation[13] requires specific flow standards

[13] Fish and Game Code §1726 et seq.

from projects located on the Middle Fork to maintain a healthy self-sustaining wild trout population. Any proposed changes to those flows would have to consider that management objective.

Within the Sierra Nevada Ecosystem is also the Tuolumne River - a federally protected Wild and Scenic River - and largest tributary to the San Joaquin River. 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 changes 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 plan should recognize the role of this regulatory tapestry that overlays the Sierra Nevada Ecosystem. The Council's Proposed Project must also recognize the various responsibilities of the State and Federal agencies charged with managing and regulating these resources, as well as the legal constraints[14] that exist upon the SWRCB regarding some of these river systems[15] 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 an *"...aggressive implementation of a more natural flow regime."*, apparently at any consequence to any other ecosystem.

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. Specifically those claiming that water supply projects will result from the establishment of these 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 to benefit the Delta and downstream water users. Please correct.

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

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[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.

are not practical due to the physical conditions of the Sierra Nevada Ecosystem and foothills. Desalination is out of the question. Groundwater conjunctive use projects in a landscape with, except in small and rare circumstances, no actual groundwater basins is not an option. 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 costs. 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 is false regarding these Sierra Nevada Ecosystem water systems. Their 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 the so-called Area of Origin[16] 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 within the EIR, Alternative 1B specifically references the use of the Public Trust Doctrine (see submitted Ag Urban Coalition Plan page 31). In addition, there is no reason to believe that the SWRCB and other regulatory agencies 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 certainly is any proposed 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 and the reader is misled.

[16] California Water Code §10505, 10505:5, 11128, 11460, and 11463; and §12200 to 12220

Returning again to the mantra of flow objectives, the fact is that the flow objectives will take time to be adequately and accurately developed and even then it would only be a component and not the 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 of flow to restore the Delta ecosystem is limited to the interrelated relationship flow has with all other components of the ecosystem. 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 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 Ag Urban Alternative Plan as submitted, Chapters 2, 5 & 6). That Alternative 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 those efforts would provide agencies, like the State Water Board, with the scientific tools they need 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 carry out. 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 re: increasing California's air?

Page 4-62, lines 24-34. It is not likely that given the uncertainties presented within the Proposed Project that proactive efforts to transfer water from north of the Delta to south of the Delta will take place. Additionally, proposed sanctions such as ER P1's moratorium on new water rights permits would not engender the likelihood of Sierra Nevada Ecosystem agencies transferring water. 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 CWC §1011 provides that conserved water is deemed equivalent to a reasonable beneficial use of water and no forfeiture of that water occurs. Therefore, the only circumstances to likely 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 are generally an impact to the fiscal viability to small and medium sized upstream water providers and a burden on many customers who's 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. These reductions would impact agriculture first and then municipal supplies. Please make this change.

Page 4-89, Section 4.4.6. The initial statement on line 33 is factually incorrect and unsupported by any evidence in the EIR. It is an unsupported conclusion. Please see the submitted Alternative 1B for details regarding water transfers (see Ag Urban Alternative Plan as submitted pg 19), groundwater (see Ag Urban Alternative Plan as submitted pg. 20 & 21) and reservoir operations (see Ag Urban Alternative Plan as submitted pg. 22).

Line 40 of the same page is factually incorrect, as under Alternative 1B flow objectives would be premised on more accurate parameters (see Ag Urban Alternative Plan as submitted pg. 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. Indeed 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 characterizing it as being superior in terms of contributing towards improving current conditions is unsupported in the document. Alternative 1B would seek out reasonable species life cycle data and conduct analysis and then rank the efficiency of flows to other management actions (see submitted 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 to those areas could inhibit local governments and agencies to supply water to people, farms and communities as planned for in long-term General Plans and Specific Plans. This in turn could result in increased reliance on fractured rock ground water sources replacing higher quality, more affordable and reliable surface water supplies that currently exist. Such an outcome would both adversely impact groundwater supply sustainability and result in higher costs to water users within Disadvantaged Communities.

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. Groundwater within the Sierras is generally found in fractured bedrock formations and is less reliable, has lower water quality (containing minerals and other contaminants) and is more expensive than existing surface water sources. This would inhibit sustainable economies in the Sierras as well as the environmental use of water in the Sierra Nevada Ecosystem. Clearly, this would be done in order 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 Sierras. 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 alleged in line 7-11. Indeed 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 argue that actions such as the SWRCB halting the issuance of all water rights permits as is 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 take place without a new water right from the SWRCB. Please correct.

