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January 31, 2012

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

**Re: Comments on Delta Plan Draft Environmental Impact Report (DEIR)**

Dear Chairman Isenberg and Members of the Council:

On behalf of the thirty-one member counties of the Regional Council of Rural Counties (RCRC), I appreciate the opportunity to comment on the Delta Plan DEIR released on November 4, 2011. As you know, RCRC has submitted extensive comments on the previous draft versions of the Delta Plan, as well as joining as a signatory on two Ag-Urban Coalition letters. RCRC would like to once again express our appreciation for the Delta Stewardship Council's extension of the comment period for the Delta Plan DEIR to February 2, 2012.

As RCRC noted in our comments on the Fifth Staff Draft of the Delta Plan (Proposed Project), we continue to have serious concerns with the document. As to the DEIR, RCRC is also very concerned with the approach taken in the environmental review. RCRC submits the following comments on select key areas of concern for your consideration:

**Delta Plan.** Like the Proposed Project, the DEIR lacks adequate specificity. As RCRC has commented previously, the Proposed Project does not contain an actual "plan" to meet the coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The 12 proposed regulations and 61 proposed recommendations contained in the Proposed Project are not linked together in a cohesive manner, and are not an adequate substitute for a plan.

The Proposed Project/DEIR should include specific near-term, mid-term and long-term actions, to be taken in an orderly progression, that advance the coequal goals. RCRC encourages the Delta Stewardship Council to review the Ag-Urban Alternate Plan (as submitted by the Ag-Urban Coalition) as the Ag-Urban Alternate Plan contains specific actions to be taken in a sequential manner, over time, to meet the coequal goals.

As RCRC has noted in previous comments to the Delta Stewardship Council, the Proposed Project/DEIR should include coordination among agencies and the

identification of opportunities to integrate programs as envisioned by the Delta Reform Act.

**Flows.** The strong bias in the Proposed Project/DEIR for flows i.e. “more natural flow regime” as the primary tool to address ecosystem management, as opposed to the utilization of a combination of management tools to address all stressors, is of particular concern to RCRC member counties upstream of the Delta. The Proposed Project’s emphasis on flows disregards existing science which shows that there are multiple stressors impacting the health of the Delta ecosystem.

As noted in previous comments, RCRC believes that if the Proposed Project continues to promote a more natural flow regime then the DEIR must analyze and assess the impact (direct and indirect) on areas upstream of the Delta to ensure that there is no redirection of unmitigated significant impacts to upstream beneficial uses in the areas/counties/watersheds of origin. The DEIR does not contain such an analysis.

The Proposed Project includes deadlines that the State Water Resources Control Board “should” meet in establishing updated flow objectives and flow criteria. As noted in previous comments, the deadlines contained in the Proposed Project/DEIR are unlikely to be met, a fact acknowledged in Appendix C, Page 4, Footnote 7 relating to implementation through water right hearings, the most likely scenario.

**Coequal Goals.** A fundamental flaw in the Proposed Project/DEIR is that it does not define what it would mean to achieve the coequal goals. As a result the DEIR does not contain the quantitative analysis necessary to adequately evaluate the Proposed Project and the Alternative Projects, and reach any conclusions.

**Proposed Project.** The Proposed Project/DEIR contains a number of conflicting provisions from one chapter to the next. It is important that the next draft of the Proposed Project/DEIR resolve these differences.

The DEIR states that the Proposed Project is “the Environmentally Superior Alternative”, but it does not contain the quantitative analysis necessary to adequately analyze if, and how, the Proposed Project will meet the co-equal goals of “providing a more reliable water supply for California and protecting, restoring and enhancing the Delta ecosystem”. In short, the conclusion reached in the DEIR does not appear to have a factual basis.

**Alternative Plans.** In a letter dated June 13, 2011, RCRC urged the Delta Stewardship Council to include for consideration and further analysis in the DEIR the Alternate Plan submitted to the Delta Stewardship Council by the Ag-Urban Coalition. RCRC subsequently expressed appreciation in our June 30, 2011 comments for the action taken by the Delta Stewardship Council to include the Ag-Urban Alternative Plan in the DEIR as one of the alternatives to be considered. RCRC is familiar with the proposed Ag-Urban Alternative Plan, and the good-faith effort to develop a widely-supported proposal that would further the coequal goals - and was therefore disappointed to learn

that the Alternative Plans contained in the DEIR do not reflect the actual Alternative Plans submitted by interested parties for Delta Stewardship Council consideration.

Similar to the discussion above relating to the determination that the Proposed Project is the Environmentally Superior Alternative, the DEIR concludes that the Alternative Plans will not achieve the co-equal goals, but it does not contain the quantitative analysis necessary to adequately evaluate why the Alternative Plans will not meet the coequal goals.

