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June 7, 2017

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Subject: Comments on May 25, 2017, Conveyance, Storage and Operations of Both (CSO) and Performance Measures (PM) Amendments; and State of California Environmental Justice Policies

Dear Delta Stewardship Council Members:

Restore the Delta advocates for local Delta stakeholders to ensure that they have a direct impact on water management decisions affecting the water quality and well-being of their communities, and water sustainability policies for all Californians. We work through public education and outreach so that all Californians recognize the Sacramento-San Joaquin Delta as part of California's natural heritage, deserving of restoration. We fight for a Delta whose waters are fishable, swimmable, drinkable, and farmable, supporting the health of the San Francisco Bay-Delta Estuary, and the ocean beyond. Our coalition envisions the Sacramento-San Joaquin Delta as a place where a vibrant local economy, tourism, recreation, farming, wildlife, and fisheries thrive as a result of resident efforts to protect our waterway commons.

Restore the Delta and Environmental Justice Coalition for Water jointly provided comments on April 17, 2017 concerning an earlier draft of the proposed CSO and PM Amendments. Council staff provided revised drafts to the Council for its May 25th meeting in Sacramento, about which we provide brief general public comments orally at the meeting. We provide you with this brief summary letter, to which are attached more

detailed comments on the May 25th draft amendments (both items 9 and 10 from that meeting agenda).

Summary of Comments

Restore the Delta finds little if any improvement in the content of the amendments relative to key policy goals of the Delta Reform Act. We continue to regard the amendments as unjustified, premature, and prejudicial toward promotion of “dual conveyance” as an “improved conveyance option.” The amendments appear geared to benefit one of the Delta’s largest and newest landowners, the Metropolitan Water District of Southern California, probably to improve the appearance that the Tunnels proposal they support has gotten at least *some* kind of public agency approval of late.¹

A recent news report from the Associated Press bears this out. After Governor Jerry Brown issued a call for the water agencies involved with the Tunnels Project to commit to its funding post haste, AP reported that “California’s powerful regional water district are working alongside [the governor] to take more responsibility for designing, building, and arranging financing for” the Tunnels Project, and that talks have been ongoing since May.² They will create a joint powers authority (JPA) to carry out the project. As important, the JPA will carry the load that the California Department of Water Resources appears no longer able to fulfill with the Tunnels. A greater role for the water contractors in bringing the Tunnels as dual conveyance to fruition is tantamount, in our view, to privatizing them and removing them far from public accountability.

Despite these developments in the real world beyond the Delta Plan, or probably because of them, we find it untenable that the Council should hold to an abstracted view of the language in its Delta Plan amendments concerning dual conveyance. We continue to find the Council avoiding its legislated duty to implement the Delta Reform Act in an integrated, holistic fashion with regard to all state policies contained in the Act, as well as those statewide policies concerning environmental justice, anti-discrimination, and human right to water concerns—all of which should be addressed in state agency planning documents like the Delta Plan.³ The Council appears intent on interpreting Water Code Section 85304 narrowly and with little attention to how it relates to other policy mandates and duties under the Act. This is improper, and the Council needs to stop this process immediately so it can have Council staff development language for Delta Plan policies that comply with these statewide policy requirements.

¹ Metropolitan Water District recently acquired the following five islands in the legal Delta: Chipps, Webb, Bouldin, Holland, and Bacon islands. The latter four islands comprised the former Delta Wetlands water storage and restoration project.

² <http://www.latimes.com/local/lanow/la-me-delta-tunnel-20170603-story.html>. “The water contractors don’t believe DWR is capable of delivering a \$15 billion project,” said one source in the story.

³ See Attachment 1 of our April 17, 2017, joint letter with the Environmental Justice Coalition for Water.

We attach specific comments linked directly with page and line citations to the May 25th draft of the CSO amendments and to Item 9. Thank you in advance for considering these comments.

We urge the Council to delay its vote on these amendments. They remain poorly formulated, and lack clarity and adequate justification at this time.

