

May 6, 2011

Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, California 95814

**Sent via e-mail to Individual Council members
and Council Executive Director**

Re: Third Draft – Delta Plan

Dear Chairman Isenberg and Members of the Council:

The undersigned agencies, associations, and organizations have reviewed the Third Draft of the Delta Plan (Third Draft), which was released by the Delta Stewardship Council (Council) on April 23, 2011. While we acknowledge and appreciate that there have been some significant and important improvements to the Third Draft as compared to the Second Draft, many of the foundational concerns we identified in our April 8, 2011 coalition letter remain outstanding. We are particularly concerned with the provisions related to the excessive regulatory approach and the asserted jurisdictional reach of the Council.

The Delta Plan must use clear, precise and consistent language to effectively guide actions toward achieving the coequal goals of water supply reliability and restoring the Delta ecosystem. Language in the Third Draft remains confusing and problematic. Key terms are often used interchangeably and many of the ostensible “standards” proposed in the Plan (e.g., “reasonable” or “effective”) are vague at best. If the Plan is to be well understood, key terms must be clearly defined and requirements, especially related to covered actions, must be clarified. If such revisions are not made, “void for vagueness” will be a very real concern as the Council’s CEQA process goes forward.

1. *The Delta Reform Act Requires the Council to Prepare a Plan, Not Create a New Regulatory Agency*

The Delta Reform Act (SB X7 1) contemplates that the Delta Plan will serve as a “comprehensive, long-term management plan for the Delta.” Water Code §85059. The Council has yet to set forth a program that coordinates and synthesizes the efforts of local, state, and federal agencies in a way that achieves the coequal goals. To the contrary, the Third Draft, like its predecessors, is a long list of proposed regulatory policies that the Council intends to approve and implement. This approach is problematic for several reasons. First, and most fundamental, there is no Plan, but only a series of proposed regulatory acts. Second, this approach effectively ignores the good work in ecosystem restoration, water supply reliability, Delta preservation, and flood control being done by other agencies, and instead requires the Council to “reinvent the wheel” in the form of a wholly new regulatory apparatus. Third, the document lacks cohesion. To create a Plan, rather than a collection of scattered regulatory acts, the Third Draft must include the following three revisions.

First, the next draft Plan should more clearly describe its long-term vision for the Delta (pages 11 and 12); consistent with Water Code sections 85020 and 85300-85309. The emphasis must be on a comprehensive approach which includes the necessary investments in the Delta for improving statewide water supply reliability and reducing the multitude of stressors on the ecosystem. Moreover, this must be accomplished in a manner that protects the unique character of the Delta, including enhancing the Delta economy, protecting the quality of the Delta environment, and providing for public safety through improved flood protection. We suggest that the fourth draft identify the elements of a Delta solution that can be achieved by each of the milestones identified on page 13 of the current draft, as well as the “near-term” and intermediate term timeframe discussed at the Council meeting last week. In this way, the revised Delta Plan can identify targets associated with the implementation of the Delta Plan and ways to measure progress towards the coequal goals.

Second, the Delta Plan should identify all of the programs, policies and actions currently being undertaken by various organizations and agencies that could assist or interfere with achieving the coequal goals.

Third, the Delta Plan should fill in the gaps by identifying additional or modified programs necessary to reach the milestones for achieving the coequal goals. These three steps would comprise a very useful implementation approach for the Plan’s initial five-year period, after which the Council could assess progress and develop specific and more narrowly targeted and practical approaches.

2. *The Delta Reform Act Requires the Council to Coordinate With Existing Agencies, Not Regulate Them*

By including the Delta Reform Act in the 2009 comprehensive water package, the Legislature recognized that there are a myriad of local, state and federal agencies with independent jurisdiction and statutory directives in the Delta. The Legislature also recognized that there is a distinct lack of coordination amongst these agencies regarding actions taken in the Delta. The legislative purpose for establishing the Council against such a backdrop was to facilitate the integration and synthesis of these efforts to achieve the coequal goals, not to place those agencies under the regulatory umbrella of the Council or duplicate existing efforts.

