CALIFORNIA FARM BUREAU FEDERATION
OFFICE OF THE GENERAL COUNSEL
2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 · PHONE (916) 561-5665 · FAX (916) 561-5691

Sent via U.S. Mail and E-Mail
deltaplancomment@deltacouncil.ca.gov
joe.grindstaff@deltacouncil.ca.gov
terry.macaulay@deltacouncil.ca.gov

June 24, 2011

Chairman Phil Isenberg and Members of the Council
Delta Stewardship Council
650 Capitol Mall
Sacramento, CA 95814

Re: Delta Plan – Fourth Staff Draft

Mr. Chairman and Members of the Council:

The California Farm Bureau Federation ("Farm Bureau") has reviewed the fourth staff draft of the Delta Plan. As the Council is aware, Farm Bureau has commented on all three previous drafts of the Delta Plan, and appreciates the Council's consideration of those comments and their incorporation into succeeding drafts, where possible. From the outset, it should be stated that we believe that the fourth staff draft shows considerable improvement over the preceding drafts. Nevertheless, it is apparent that a number of very large issues remain on the table for California agriculture, and for this reason Farm Bureau President Paul Wenger wrote to you on June 13, 2011 to embrace consideration of an Alternative Delta Plan, as presented by the agricultural/urban coalition of water users. Notwithstanding the belief that an alternative to the Council's current trajectory must be considered, we respectfully present here the following written comments to the Council for its consideration of the fourth staff draft of the Delta Plan.

The California Farm Bureau Federation is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing approximately 76,500 members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources. As such, Farm Bureau has long been involved in policy processes related to its aim of securing and protecting an affordable and reliable supply

NANCY N. MCDONOUGH, GENERAL COUNSEL
ASSOCIATE COUNSEL:
CARL G. BORDEN · KAREN NORENE MILLS · CHRISTIAN C. SCHEURING · KARI E. FISHER · JACK L. RICE

of water for farmers and ranchers, and has most recently committed substantial resources to processes such as Delta Vision and the Bay-Delta Conservation Plan ("BDCP").

Farm Bureau recognizes the magnitude of the water crisis which is upon California, as the population of the state tends ever-upward toward 50 million people at the same time a policy overlay of environmental ambitions is implemented. Both factors are exacerbating the crisis on the demand side, while strategic planning and consensus on the supply side seem to be absent and the interest groups remain in zero-sum mode. Against this backdrop, the Council is tasked by the Legislature to develop a Delta Plan which achieves the co-equal goals of restoring both the Delta ecosystem and a reliable water supply for California, as well as a suite of other goals – including the protection and enhancement of the agricultural values of the Delta.

It is an incredible task, but the Council will fail in this tasking if it pursues incredible solutions. Years and years of conflict over the Delta are nothing if not incredibly frustrating, but a maverick search for new paradigms in response will break its own back on ineluctable human needs and simple politics. Rather, the Delta Plan simply must reflect a measured and realistic approach toward water supply planning within the context of environmental objectives. Farm Bureau urges the Council to consider the following practical points as it looks for durable solutions:

1. Legal Doctrine Is Not A Quick Fix.

The Delta Plan should not rely upon the siren call to deploy either the "reasonable use" doctrine or the "public trust" doctrine to solve California's water problems through the release of large amounts of applied water to instream flows. The commands of Article X, section 2 of the California Constitution are mixed, construed by the courts on an *ad hoc* basis, and as easily turned around to test the efficacy of environmental flows as any other beneficial use of water. The "public trust" doctrine is even more uncertain, being but one step removed from law review articles. Both are chance bets to rely upon as part of a bricks-and-mortar solution set for California's water crisis, and would commit the future of a large portion of California water policy to a string of courtrooms.

2. The Delta Flow Criteria Fail In Context.

The Delta Plan, in numerous places, references the Delta flow standards for fish that were explored by the State Water Resources Control Board in 2010 as an exercise of the Legislature. No balancing of the needs of other beneficial users of water entered into that calculation, and by the board's own account the total estimated water supply impact of implementing those standards would have been in excess of 5 million acre-feet of water. Given the amount of scientific conjecture that went into the 3 days of testimony that led to those "standards", a large amount of water denied to other users in order to implement those standards would probably itself be subject to the inquiry of "reasonableness" if not demonstrably effective in restoring fisheries.