Thank you once again for the opportunity to comment. If you have questions of us regarding these comments you may contact Barbara Barrigan-Parrilla at 209.479.2053 (or via email at barbara@restorethedelta.org) or Tim Stroshane at 510.524.6313 (or via email at tim@restorethedelta.org).

Sincerely,

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|  Barbara Barrigan-Parrilla Executive Director |  Tim Stroshane Policy Analyst |
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Attachment

Cc: Mayor Michael Tubbs, City of Stockton
Kurt O. Wilson, City Manager, City of Stockton
Robert Granberg, City of Stockton Municipal Utilities Department
John Luebberke, City Attorney, City of Stockton
Kelley Taber, Somach, Simmons & Dunn
Trent Orr, Earthjustice
Yana Garcia, Earthjustice
E. Robert Wright, Senior Counsel, Friends of the River
Osha Meserve, Soluri Meserve
Thomas H. Keeling, Freeman Firm
Doug Obegi, Natural Resources Defense Council
Gary Bobker, The Bay Institute
Jon Rosenfield, The Bay Institute
Carolee Krieger, California Water Impact Network
Bill Jennings, California Sportfishing Protection Alliance
Barbara Vlamis, AquAlliance
Kathryn Phillips, Sierra Club California
Kyle Jones, Sierra Club California
Jonas Minton, Planning and Conservation League
Conner Everts, Environmental Water Caucus
Jeff Miller, Center for Biological Diversity
John Buse, Center for Biological Diversity
Adam Keats, Center for Food Safety

Michael A. Brodsky, Save the California Delta Alliance
John Herrick, South Delta Water Agency
Dante Nomellini, Central Delta Water Agency
Noah Oppenheim, PCFFA and Institute for Fisheries Resources
John McManus, Golden Gate Salmon Association
Jay Lund, Chair, Delta Independent Science Board (DISB)
Stephen Brandt, Member, DISB
Vincent Resh, Member, DISB
Tracy Collier, Member, DISB
Richard Norgaard, Member, DISB
Brian Atwater, Member, DISB
Elizabeth Canuel, Member, DISB
Harindra Joseph Sermal Fernando, Member, DISB
John Wiens, Member, DISB
Joy Zedler, Member, DISB

Restore the Delta Comments
on CSO Amendments and PM Amendments
and Environmental Justice Policies
(May 25, 2017 versions)

Comments Regarding Environmental Justice Policies

We found the May 25, 2017, drafts of both the CSO and PM amendments, as well as the Item 10 staff report, devoid of any mention of environmental justice, anti-discrimination, and human right to water policy mention or discussion. No analysis of their relevance to the issues of Delta conveyance and Delta watershed storage and operation of both has been provided to date. This is improper, and represents a state agency avoiding its duty to comply with the analysis requirements of these statewide planning policies. Our concern on behalf of environmental justice communities is that they will experience an unjust burden of risk from degraded drinking water quality, higher municipal water rates resulting from needed adjustments in water treatment in relation to the project, greater likelihood of contamination in municipal and individual groundwater wells, greater likelihood of consuming contaminated fish, decreased access to public recreation sites, decreased access to waterways for cultural practices, and displacement from farm economy jobs, as well as their Delta homes without any just compensation or job retraining.

We remind the Council that for any further amendment of the Delta Plan, environmental justice policies must be taken account of and Council staff should be directed to organize outreach to Delta region environmental justice communities so that they understand the Delta Plan and the proposed CSO and PM amendments, and their effects on environmental justice communities if and when they are implemented by the Council and other state agencies.

General Comments Regarding the Proposed Delta Plan Amendments

In sum, our general comments fall into broad, integrated categories:

- From a policy standpoint, the Council has failed to implement the state policy mandate to reduce reliance on the Delta for California's future water needs. Reduced reliance on the Delta could and must become a key component of the Council's and other state agencies' efforts to meet the coequal goals of the Delta Reform Act (Act) in a manner that protects the Delta and its communities as an evolving place. This policy animates as well as constrains all other objectives of the Act in light of reducing reliance on the Delta, whether the objective is water quality protection, land use, or "new or improved conveyance and storage" in the Delta and its watershed. The reason this policy is so important is that, among the other relevant Delta policies in the Act is that of Water Code Section 85023,

which states that “the longstanding constitutional principle of reasonable use and the public trust doctrine shall be the foundation of state water management policy and are particularly important and applicable to the Delta.”

