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www.mountaincountieswater.com

September 26, 2011

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

Re: The Fifth Staff Draft Plan Comments

Dear Chairman Isenberg and Members of the Council,

On behalf of the Mountain Counties Water Resources Association (MCWRA), I am writing to express our concerns with the Fifth Staff Draft Plan (Plan). MCWRA provides advocacy for the water interests of 61 members, including 21 water purveyors, four counties and one city.

In its current form, the Plan is vague and there are redirected impacts that will significantly affect the Sierra Nevada ecosystem, upstream water purveyors and their communities. The State has assured a future for the Areas of Origin as water rights were filed by the State on behalf of the Areas of Origin in the 1920's. These rural areas need this assurance in the Plan for long-term economic viability.

There are two recommendations that the Council should remove from the Plan. WR R5 (page 84) and ER P1, item 2 (page 86 & 114).

WR R5 implies that senior water right holders could be forced to implement costly alternatives to change a point of diversion or increase needed water supplies, which seems to violate Water Code Section **85031**. (a) *"This division does not diminish, impair, or otherwise affect in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections, including, but not limited to, rights to water appropriated prior to December 19, 1914, provided under the law."*

If implemented, it would create a future of uncertainty and may very well cripple many of the smaller water purveyors with water moratoriums, and/or economic and financial hardships.

ER P1 states that the Council could recommend that the State Water Resources Control Board (SWRCB) cease issuing water rights permits if the SWRCB has not completed the Delta regulatory flow objectives by June 2, 2014 and the upstream high-priority tributaries non-regulatory flow criteria by June 2, 2018.

- Executive Members
- Amador Water Agency
 - Calaveras County Water District
 - City of Folsom
 - County of Calaveras
 - County of Placer
 - El Dorado County Water Agency
 - El Dorado Irrigation District
 - Foresthill Public Utility District
 - Georgetown Divide Public Utility District
 - Nevada Irrigation District
 - Placer County Water Agency
 - South Tahoe Public Utility District
 - Tuolumne Utilities District
 - Utica Power Authority

If by June 13, 2013, the SWRCB indicates that the updates cannot be achieved by the suggested timeframes, the Council will consider different approaches and may amend the Delta Plan to address flows with regard to covered actions and consistency with the Delta Plan.

This recommendation is unnecessary because the SWRCB is already obligated to evaluate the environment, habitat and public interests in their water rights determination. Further, it was very valuable that the Council invited the State Board representative, Les Grober, Environmental Program Manager, to update the Council on the State Board activities at the September 23, 2011 DSC meeting. It was very clear that the DSC imposed 2014 deadline will not be met due to limited State Board resources. If implemented, ceasing issuing water rights permits will have unintended consequences, such as viable projects held hostage that could lead to moratoriums and water shortages and would undermine the Councils' goal to achieve the coequal goals. It is also unclear in the Plan if the non-regulatory flow criteria on the high priority tributaries will later become regulatory.

The Delta Reform Act of 2009 does not give the Council broad regulatory power over use of the State's water resources and its attempt to regulate actions outside the Delta exceeds its statutory authority. However, the Plan seeks to dictate local water management decisions outside the Delta, which is an overreach of authority, undermines the local water management stewardship role and is a shift from the legislature's intent of the Delta Reform Act.

Covered Actions: At the September 15, 2011, the Council held a workshop on "Covered Actions & Governance". Several speakers addressed the continuing concern from water purveyors within the Delta **Watershed** over the Plan's description of "covered action." You will recall that the Association also brought up this issue at the August 26th Delta Stewardship Council meeting. At the workshop staff stated clearly for the first time that diversions of water within the Delta **Watershed**, including changes to water rights for such diversions, are **not** considered by the Council to be "Covered Actions" subject to consistency requirements with the Plan. While I appreciate Keith Coolidge's confirmation letter, the Plan should include a clarifying statement for those not copied on Keith's letter (attached).

We strongly urge that the Final Plan include a clarifying statement, possibly within or preceding Policy WP P1 (as referenced on page 82 of the Draft Plan) that reads:

A "covered action" does not include any action granting, administering or changing a water right permit or license to divert water within the Delta watershed but wholly outside of the statutorily defined Delta, or any action to exercise a water right or to use water within the Delta watershed but wholly outside of the statutorily defined Delta, unless the water is conveyed through the Delta.

Despite this clarification to narrow the definition of "Covered Actions", there is still much uncertainty such as the meaning of the statement ["underlying action necessitating the new or changed water right can be a covered action (provided it otherwise meets the statutory definition)]. I urge you to schedule an additional workshop on "Covered Actions" as Ms. Gray suggested on September 15, 2011.

On September 20, 2011, the DSC held a workshop on the Finance Plan, which is of high concern for all of the reasons so stated at the workshop. The recommendations in Chapter 9 on how and who should pay to support the coequal goals are extremely premature. The DSC should first create a Business Model that reflects specific projects, a needs assessment and cost/benefit analysis, along with the science behind each project. In as much as the Fifth Staff Draft Plan seems to miss the mark to meet the coequal goals makes it premature to establish recommendations that would support the Plan.

Lastly, as an active member of the Ag/Urban II coalition convened by ACWA, I respectfully urge the Council to consider the proposed Alternate Delta Plan. The Alternate Plan:

- Meets the intent of the 2009 legislation.
- Will allow for improvements in water use efficiency in a locally cost effective manner - statewide.
- Can be implemented right now without any additional authorities or legislation.
- Meets the prime objectives of the DSC Plan; it will allow for the achievement of the Co-equal goals.
- Is consistent with the responsibilities, duties and authorities of existing state and local agencies.
- Is complimentary to the DBHCP process and not a hindrance to that process.
- Is supported by the vast majority of local agencies and governments who must ultimately carry out many of the water and resource management actions contemplated in the legislation.
- Provides regulatory certainty that will encourage not discourage capital investment.

I encourage Council members and staff to work with members of the Ag/Urban coalition to find the best options to achieve the coequal goals.

Thank you for your time and opportunity to provide these comments. Please contact me at 530.957.7879 if you have any questions.

Sincerely,



John Kingsbury
Executive Director

Mountain Counties Water Resources Association

c: MCWRA Board of Directors
Tim Quinn, ACWA Executive Director