As a particular point of draftsmanship, it should be noted that the "problem statement" on setting flows in the Delta is asymmetric. It states that "every action that potentially increases the amount of water diverted from or moved through the Delta is vulnerable to legal challenge over the question of whether sufficient flows are available to protect and restore the environment" until Delta flow standards are adopted, but assumes away the legal risk of actually adopting and implementing flow standards *in the first place* that would constrain vested water rights without actual demonstrative positive, reasonable, beneficial effect.

3. Storage.

The fourth draft contains improved discussion and recommendations on expanding statewide water storage, a critical need for a California that continues to outstrip its water wherewithal without planning forward on supply. Farm Bureau appreciates the draft plan's recognition of the potential recapture of urban runoff. Farm Bureau also encourages the Council to make the recommendations in the Delta Plan even more robust with respect to new surface storage projects, and believes the Council should recognize that a planning horizon of 5 to 10 years is neither hopelessly distant nor any reason not to more fully explore and encourage these projects within the pages of the Delta Plan. Additionally, Farm Bureau believes the Delta Plan should recognize that the new surface storage projects currently being proposed are not expected to have the on-stream impacts of previous projects.

Farm Bureau appreciates the draft plan's recognition of climate change as a driver in the need for additional water storage, and also the plan's recognition that additional surface storage assets will allow for improved management of environmental water flows, their timing, and the temperature in the river system. Finally, the statement of need for interim steps in water storage that can be accomplished in the short and medium term, at the same time that long-term improvements are planned and implemented, is a valuable and necessary recommendation.

4. In-Delta Water Quality.

As mentioned above, Farm Bureau believes that restoration of water supply reliability to service areas south of the Delta through an improved conveyance regime is a necessity for the health of California's agricultural economy. In reaching that objective, Farm Bureau has been consistent in advocating for design and operational parameters which are protective of water quality standards for in-Delta beneficial uses, including agriculture. As such, discussion of the environmental goal of restoring a more "natural flow regime" in the Delta, including the movement of isohalines up and down stream, must account for the maintenance of water quality standards for agriculture.

The draft plan's recognition of the need to control wastewater discharges and urban runoff as an "other stressor" in the Delta is a valuable point, as is the recognition of emerging research on the role of nutrients and their food web effects on the Delta's health.

5. Groundwater.

Farm Bureau believes that the circumstances of groundwater management recommend for local and regional efforts to manage that resource. DWR has recognized the problem of groundwater overdraft as a generalized statewide phenomenon and as a particularized problem in a number of individual basins, but the problem remains susceptible to local and regional groundwater management. Farm Bureau believes the Council should delete its draft recommendation that the State Water Resources Control Board pursue Water Code section 275 actions within specified basins as unnecessary and otherwise a field not committed to the Board's expertise by statute. Further, the attempt to shoe-horn such actions into the authority as to groundwater quality found in Water Code sections 2100-2101 is legally questionable and should also be stricken.

6. The Future of California Agriculture

Except as a target, the fourth draft of the Delta Plan contains scant reference to a vision for the future of California agriculture. This is unfortunate, since California's farmers and ranchers are incredibly productive and the vibrant California agricultural economy is the nation's strongest. As I have alluded to previously with the Council, it is environmentally myopic to offshore large swaths of California's agricultural production through misplaced and draconian water policy choices, as there are few alternative agricultural venues which regulate farming's "footprint" as closely as California does. Shunting the environmental impacts of our food supply to distant locations is probably the least wise environmental policy choice we can make.

CFBF looks forward to further engagement on the Delta Plan as it evolves, and to working with the Council on the many pressing issues that are before us all.

Very truly yours,

Christian C. Scheuring
Managing Counsel

CCS/dkc

cc: Jerry Meral, Bay-Delta Conservation Plan, Resources Agency
Charles Hoppin, Chairman State Water Resources Control Board