- The Council is also charged with meeting the coequal goals in the context of having water users around the state reduce their reliance on the Delta. In light of reduced Delta reliance, the coequal goals should and must be read to take pressure off Delta exports, rather than increase it as would dual conveyance as a conveyance concept, so that both greater water supply reliability and ecosystem restoration can be achieved. This reading is a reminder that increased water supply reliability does not inherently mean increasing water supplies from the Delta; nor does it mean “maintaining water supplies from the Delta” when there is a legislative policy in place that mandates reduced reliance on the Delta for California’s future water needs. Moreover, the coequal goals are to be achieved not just in tandem with respect to each other, but are to be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.⁴
- Promotion of a “dual conveyance” option in the Delta Plan when there is an actual petition to change points of diversion of the State Water Project for the California WaterFix (Tunnels) project is to insist on a distinction without an important difference at this moment in time. It insults people to insist that placing dual conveyance as a “promoted option for new and improved conveyance” is not the same as endorsing the Tunnels project. This project has been public for five years, and has been the object of hundreds of thousands of pages of reports and letters written about it. **We at Restore the Delta ask the Council to please stop insulting the California public by insisting that its “dual conveyance” language is an important or meaningful distinction; it is not.**
- **The proposed CSO amendment**, and the Council proposing it, fails to grasp that the language of Water Code Section 85304, which calls for promoting new and improved conveyance and storage strategies in the Delta watershed, **not only must be read in the context of reduced Delta reliance for California’s future water needs. It must be read as well in the context of the Council’s role in approving “covered actions.”** For covered actions to proceed, they must be found consistent with the Delta Plan by the Council. This means the Council has a regulatory role evaluating covered actions. **To promote the Tunnels project as a conveyance project in the Delta Plan (that is, in the guise of “dual conveyance”)** means that the Council would tolerate a **conflict of interest that will undermine public confidence in the Council than already occurs.** The Council appears to prefer to resolve this matter by

⁴ In a separate letter, May 31, 2017, commenting on the 2017-2021 Draft Science Action Agenda document to Dr. Cliff Dahm, PhD (lead scientist of the Delta Science Program) we offered constructive suggestions for the Action Area 4 science action agenda concerning integrative common pool resources research.

resort to statements by Council member Frank Damrell that the Council somehow must comply with Section 85304 as a mandate somehow equivalent to the Act's Chapter 2 policies. This is arguable at best. As we stated in our April 17, 2017, letter to the Council, "by its silence in the proposed Delta Plan amendment 'promoting' conveyance and storage options, the the DSC condones passive acceptance of the California WaterFix's presentation and poor justification of 'need' for the project. Approval by the DSC of this DPA [Delta Plan amendment] would be prejudicial to WaterFix consideration by the DSC when it arrives as a proposed covered action....The DSC failed to grapple with [the meaning of "promotion"] in relation to broader goals and objectives of the Act."⁵ We recommend that the Council stay a vote on the amendments on June 22, and instead embark on a process where it considers both the integrated reading of Water Code Section 85304 with Delta Reform Act policies as well as the environmental justice policies that it has failed to implement thus far.