The assertion in the report on this matter is consistently wrong. To wit, a moratorium on new water rights permits will inhibit and not enhance new supply development within the Sierra Nevada Ecosystem. The loss of water to creating 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 these areas have their supplies reduced, as is described within 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 scientific accurate description of that land area than the "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 increases from current irrigation deliveries to deliveries in year 2035 are 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

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[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.

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]

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 should ER P1 or WR R5 be 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 ancillary benefits to the environment resulting from agricultural land use. Thus, existing and anticipated ecosystem benefits associated with those agricultural lands would be lost. Cumulatively this impact 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 can 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

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

federal managers. Customers and/or elected officials of 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 some action is not identified as a component of either the Proposed Project, or one of the alternatives, that the subject action will not occur. This could not be further 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 energy is either missed or mischaracterized in this analysis.

This error is systemic to the analysis and clearly 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 within this document 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 wild land 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 significantly due to significant recreational use. These 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 recreation 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 dubious 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, will result in modifications to reservoir and powerhouse operations. Those modifications will result in a reduction in the current production of clean, renewable, hydroelectric power. That lost power, particularly the peaking power production (12 p.m. to 6 p.m. weekdays), will have to be replaced. The current preference for new peaking power generation facilities is gas turbine plants. New (more expensive and less efficient) gas turbine plants will result in an increase in greenhouse gas emissions and a greater dependence for the State on nonrenewable fuels. The resulting impact of that 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 will 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. Those 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"* will result in loss of water available for that energy generation, especially within the Sierra Nevada Ecosystem. Lost hydroelectric generation will have to be replaced with alternate sources, most likely gas turbines, which are more expensive, less efficient, more polluting and use a nonrenewable fuel. The complete cost in lost energy generation capacity increases in greenhouse gas emissions, increase in energy costs to customers and further dependence on fossil fuels should be provided in 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 with no 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 were addressed earlier and numerous times. Nevertheless we believe it is important to point out that (again) the EIR mischaracterizes Alternative 1B without evidence to support conclusions. Please correct this conclusion, or provide evidence supporting the assertion.

Page 24-17, Table 24-1. Significant unavoidable impacts of the Proposed Project will include an increase in the cost and reliability of municipal and agricultural water supplies to many areas within the Sierra Nevada Ecosystem due to decreased existing supplies and a loss of new water supply project opportunities. This loss of cost effective water supply availability will 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 C.W.C. §85054. *"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 the Coequal Goals in C.W.C. §85054. Please cite the actual definition to avoid confusing the reader and misquoting 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 usually superior to 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. That is, to consider the effect of one factor (such as stream flow) on the various trust resources and another 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 C.W.C. §85054. It would be more accurate, and certain more prudent for the EIR to use terminology which was more accurate and not unnecessarily dramatic. Please see 136 Cal. App. 4th; 39 Cal. Rptr. 3d 189.

Page 25-2, Section 25.4.1. The Delta does not supply water to a significant portion of the Delta watershed. It supplies no water to the Sierra Nevada Ecosystem and those communities located therein. The EIR inaccurately generalizes what areas the Delta supplies water to and which areas it does not supply. This is confusing to the reader and when coupled with objectives such as *"reducing reliance on the Delta"* can confound the reader's ability to sort out how an area that receives no water from the Delta can become less reliant upon the Delta for its water supplies. Simply put, there is no reliance on the Delta for water supplies within the Sierra Nevada Ecosystem. Therefore, reducing reliance on a source not used is asking the impossible. The EIR must clarify this point both within this section as well as the remainder of the document.

Page 25-3, lines 8 & 9. The document mischaracterizes alternative 1B with no evidence supporting the claim that this alternative *"...is more water-supply focused."* Quantify or correct.

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? Is it the intention of the Proposed Project to 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 a 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 use. No such evidence is presented in the EIR.

Page D-18, Section 2.0 and Page D-52, Section 4.0. These entire sections seem to leave out any reference to the various federal statutes, which regulate a significant portion of the lands[20] 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.

This marks the end of our specific comments on the Draft Delta Plan Program Environmental Impact Report. We thank the Council for the opportunity to comment on the document.

Sincerely,

Peter J. Kampa
General Manager
Tuolumne Utilities District

[20] 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 is composed of approximately 50% publicly owned lands. Some Sierra Ecosystem Counties have over 80% publicly owned lands.