**Covered Actions.** RCRC in previous comments expressed appreciation that the Proposed Project contained more specificity than previous drafts as to the types of projects that are not covered actions, but at the same time expressed the need for still greater clarity as this is the one area in which the Delta Stewardship Council has regulatory authority. Unfortunately, the Proposed Project/DEIR remains deficient in this regard. It is imperative that the Proposed Project/DEIR provide the clarity needed as to what is/is not a “covered action”, and that the Proposed Project/DEIR be consistent with the Delta Reform Act.

Clarity in the definition of “covered actions” is of particular importance to the Delta counties, as is the consistency determination process. RCRC urges the Delta Stewardship Council to work cooperatively with the Delta Counties to address their concerns which include, among other things, the potential to usurp the local land use planning process and balancing future habitat restoration with other land uses.

**Governance.** The Proposed Project/DEIR governance structure still seeks to exert Delta Stewardship Council regulatory powers beyond those conferred by statute. RCRC believes that the intent of the Delta Reform Act is the establishment of a collaborative approach utilizing the authority of the cooperating agencies as the enforcement mechanism. RCRC again urges the Delta Stewardship Council to consider the means by which the Ag-Urban Alternative Delta Plan proposes to further the coequal goals in a manner that is enforceable without being regulatory.

**Science.** As RCRC has noted in previous comments, the Proposed Project envisions a Science Program that will clearly be an extremely expensive long-term undertaking. While RCRC strongly supports good science, RCRC has urged the DSC to recognize that funding may well be limited - and expressed the opinion that much greater focus is needed.

The Proposed Project/DEIR does not prioritize scientific research to address Delta fisheries and instead it largely relies on “flows” to address ecosystem needs (see comments above). RCRC is not aware of any scientific evidence showing that fish abundance will be improved by controlling flows without consideration of the other stressors. The Proposed Project/DEIR should contain a plan to prioritize critical scientific research.

**Water Supply Reliability/Water Transfers.** The Proposed Project/DEIR does not approach the coequal goals of water supply reliability and Delta ecosystem concurrently.

The Proposed Project seeks to impose certain requirements on parties to a “covered action” water transfer meeting certain criteria including, among other things, requiring that water suppliers develop and implement a conservation-oriented rate structure by December 31, 2020. As RCRC has stated previously, the proposed requirements will likely have a dampening effect on the willingness of upstream water suppliers to engage in water transfers that come under the purview of the Delta Stewardship Council. In short, discouraging upstream water suppliers from engaging in water transfers is counter-productive and will not increase water supply reliability – instead it could well result in reduced water supply reliability.

**Water Rights.** The Proposed Project ignores existing area-of-origin water right law and existing water right priorities.

The Proposed Project includes actions that the Delta Stewardship Council will consider taking if the State Water Resources Control Board cannot meet the deadlines contained in the Proposed Project/DEIR (see comments above) as follows:

- consider a covered action that would increase the capacity of any water system to store, divert, move, or export water from or through the Delta inconsistent with the Delta Plan until the revised flow objectives are implemented; and,
- recommends that the State Water Resources Control Board cease issuing water rights permits in the Delta and Delta watershed (or, if the absence of flow criteria is specific to one or more of the major tributaries, then the recommendation could be focused on the impacted areas).

As RCRC has stated previously, the attempt by the Delta Stewardship Council to regulate in place of, or on behalf of, existing regulatory agencies is inconsistent to the intent of the Delta Reform Act. Additionally, as RCRC has noted in previous comments, water supply reliability and regional self-sufficiency in the Delta and areas upstream of the Delta will by necessity involve the State Water Resources Control Board and the amendment of and/or issuance of new permits. RCRC urges the Delta Stewardship Council to delete this language from the Proposed Project/DEIR.

**Financing.** The Proposed Project/DEIR recommends that the Legislature authorize the Delta Stewardship Council to impose fees on water users and others to fund the activities of the Delta Stewardship Council. As noted in previous comments, RCRC opposes such fee authorization.

RCRC supports the “beneficiary pays” principle, in which funding sources and the level of any fees are identified based upon the benefits received. Public benefits should be funded by the General Fund, General Obligation bonds, and federal appropriations.

RCRC encourages the Delta Stewardship Council to engage potential beneficiaries in discussions to develop funding recommendations. However, to encourage financial participation the sixth draft of the Proposed Project must be significantly revised to include a plan identifying specific actions that will advance both of the coequal goals and demonstrate the value of such actions to potential beneficiaries.

In conclusion, RCRC urges the Delta Stewardship Council to instruct staff to significantly revise the Proposed Project/DEIR to address the key issues noted above, and to analyze the Proposed Project and Alternative Plans within the context of advancing the coequal goals - with all due consideration given to mitigating potential direct and indirect impacts on areas north and south of the Delta.

Please contact me at (916) 447-4806 or [kmannion@rcrcnet.org](mailto:kmannion@rcrcnet.org) if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Kathy Mannion". The signature is written in a cursive style with a large initial "K".

Kathy Mannion  
Legislative Advocate

cc: Mr. Joe Grindstaff, Executive Officer