BOARD OF SUPERVISORS

ADMINISTRATION CENTER
25 COUNTY CENTER DRIVE - OROVILLE, CALIFORNIA 95965
TELEPHONE: (530) 538-7224

BILL CONNELLY
First District

LARRY WAHL
Second District

MAUREEN KIRK
Third District

STEVE LAMBERT, Chair
Fourth District

KIM K. YAMAGUCHI
Fifth District

January 24, 2012

Mr. Phil Isenberg, Chair
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

RE: Draft Environmental Impact Report

Dear Chairman Isenberg and Council Members:

Butte County appreciates the opportunity to comment on the Delta Plan Draft Environmental Impact Report (DEIR) released on November 4, 2011. In providing comments, Butte County acknowledges the hard work done by the Delta Stewardship Council (DSC) and staff in developing a Delta Plan. The DEIR identified the Fifth Staff Draft Delta Plan as the Project Plan. Butte County finds that the DEIR fails to fully assess potential impacts to the Delta watershed, is inconsistent with the Project Plan, and lacks adequate clarity. The Project Plan contains significant areas of concern for Butte County.

The Delta Reform Act of 2009 (SB1X 1, Simitian) created a once-in-a-generation opportunity to resolve California's water challenges through the coequal goals of "*providing a more reliable water supply for California and protecting, restoring and enhancing the Delta ecosystem.*" The DSC's Delta Plan will be a driving force for a long-term solution for the Delta. Unfortunately, at a time when the DSC could provide clarity and leadership on resolving critical issues facing the Delta and water supply reliability based on its legislative charge, the Project Plan and the DEIR are inconsistent, incomplete and unclear. Unless these shortcomings are resolved, the pattern of failed attempts to resolve the Delta will continue.

Although the Project Plan (i.e., Fifth Staff Draft Delta Plan) is an improvement from the previous drafts in some aspects, it remains inconsistent with legislative authority given to DSC and will lead to negative impacts to the Delta watershed. Portions of the Project Plan accurately articulate that the legislation did not authorize or intend that the Project Plan would affect water rights or otherwise regulate or impact areas upstream of the Delta. However, Project Plan includes opinionated statements such as those found on page 6 that disagree with the legislative charge given to the DSC. Another example can be found on page 56, where Project Plan states, "*Actions in the secondary planning area*

may significantly impact the Council's ability to achieve the coequal goals." Butte County is concerned with the inclusion of such policy statements that conflict with the Delta Reform Act.

Of most importance to the Delta watershed is the focused attention of the Project Plan on the development, implementation and enforcement of updated flow requirements for the Delta and high priority tributaries (Policy ER P1, Section 4 page 86). The Project Plan establishes recommendations that will regulate and impact upstream areas. For example, Policy ER P1 states, "*the DSC will consider and may amend the Delta Plan to achieve progress on the coequal goals in place of updated flow requirements. For example, the Delta Stewardship Council could: .... 2. Recommend that the SWRCB cease issuing water rights permits in the Delta and the Delta watershed (or, if the absence of flow criteria is specific to one or more of the major tributaries, then the recommendation could be on the impacted areas).*" This policy sends a clear and powerful message to the SWRCB regarding the DSC's intent that areas upstream of the Delta should be part of the enforceable regulatory framework. This is not consistent with the intent of the statute.

The Project Plan would result in unanticipated impacts upstream of the Delta. Decreased diversions in the Delta watershed would cause an increased demand on the groundwater basin. Butte County has an agricultural-based economy that is dependent upon long standing water rights and a healthy groundwater basin. The local streams and creeks provide suitable fish habitat for the region. As the DEIR briefly states in Section 22, the groundwater basin in the Sacramento Valley is in delicate balance with some areas showing early signs of decline. Disruption of this balance may devastate the agricultural industry and ecosystem north of the Delta. Butte County shares the concerns submitted by Northern California Water Association (NCWA) and others regarding impacts to the region from the flow criteria and the bias of the DSC on flow criteria over a broader approach to address ecosystem stressors. The DEIR fails to either acknowledge or assess these impacts that could result from the Project Plan.

Butte County is not alone in expressing concerns over the inconsistencies in the Project Plan. The Delta Independent Science Board in its comments on the Fifth Staff Draft Delta Plan wrote, "*the Council has deferred to the authority of the SWRCB in this matter and the SWRCB is developing flow standards in consultation with DWR and with BDCP. As sensitive as the issue is, however, we would like the Council to be bolder about its expectations.*" Butte County agrees. The DSC should not advocate for enforceable flow standards on one hand and be silent on how those standards conform to the framework of the Delta Plan on the other. The DSC should include a policy stating that the implementation of flow standards for the Delta should not be met through changes in water rights or diversions from the Delta watershed. Silence on the part of the DSC would invite inconsistency with the DEIR and, ultimately, another round of conflict over the Delta.

The enforceable flow criterion is one of many inconsistencies between the Project Plan and the DEIR. The DEIR fails to take into account any impact that the Project Plan may have to the northern portion of the Delta watershed. The Project Plan is either silent on the limitations of regulatory actions of other agencies or discretely encourages actions by those agencies outside of the Delta. Shifting impacts from the statutory Delta to areas upstream could destroy the local economic base and disrupt

the fabric of local communities. If the Delta Plan remains open to allowing actions that could impact the Delta watershed, then the DEIR must assess the socioeconomic, environmental, and recreational impacts as well. The DEIR cannot ignore the impacts, direct and indirect, on areas outside of the Delta based on the Project Plan.

Butte County maintains that the Project Plan must emphasize that a healthy and vibrant north of Delta watershed is an important foundation for achieving the coequal goals. The DEIR describes much of the Sacramento Valley as having a relatively healthy ecosystem and groundwater basin. A disruption to the delicate balance to the north of Delta watershed would not only be disastrous for the region but will undermine any likelihood of achieving the coequal goals. The protection of the Delta watershed and area of origin water rights are foundational to a healthy Delta. The Delta Plan must reference and acknowledge Water Code 85031, which states, "*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. This division does not limit or otherwise affect the application of Article 1.7 (commencing with Section 1215) of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462, and 11463, and Sections 12200 to 12220, inclusive.*" Butte County believes that honoring area of origin water rights is consistent with the regional sustainability component of the Delta Reform Act and a foundational element to California's water future.

In conclusion, the Project Plan must remain clear and consistent in regards to its statutory responsibility and based on scientific evidence. As the Fifth Staff Draft Delta Plan states, "*Despite the cheerful optimism of past governance efforts to assert that when it comes to matter of the Delta 'we can all get better together,' the Council has reached another conclusion. True effort to achieve the coequal goals will in fact bring tradeoffs that will be neither popular nor clear-cut.*" That aptly crafted phrase should also be honored by the DSC and result in a Delta Plan that conforms to its legislative mission and authority.

Sincerely,

Steve Lambert, Chair
Butte County Board of Supervisor