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December 27, 2012

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

Attn: Cindy Messer

Re: Notice of Proposed Rulemaking

Dear Chair Isenberg and Members of the Delta Stewardship Council:

On behalf of the thirty-two member counties of the Regional Council of Rural Counties (RCRC) I appreciate the opportunity to submit comments on the Delta Stewardship Council (Council) proposed regulations, dated November 16, 2012, relating to consistency with regulatory policies contained in the Delta Plan. As you know, RCRC has submitted comments on each of the drafts of the Delta Plan. RCRC is also submitting comments on the Final Draft Delta Plan and the Recirculated Program Environmental Impact Report (PEIR), both of which were released on November 30, 2012, the same day as the proposed regulations.

As RCRC noted in our comments on the September 5, 2012 Proposed Final Draft Delta Plan, according to the Office of Administrative Law (OAL) website agency regulations are to be "clear, necessary, legally valid, and available to the public". Additionally, according to the document entitled *How to Participate in the Rulemaking Process* under Standards for Regulations is found "A regulation must be easily understandable, have a rationale, and be the least burdensome, effective alternative. A Regulation cannot alter, amend, enlarge, or restrict a statute, or be inconsistent or in conflict with a statute." RCRC expressed concern in our comment letter dated September 13, 2012, that if the Delta Plan itself lacks clarity that the regulations based upon the Delta Plan policies may likewise lack sufficient clarity. RCRC continues to have concerns in this regards.

The crux of the problem is the comingling of Delta Plan regulatory policy with Delta Plan recommendations in the proposed regulations. The first example of this comingling can be found in the definition of "Achieving the coequal goal of providing a more reliable water supply for California" (*Section 5001. General Definitions*). Mingled in the definition are WR P1 (Reduce Reliance on the Delta and Improve Regional Self

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Reliance) - a regulatory policy that comes into play only when water is exported from, transported through, or used in the Delta, and WR R1 (Implement Water Efficiency and Water Management Planning Laws) and WR R4 (Expanded Water Supply Reliability Element) both of which are contained in the Delta Plan as recommendations.

Another example is *Section 5005. Reduce Reliance on the Delta through Improved Regional Water Self-Reliance*. The Council's regulatory authority outside of the Delta is limited to when water is exported from, transferred through, or used in the Delta. RCRC recommends that Sections 5005 (a) and (b) of the proposed regulations be deleted. Sections 5005 (c) (d) (e) and Section 5005 (2) are germane and within the scope of the Council's regulatory authority.

The third and last example of the confusing nature of the proposed regulations is *Section 5007. Update Delta Flow Objectives*. Section 5007 (a) and (b) are recommendations contained in the Delta Plan that the State Water Resources Control Board take certain actions relating to flow objectives by specified dates. As you know, the Council has no authority over the State Water Resources Control Board, and can only recommend certain actions. RCRC is of the opinion that Section 5007 (a) and (b) are inappropriately included in the proposed regulations and that they should be deleted. The language of Section 5007 (c) and (d) is germane to the regulations. RCRC recommends that Section 5007 (c) be revised as follows:

~~(c) Prior to the establishment of revised flow objectives as described in subsections (a) and (b),~~ The existing Bay Delta Water Quality Control Plan flow objectives shall be used to determine consistency with the Delta Plan until such time as the State Water Resources Control Board may revise the flow objectives. Upon revision of ~~After the flow objectives, are revised,~~ the revised flow objectives shall be used to determine consistency with the Delta Plan.

In conclusion, RCRC urges that the text of the draft regulations be reviewed and revised as needed to eliminate confusion as a result of the comingling of regulatory policy and non-regulatory recommendations.

Please feel free to contact me with any questions at (916) 447-4806 or kmannion@rcrcnet.org.

Sincerely,



Kathy Mannion
Legislative Advocate

cc: Members, Delta Stewardship Council
Mr. Chris Knopp, Executive Officer