The Council should help the approximately 200 agencies with authority in the Delta to work better together, not just become the 201st regulatory agency. If additional regulations had been the goal, the Legislature could have easily abolished or transferred those agencies’ authority and obligations to the Council. Instead, the Legislature recognized that achieving the coequal goals would only be possible if the Council provided the coordination amongst the other agencies necessary to resolve the problems facing the Delta, not duplicate those agencies’ efforts.

3. *The Delta Reform Act Requires the Council to Base the Delta Plan on Good Science*

Water Code section 85308(a) requires the Council to base the Delta Plan on the best available science and the independent scientific advice of the Independent Science Board (ISB). Unfortunately, the Third Draft, like its predecessors, does not comply with this direction. In its letter to the Council dated March 22, 2011, the ISB described the problems facing the Delta as “wicked” and admonished the Council for failing to use the best available science as the basis of its policies and recommendations to address those problems. The Third Draft failed to correct this noted deficiency. This represents another failure to satisfy the legislative direction in the Act. Water Code §85308(f).

More recently, in a report presented to the Council last week, the ISB noted that the framework and structure of the Third Draft is not consistent with providing the requisite foundation and parameters for an adaptive environmental management program that will be necessary to adequately address the problems facing the Delta. Specifically, the ISB report stated that “new issues of trust and trust-building processes, including adequate monitoring and transparency, need to be addressed to formally set the stage for a clear and successful transition to AEM [adaptive environmental management].” (*See* Agenda Item 12, Attachment 1 of the DSC April 28-29, 2011 meeting.)

We urge the Council to focus the component of the Delta Plan addressing “Science and Adaptive Management,” not on an “academic description” of adaptive management, but rather on developing procedures to assure all stakeholders that actions will only be included in the Delta Plan or modified over time based on full consideration of the latest scientific information. In addition, we encourage the Council to take advantage of the ISB’s expertise to develop methods and measures for evaluating whether actions undertaken in the Delta are successfully advancing the coequal goals.

Very truly yours,

Signatures on attached pages

cc: Members of the Council
Joseph Grindstaff



Timothy Quinn
Executive Director
Association of California Water Agencies



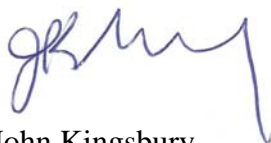
David Guy
President
Northern California Water Association



Byron Buck
Executive Director
State and Federal Contractors Water Agency



Allen Short
Coordinator
San Joaquin River Group Authority



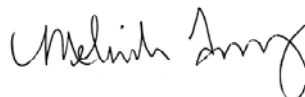
John Kingsbury
Executive Director
Mountain Counties Water Resources
Association



Richard Atwater
Executive Director
Southern California Water Committee



Dan Nelson
Executive Director
San Luis & Delta-
Mendota Water Authority



Melinda Terry
Executive Director
North Delta Water Agency



Mario Santoyo
Director and Technical Advisor
California Latino Water
Coalition



Ron Jacobsma
General Manager
Friant Water Authority



Michael J. Reagan
Chair, Board of Supervisors
Solano County



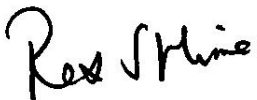
Paul Wenger
President
California Farm Bureau Federation



Valerie Nera
Policy Advocate
California Chamber of Commerce



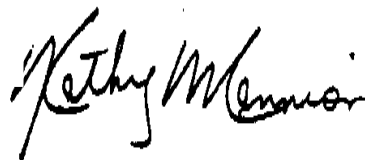
Richard Lyon
Senior Vice President
CA Building Industry Association



Rex Hime
President and CEO
California Business
Properties Association



Tom Nassif
President and CEO
Western Growers



Kathy Mannion
Legislative Advocate
Regional Council of Rural Counties