- The CSO amendment, if adopted, will apparently be considered Delta Plan recommendations by the Council, not policies.⁶ Under different circumstances, the fact that these amendments are considered recommendations, rather than policies, by the Council would mean that they are toothless. Most Delta Plan recommendations are seen this way. The proposed CSO amendment seemingly confers no new authority on the Council by which they would directly build a tunnels project or new surface water storage facility elsewhere in the Delta watershed. **We anticipate, however, that the dual conveyance language can easily be treated as prejudicial language justifying rubber stamp treatment by the Council of a California WaterFix covered action certification request.** This is why we are not comforted by the Council's treatment of this language as mere "recommendations." Recommendations in this case may be just "symbolic," but symbols do matter.
- The surface logic of "dual conveyance" is simply to add other points of diversion for the state and/or federal water projects that now divert from the Delta. It is presented as providing options for operating the export system when fish are present so that fish can be avoided. If this was demonstrably true, then this idea would have been accepted and acted on long ago. It is not true however. **The fact is that dual conveyance adds points of diversion to the Delta and therefore adds locations where reverse flows may occur, fish attempting to swim past mile-long fish screened diversions will inevitably get impinged or killed, and microscopic food webs in these locations will be exported just as they are now in the south Delta.**

⁵ Joint letter of Restore the Delta and Environmental Justice Coalition for Water, April 17, 2017, p. 5.

⁶ "These provisions are recommendations; they are not regulations." Agenda Item 10, Attachment 5, May 25, 2017, p. 21, line 19.

- Finally, Council reliance on an adaptive management and monitoring program misplaces faith in adaptive management as an “ace in the hole” for addressing obvious and less than obvious anticipated impacts of the Tunnels project and dual conveyance generally that cannot now be adequately mitigated to prevent, for example, take of endangered species. Adaptive management in connection with dual conveyance has been discussed since the beginning of the Bay Delta Conservation Plan, and is still mentioned with California WaterFix. Unfortunately, adaptive management has little to offer in the way of a track record for successful ecological and water management, as well as project mitigation.⁷ The National Research Council in 2011 found the Bay Delta Conservation Plan (which had not yet proposed a dual conveyance project configuration) lacking clear goals, an adequate effects analysis against which its seemingly robust environmental monitoring system could be compared, and a lack of detail about many aspects of the Plan’s adaptive management program. Since that time, the tunnels conveyance project has been separated from any habitat conservation or adaptive management plan. What has been proposed to the State Water Board as the Tunnels’ petition’s adaptive management “framework” appears to be a giant step backward from what was presented to the National Research Council for the project in 2010, six and a half years ago, and what was released in 2012 as part of the Bay Delta Conservation Plan.⁸ It was just 16 pages long, had no authorial attribution, lacked specific goals, effects to be monitored, and a monitoring program. The actual “dual conveyance” project before the California public now has no effective adaptive management plan yet to speak of, and there is little prospect that it will meet the NRC’s criteria when a new version for California WaterFix ever gets released.

Specific Comments on the Delta Plan Amendments

(Page references will be presented as [page number]:[line number range].) Our comments here will proceed section by section: Introduction, Amending the Delta Plan, Problem Statement, and “Conclusion” (which we think is misnamed, and should be renamed as “Recommendations” since the Council elsewhere insists the language in the conclusion is “recommendations” and not regulations.

Page 1:3-11: The opening paragraph of Attachment 5 of Item 10 from the May 25 agenda packet confirms that the Council refuses to grapple with the challenge of interpreting the matter of promotion of conveyance alternatives based on Water Code Section 85304 in light of the Council’s role in certifying covered actions as consistent

⁷ National Research Council, *A Review of the Use of Science and Adaptive Management in California’s Draft Bay Delta Conservation Plan*, 2011, p. 38.

⁸ The official presentation of California WaterFix’s adaptive management framework to the State Water Board’s change petition hearing is [Exhibit DWR-117, Adaptive Management Framework](#).

with the Delta Plan. As we have said above, the Council refuses to acknowledge, improperly, that the language of its recommendations promoting conveyance concepts would likely be used to justify a certification; the possibility of covered action certification does not depend on whether a particular covered action reflects language in the Delta Plan serving as a regulation or a recommendation. Consistency with the Delta Plan is a matter of the overall content of the Plan. We recommend that this paragraph be amended to reflect this reality about consistency determinations and Delta Plan content, or be deleted entirely.

