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Mr. Phil Isenberg, Chair
Delta Stewardship Council
980 Ninth Street, Suite 1500
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June 23, 2011

Subject: Delta Plan - 4th Draft

Dear Chairman Isenberg and Council Members:

On behalf of the Tuolumne Utilities District we offer these comments on the most recent - 4th Draft - of the Delta Plan. We have previously commented on the 2nd staff draft and also were participants in the development of an alternative plan submitted to the Council on June 10, by a coalition of water interests from throughout the State. We have also provided comments to the Delta Stewardship Council (DSC) through the Notice of Preparation process for CEQA compliance.

The Tuolumne Utilities District has an interest on the proposed Delta Plan due to the location of our District's service area within a San Francisco Bay Delta Tributary watershed. Additionally, due to the lack of clarity regarding what actions will or will not be defined as covered actions, or be subject to appeal to the Council, we have reservations that we will maintain the ability to effectively manage our resources in a timely and cost effective manner due to the uncertainties raised under the draft Delta Plan.

Comments -

The ultimate litmus test of any Delta Plan is the achievement of the Co-Equal Goals as defined in Public Resources Code section 29702:

(a) Achieve the two coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

Our agency continues to have significant concerns with the DSC's latest (fourth) version of a draft plan. Specifically, with regards to the co-equal goals, the staff draft does not seem to anticipate or even accommodate necessary increases in water supplies to urban agencies to meet future demands. Rather, both in text and graphically, the future is perceived as a "capped" supply with any gains coming through increased efficiency (regardless of the marginal costs associated with those efficiency measures) and recycling. This approach will both add to the cost of water and be especially harmful to areas that contain large percentages of disadvantaged community (DAC) populations. Most of the District's customer base is comprised of DAC areas and least cost resource planning is essential to meeting their needs.

The term co-equal must be interpreted by the Council to mean just that: two goals that are equal. In our estimation the Council has created a hierarchy in which increasing water supply for municipal and irrigation use is on a lower "tier" than ecosystem restoration. The public trust doctrine requires a balancing of a public good in the use of water, to be in balance both sides of the scale must be equal.

The DSC draft (page 15 lines 5-13) has focused far too much on the increased reliance on conservation as a supply of water. This "new" supply source is predicted on a 50% reduction from current baseline consumption levels (defined in CWC§10608.12(b)). The present requirements under SBX7-7 already require a 20% reduction of statewide use from baseline by the year 2020. The additional proposal by the DSC to impose additional conservation measures to achieve a 50% reduction in per capita water use, with no regard to economic factors associated with those conservation measures, will result in unnecessary, severe financial and lifestyle impacts to the people of California. The DSC should more logically combine the cost effective and practical tools of water use efficiency and new sources of supply to assure a viable economy through the cost effective use of scarce public funding.

Significantly, this same section of the draft plan fails to mention any new development of surface water supplies. Does the DSC anticipate that there will be no water secured to supply the State's areas of origin? If that assumption is imbedded in the DSC's planning then it fails to recognize both a fundamental component of California water law assurances provided to the Delta tributary watersheds and their people, and the need for additional water supplies for the tributary watershed communities.

The DSC draft also continues to advance two single purpose themes; environmental problems in the Delta will be resolved through more and more flows from upstream and water supply problems in the state will be met through more conservation. In fact neither hypothesis is supported by evidence in the record. On both these points the Plan is simply in error.

The Council's draft fails to capture the flavor in the diversity of this state's water systems region-by-region and system-by-system. Demand side management as a sole strategy for meeting future demands for water is a doomed strategy for this state, its people, its communities and economy. The notion of consistently paying more money to have less water is not a solution for our District's customers; it is one more problem. We strongly urge you to examine the more realistic and achievable gains in increased water supply and reaching the co-equal goals as presented in the June 10, Alternate Delta Plan.

In general, this version of the draft plan, like the previous three drafts, aims to reduce water supplies, reduce reliability and create regulatory certainty, rather than genuinely attempting to achieve the co-equal goals.

We are also greatly concerned that the latest draft continues the direction of proposing to advance the regulatory authority of the Council far beyond the intent and authority granted by the legislation. The Council's limited authority has been misinterpreted by a staff that has proposed "bootstrapping" local water management decisions that are geographically far removed from the Delta into the Council's "covered action" jurisdiction.

The most recent staff draft (see page 57 lines 13 - 16) does not recognize that in some areas of the state water suppliers are limited to a single source of water for up to 100% of their customer use. One of those areas is the Tuolumne Utility District, where the only source of supply is surface water from the South Fork Stanislaus River- a Delta tributary. Almost all of our customer's water supply originates in the South Fork of the Stanislaus River. As a region we could not be more dependent on one source and yet at the same time be more self-reliant as a region.

