



January 14, 2013

VIA E-MAIL: [recirculateddpeircomments@deltacouncil.ca.gov](mailto:recirculateddpeircomments@deltacouncil.ca.gov)

Mr. Phil Isenberg, Chair  
Mr. Chris Knopp, Executive Officer  
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Gentlemen:

We have reviewed the November 2012 Final Draft Delta Plan (Plan) and Recirculated Volume 3 of the Draft Environmental Impact Statement for the Delta Plan (RDEIR). We appreciate the opportunity to comment on the Plan and RDEIR and submit the following comments on those documents.

*Comments on Final Draft Delta Plan*

We commend the Council's efforts to generally improve the Plan through the various drafts. With respect to the ongoing discussion around the policy on reduced reliance on the Delta and improved regional self-reliance, however, we are compelled to reiterate our concerns with the apparent confusion about how "reduced reliance" applies to water diversion and use outside the Delta.

North State water suppliers and users upstream of the Delta--in both urban and rural areas--are leaders in providing water for diverse beneficial purposes and have demonstrated success in implementing various programs over the past several decades that are truly improving regional self-reliance. Upstream water users are committed to "improve [their] regional self-reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts" as called for in Water Code §85021. We appreciate the Council's recognition on page 56 of the Plan that upstream projects are not within the Plan's regulatory scope.

We also appreciate the Council's continued recognition of the American River Integrated Regional Water Management Plan (IRWMP) as a regional success story in reducing reliance on Delta Water on page 102 of the Plan. We would, however, like to take this opportunity to remind you that American River water users are not alone in their success among water users upstream of the Delta and in preparing IRWMP's. Throughout the North State, water agencies and their ratepayers have been engaged for many years in progressive water management, including water conservation and recycling and conjunctive use activities

that meet the “reduced reliance” goals. In addition to the various IRWMP’s, this is also shown in “Instream Flow Requirements in the Sacramento River Hydrologic Region” (September 2011), which has previously been provided to the Council and is attached for convenience. These success stories are all consistent with the Delta Plan and should be acknowledged as such. We further appreciate that the Plan has retained the discussion of “more natural functional flows” (Plan, pp. 141, 155), which is an improvement over the discussion of the problematic “more natural flows” that several drafts contained.

The Plan, however, still retains language in Policy WR P1 regarding reduced reliance on the Delta and improved regional self-reliance (Plan, p. 108), and the added Appendix P that attempts to explain how agencies should implement the goal of “reduced reliance.” Beside the fact that Appendix P is confusing and ambiguous, the Council continues to misconstrue both the scope of its jurisdiction and its core statutory mission of working with state agencies to coordinate Delta policies and actions.

Despite our continual comments as various drafts have emerged, we believe the Plan confuses and misconstrues the way “reduced reliance” applies to water diversion and use outside of the legal Delta, yet in the Delta watershed. Policy WR P1 continues to define success as the demonstration of “a significant reduction in the amount of water used, or in the percentage of water used, from the Delta watershed.” (Plan, p. 108.) As we have stated in numerous letters and comments (See e.g., our September 11, July 11, and June 12, 2012 letters), this simply does not make sense for water management in areas upstream of the Delta and it is not workable for water suppliers we represent in the Delta watershed, which are completely dependent on local water supplies from the watershed. Moreover, WR P1 is inconsistent with 1) Water Code §109 and Water Code §85031(a), which ensure that water rights and area of origin provisions will not be impacted in any manner; and 2) the co-equal goals in Water Code §85054 that calls for “providing more reliable water supply for California,” including areas upstream of the Delta.

We again urge the Council to reconsider the way it approaches areas upstream of the Delta and clarify the language improperly suggesting that success in implementing this policy requires reduced reliance on the Delta in areas in the Delta watershed, but outside the Delta.

#### *Recirculated Volume 3 of Draft EIR for Delta Plan*

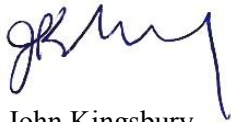
The RDEIR continues to suffer from the same deficiencies as the original DEIR. For example, at page 3-9, the RDEIR states that the SWRCB’s implementation of new Delta flow objectives as urged by the Delta Plan “to place more emphasis on creating a natural flow regime in the Delta” will have a less than significant impact on water supplies because of the “availability of alternative water supplies and continued availability of Delta water supplies.” There is no discussion at all of what such objectives actually could do to water supply reliability, for example, the imposition of severe reductions in storage in Folsom Reservoir that would result in that reservoir reaching dead pool in dry years, essentially cutting off water supplies to significant urban populations in Sacramento, Placer and El Dorado Counties. This point has been supported with substantial evidence provided to the Council by MBK Engineers, which shows that existing Delta flow standards in the existing biological opinions for Delta salmonids and smelt could result in such impacts. Similar information has been presented in the workshops held by the SWRCB this past fall on Delta flow issues. In spite of the absence in the RDEIR and previous draft EIR of any evidence to the contrary, the RDEIR at page 3-9:25-31, claims that the Council’s conclusions are supported by substantial evidence that enforcement of “reduced reliance” would have less than significant impacts. Worse, this conclusion is supposedly reached because “there is not available information to indicate that another finding is warranted or supported by substantial evidence.” That is simply false and relying on such statements renders the RDEIR wholly inadequate under CEQA.

The RDEIR also just assumes that new flow objectives adopted by the SWRCB would benefit all special-status fish. At page 4-14, the RDEIR states that “[t]hese flow requirements would take into consideration the flow needs of special-status fish species as well as riparian vegetation. These flow modifications would represent a beneficial change for special-status fish . . . .” Again, while it may be permissible for

the Council to use qualitative analyses in the RDEIR, the Council cannot willfully ignore the impacts that we have demonstrated with substantial evidence could occur if the desired project were actually implemented. These impacts were described in more detail in our comment letter submitted to the Council concerning the initial DEIR and in Yuba County Water Agency's similar comments supported by the work of its consultant, Steve Grinnell. Thus, the RDEIR's discussion on this subject also is contrary to both the substantial evidence presented directly to the Council and to the evidence presented to the SWRCB that is publicly available to and known by the Council and its staff. Like the original DEIR, the RDEIR continues to violate CEQA.

Again, we appreciate the opportunity to submit comments to the Council on the Final Draft Delta Plan and Recirculated Draft EIR. Please contact us if you have any questions about our comments or would like to discuss them further.

Sincerely yours,



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