

April 08, 2011

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

RE: Delta Plan – 2nd Draft

Dear Chairman Isenberg and Council Members:

We have grave concern regarding the direction of the Delta Stewardship Council's second draft (March 18) Delta Plan. We cannot support the second draft as it envisions unnecessary and untenable regulatory underpinnings to a Delta Plan that will only exacerbate present challenges in the Delta rather than contribute to their resolution consistent with the coequal goals. Furthermore, the second draft far exceeds the authority provided to the Council by the Delta Reform Act. The Council must revise the Delta Plan to adhere to the direction so carefully crafted in the Delta Reform Act.

In the second draft the Council seeks to establish a basis to regulate statewide water management activities through the exercise of its limited and narrowly proscribed authority to review the consistency of "covered actions." The Delta Reform Act does not give the Council broad regulatory power over use of the State's water resources. The Council's mandate to draft a Delta Plan explicitly does not shift legislatively mandated authorities of other State or local agencies to the Council, and its authority to review the consistency of "covered actions" cannot be expanded to somehow become applicable to the entirety of the Delta Plan. The second draft includes unwieldy regulatory policies that expose the Council's efforts to transform its non-regulatory mandate to draft a Delta Plan that was intended to ultimately coordinate efforts across state agencies, into a usurpation of those agencies' authorities through an overly expansive view of "covered actions." The Council's attempt at such regulation is not supported by the Delta Reform Act. We urge that the next draft Delta Plan be consistent with the direction and limited authority provided by under the Act.

Further, the Council's attempt to regulate actions outside the legal Delta exceeds its statutory authority. The geographic scope of "covered actions" pursuant to the Delta Plan is specifically limited to actions occurring at least in part within the Delta. (Water Code, 85057.5(a)(1).) Simply put, the Act does not authorize the Council to regulate – as proposed in the second draft – water management plans, integrated regional water management plans, water conservation and recycling programs, future water-supply options, water-use reporting, stormwater programs, groundwater use, or rate structures of water agencies outside the Delta and Suisun Marsh. While such actions outside the Delta may need to be undertaken at the local level as part of a comprehensive water strategy to reconcile economic and environmental goals, that does not justify the Council's efforts to assert regulatory control at the state level. The approach set forth in the current draft plan places an unrealistic burden upon covered actions within the Delta to evaluate actions outside the Delta as part of the covered action's consistency determination – in exceedance of the statutory intent of the Delta Reform Act.

The problem of the overreaching regulatory approach displayed in the second draft goes beyond the exaggeration of legal authority – it will rapidly move the Council away from success, driving away from the table the very parties, across the stakeholder community, that are critical to the successful implementation of an effective and viable Delta Plan over the next several decades. Innovative and comprehensive solutions will be lost for fear of being defined as a “covered action” or “connected” to a covered action. The current draft Plan is duplicative of numerous efforts already performed by other state and local agencies related to furthering the achievement of the coequal goals in the Delta and as integral to California water management generally. The Council should heed the lessons from Calfed: it is neither heroic nor effective to develop a plan that is unmanageable and indefensible – and ultimately fails to move California forward.

The need for a plan that effectively furthers the achievement of the coequal goals is urgent. We cannot support the second draft Delta Plan, because, despite this urgency, it lacks the authority, focus, and structure necessary to do so. We encourage the Council to take stock of its current efforts, and re-assess the direction it is heading. In order to restore stakeholder confidence and maintain a collaborative process, the next draft plan must be more properly focused on the Delta and Suisun Marsh, and provide a suite of recommendations that will facilitate the achievement of the coequal goals while adhering to the direction and authorities provided to the Council by the Delta Reform Act.

Sincerely,



Timothy Quinn
Executive Director
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David Guy
President
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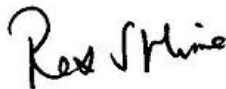
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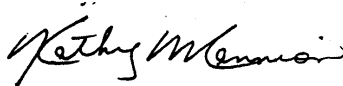
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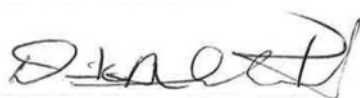
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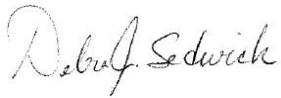
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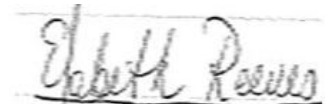
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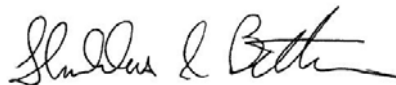
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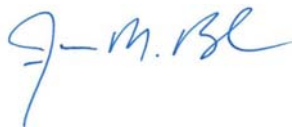
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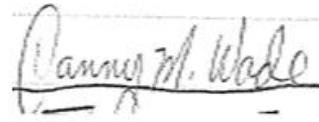
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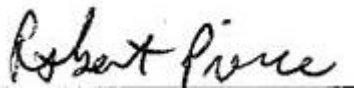
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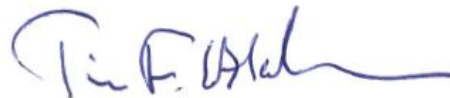
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