The DSC draft (page 70, lines 15-23) illustrates the lack of understanding by the DSC of the use of the term "region". The hydrologic regions referenced within the California Water Plan Update do not remotely resemble the various "regions" that existing in the Department of Water Resources (DWR) Integrated Regional Water Management Program (Proposition 84). Please note that those regions are smaller and were reviewed and approved by the DWR for the development of IRWM Plans and the implementation of programs and projects. Expecting IRWM regions to somehow address the larger hydrologic region issue of "regional self-sufficiency" is not within either their authority or their funding capability. The two regions and their meaning under the law are different and should be recognized by the DSC and reflected in draft plan language. We urge you to coordinate with the DWR IRWM Program relative to this matter. Development of IRWMP's are currently discretionary within these regions and the future development and improvement of these critical local water supply reliability and ecosystem restoration plans will be in severe jeopardy if additional significant expense for evaluation of "regional self-sufficiency" is placed on the water agencies funding these plans.

Page 88, lines 8-18 states that “... *the Council could determine that a covered action that would increase the capacity of any water system to store, divert, move, or export water from or through the Delta would not be consistent with the Delta Plan until the revised flow objectives are implemented.*” This is counter to WR R4 and WR R5 in Chapter 4 where the Council recommends that both DWR and the California Water Commission should identify where existing storage can be expanded or where new storage may be developed.

One of the most significant actions that can be taken to improve water supply reliability and ecosystem restoration is to change the timing of flows and diversions so that more water is diverted during wet conditions and less is diverted during dry conditions. The council continues to recommend a more ‘natural’ hydrograph. However, as recommended by several scientists with expertise in the Delta, including the DSC’s own lead scientist, the focus should be on identifying and managing for the critical aquatic ecological characteristics that will improve the Delta ecosystem and consequently, listed species’ population viability. The obsession by the Council, with a natural hydrograph, is in conflict with the programs own science.

Whatever changes in flow regime are proposed as supported by scientific evidence in the E.I.R., they must be accompanied by a change in the timing of diversions and an increase in storage to ensure water supply reliability is simultaneously improved. As currently written, ER P1 would block any increases in storage or increases in diversions during wet periods effectively undermining the opportunity to balance the flow needs of the ecosystem with other beneficial uses. In its present form this section confounds rather than attempts to achieve the co-equal goals. It should be revised so as to be consistent with recommendations in Chapter 4 and the coequal goals.

Page 88, lines 19-22, provides a recommendation that the SWRCB “*cease issuing water rights permits*” under certain conditions. Such an action would be in direct conflict with the protections that now exist to upstream areas of origin. The assurances provided to those areas are in fact affirmed in the 2009 legislation and it is not reasonable, and of questionable legality, for the DSC to recommend such a reversal to California’s water rights priority system and the protections provided to upstream areas. Please refer to CWC§85301(a), or to your own fourth draft Plan on page 53.

Page 173, lines 13-20. The proposal for the imposition of so-called user/stressor fees by the Council to fund a program of cost estimates that are at best speculative is not supported by the District. The staff drafts continue to advocate for these fees regardless of the fact that, even setting aside the theory that they are somehow justified, public agency water providers are limited in their authority to set and

increase water rates by the strict provisions of Proposition 218 (1996), which have amended California Constitution Article XIIIId. Any recommended action of the DSC, including implementation of a form of mandatory fee that would increase the water rate structure or assessment of a Public Good Charge, must consider the fee approval limitations of the California Constitution.

In general we believe the DSC fourth Draft Plan far exceeds the authority provided by legislation. The expansive and aggressive regulatory zeal evident in the Plan is not supported by the enabling legislation. The Plan, instead of being a strategic or programmatic plan that is phased in over a period of years as additional information is made available (such as the SWRCB's flow decisions and the completed BDHCP), has moved directly to a very specific, regulatory focus. Draft Plan #4, like previous iterations of the staff drafts is not a plan, but rather a wandering regulatory roadmap for the DSC. Unfortunately, the Plan as drafted would create significant uncertainty through a plethora of new regulations. Parties whose interests are compromised would in all likelihood challenge such regulations, as they are unsupported by statute.

We believe that should the DSC maintain the current staff proposals in its final draft plan the program will result in serious environmental and economic consequences. Specifically the fourth draft, rather than engendering partnerships and cooperation, undermines the justification for water agencies to invest in programs such as BDCP, which advance the co-equal goals. This could lead to no financial contributions by water agencies to ecological restoration projects. Additionally agencies, to meet customer demand, would simply pursue their own local and regional strategies to achieve necessary water supplies absent any common linkage to a Delta ecosystem restoration program.

We urge the council to re-examine the alternative plan submitted by the water leadership coalition on June 10. We believe that alternative is currently the only alternative being considered by the DSC, which can actually achieve the co-equal goals.

Sincerely,



Peter Kampa
General Manager

Cc: TUD Board of Directors
John Mills

MCWRA