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In reply refer to: L2013-001

January 10, 2013

VIA EMAIL AND U.S. MAIL

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

Re: Final Draft Delta Plan

Dear Chairman Isenberg and Members of the Council:

I am writing on behalf of El Dorado Irrigation District to comment upon the Final Draft Delta Plan. On September 12, 2012, the District submitted a comment letter on the redline version of this draft, prior to the Commission's consideration the following day. In reviewing the Final Draft released thereafter, it does not appear that any changes were made in response to those comments. Much of what follows, therefore, reiterates our prior comments. The District hopes that with more time for deliberation, the Council will see fit to make the changes we recommend.

As an active member of the Association of California Water Agencies, the North State Water Coalition, the Mountain Counties Water Resources Association, and the Regional Water Authority, the District also endorses and adopts any comments those organizations submit on the Final Draft.

Chapter 3 -- A More Reliable Water Supply for California

At page 87, the Final Draft states that the 500,000 acre-feet per year of trans-Delta exports by the Hetch-Hetchy and East Bay Municipal Utility District water systems represent about 1.6 percent of "the flow from the Delta watershed." In the next paragraph, in-Delta uses are expressed as a percentage of "inflows to the Delta." It is unclear whether these metrics are the same. Regardless, measuring the depletions of the Hetch-Hetchy and Mokelumne River export projects in this way understates their relative magnitudes. Those magnitudes would be better expressed as a percentage of all upstream diversions in the Delta watershed.

At page 108, in the first paragraph, second sentence of Policy WR P1, the words "per-capita" should be inserted before the phrase "amount of water used." Agencies like the District may well increase their ***total*** water used from the Delta watershed to serve growing populations over time, but if they show a ***per-capita*** reduction, then they are effectively reducing their reliance upon the Delta. The other metric offered in this policy, which measures ***percentage*** of water used from the Delta watershed, reflects this understanding, and the two metrics should be consistent.

At page 109, the final sentence of Recommendation WR R4 states that all Urban Water Management Plans and other, similar plans "should include a plan for possible interruption of Delta water supplies up to 36 months due to catastrophic events." This recommendation is obviously inapplicable to agencies like the District that do not take any of their water supplies from the Delta. The recommendation should be modified to clarify that this recommendation applies only to agencies that take some portion of their water supplies from the Delta.

At page 116, the second bullet under "Issues for Further Evaluation and Coordination" specifies performance measures for reduced reliance on the Delta. The first performance measure should be modified to insert "per-capita" in the same way and for the same reasons as discussed above in connection with Policy WR P1.

At page 117, the Final Draft recommends that the Delta Watermaster's existing assessment of potential illegal water diversions in the Delta be expanded to the entire Delta watershed. Regardless of its relative merits, this recommendation should be deleted, because such an assessment would clearly exceed the limited legal authority granted to the Watermaster by Water Code section 85230.

Chapter 8 -- Funding Principles to Support the Coequal Goals

At page 308, the Final Draft states that user fees "are essential and should be established to support the coequal goals and the implementation of the Delta Plan." It is unclear whether the Council intends that these user fees would be imposed only upon the beneficiaries or stressors associated with ***projects undertaken to implement the Delta Plan***, or if the Council intends such fees to be imposed *a priori* and broadly, as a free-standing funding source that can then be accessed for Plan implementation. Appendix O suggests that it is the latter. If so, it is the District's opinion that this intention exceeds the legal jurisdiction granted to the Council by the legislature.

Appendix O -- Funding and Financing Options

Page O-3 includes a discussion of diversion fees, including factors that limit their feasibility. Besides the factors listed, the practical and legal constraints imposed by Proposition 26 should be discussed.

At page O-4, this appendix discusses hydropower fees. Because hydropower is a non-consumptive use and all sizeable reservoirs used for hydropower in California are also associated with other beneficial uses, it would be questionable at best to assert that hydropower operations benefit from or stress the Delta, or benefit from any Delta Plan implementation actions. Further, as this discussion rightfully notes, the state fees currently collected on licensed hydropower projects are dedicated by law to the State Water Resources Control Board's Water Rights Program -- and the validity of the state's water rights fees continues to be the subject of legal challenge. For all of these reasons, hydropower fees should not be discussed in Appendix O as a possible funding source.

Proposition 26 is mentioned in the discussion of other stressor fees that runs from pages O-4 to O-5. The text correctly notes that under Proposition 26, any stressor fees could only be spent for a very limited range of activities, but it omits another important Proposition 26 constraint -- the need to prove that the fee revenues do not exceed the reasonable costs of the corresponding benefit provided.

The discussion of water marketing fees at page O-5 is unclear. Would such fees apply to all water transfers, or just transfers through the Delta? As the text implies, water marketing is already very difficult in California, notwithstanding numerous state policies that favor it. Imposing an additional fee on water transfers further inhibits achievement of those state policies, as well as the legislature's and the Delta Plan's policies of water use efficiency. Imposing a fee would also, for most potential transfers that do not involve the Delta, contradict the goal of improving regional self-reliance. Water marketing remains a valuable but underutilized tool that the Delta Plan should seek to incentivize, not further burden with additional fees and costs.

A statewide water resources fee is discussed at page O-5. As envisioned, it would be imposed at the retail level, yet collected and administered by the State Board of Equalization. Its proceeds would fund statewide, interregional, and regional projects. Frankly, this vision is so replete with administrative, practical, political, and legal pitfalls that it is difficult to critique it succinctly. Here are a few questions: Would the legislature impose this fee, or would it simply mandate it and leave it to local agencies to impose (and take public blame for)? How would Proposition 26 compliance occur? Would Proposition 218 compliance be necessary, and if so, how would it occur? Why is a "top-down" approach, in which the state extracts money at the retail level, and then requires local agencies to compete to recover a fraction of it for regional projects, preferable to a "bottom-up" approach, in which local agencies independently take all necessary actions to finance and build their own projects, individually or cooperatively?

Both the water resources fee and the public goods charges discussed immediately below it seem intended primarily to fund activities and projects with statewide benefits. Rather than brainstorming new fees and contorting legal principles governing fees for these purposes, the Delta Plan and its financing plan should advocate that those costs be paid out of the state's general fund and supported by the state's broad power to tax. Appendix O should be revised to delete the discussions of the water resources fee and the public goods charge, and instead forthrightly discuss raising sufficient tax revenue (if the legislature or the voters will allow it) to provide funding from the state's general fund.

We appreciate this opportunity to provide the District's comments on the Final Draft Delta Plan. We hope they will prove helpful to the Council.

Sincerely,

Thomas D. Cumpston

Thomas D. Cumpston
General Counsel

TDC:pj

cc: Board of Directors
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