Page 1:29-31: There is an important historical gap between the first and second sentences. As written these sentences imply that the Bay-Delta Accord came about solely because of the 1987-1992 drought. However, several at-risk species listings occurred between 1992 and 1994, the specifics of which are well known, and contributed to the negotiations that resulted in the Bay-Delta Accord.

Page 2:1-5: This passage greatly overstates the clairvoyance of the results of the CalFED Bay-Delta Program. The program was neither a wide-open nor well-publicized affair throughout its existence, so to say that it “presaged the need for integrated conveyance and storage and the need to achieve the coequal goals” is overstated. It leaves out for example, the role of the Delta Vision Blue Ribbon Task Force, which first articulated the coequal goals. CalFED attempted far more integration by extending its reach (if not its grasp) to include water use efficiency, levee integrity, surface storage investigations, water transfers, as well as restoring the Delta and “no net loss to exports.” The attempt to burnish CalFED’s record in these lines fails, and can easily be deleted without being missed.

Page 2:6-8: The reference to Attachment A should clearly state that the attachment is a timeline or chronology of events in the history of Delta watershed management in the Central Valley. (See our concluding note; we don’t understand why this Attachment is included. It is considered “background information” but it is unstated for what it is background to.)

Page 2:14-15: Note that the manner in which the coequal goals are to be achieved (“*shall* be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place”) is expressed in the Delta Reform Act as a mandate, not an optional aspiration. As such, it represents both a mandate for an interdisciplinary research agenda into the various values that make the Delta an evolving place as well as for long-term protection of those same values. We thank you for including them in this part of Attachment 5.

A Step Back: Why is this introduction even needed? An introduction to the amendments should just provide a simple narrative road map to the need to amend the Delta Plan, that there is a problem statement (about which more later), followed by the recommendations for “promoting” conveyance. In other words, this whole attachment is way overlong, and would reduce the need for comments from the public by eliminating all the conjectural and revisionist history advanced in it. Cut to the chase. It would

eliminate most of four pages of text that is highly arguable, contestable, and historically suspect, and best of all, unnecessary. Its length begs for correction of omissions (such as the lack of reference to the Pelagic Organism Decline period between 2000 and 2009 (which overlapped with wet years and droughts and made Delta resident fish species in particular vulnerable to the subsequent drought of 2012-2015. We recommend you simply provide a narrative road map in the introduction which can replace the first four pages of this attachment all the way to the section entitled “Amending the Delta Plan.”

Amending the Delta Plan

Page 4:28-30: This passage states “Maintaining the status quo will make achieving the coequal goals impossible in the future, and poses a significant risk of continued habitat and species decline and uncertainty in water supplies exported from the Delta.” We think the phrase “impossible in the future” is vastly overstated and unclear at best. The coequal goals will always be in a creative tension, in our view, not some final destination at which we are supposedly to arrive. They must be constantly and fairly balanced, and scientifically monitored to ensure both are achieved.

As a result of the conceptual fog of this passage, however, this passage fails to persuade us that (as implied) everything about the status quo in the Delta will make achieving coequal goals impossible in the future. Of course, the opening sentence of this section claims “there is a need to change the water water is managed and... operated in the Delta.” While this may be true, especially since the coequal goals in tandem with sturdy application of the reduced reliance mandate of Water code Section 85021 would make this sentence true, there is nothing here from pages 4:27 to 7:2 that indicates WHY the Delta Plan needs to be amended to address conveyance, storage and operation of both issues.

We recommend this section be deleted in favor of a narrative approach that begins with something like “The Delta Plan needs to be amended because previous to its adoption, there was an assumption that the Bay Delta Conservation Plan would be completed and incorporated into the Plan, based on legislative sections from Water Code Section 85320. When the state of California dropped the BDCP as a whole in favor of renaming its Conservation Measure 1 “California WaterFix,” the Council found in the summer of 2015 that it could no longer treat the renamed project short of its conservation plan in the same way as the Delta Reform Act’s crafters expected. Instead, Council found that it would have to be treated as a covered action.”

Or something like that—just say the reason for the Council’s judgment as to why the Delta Plan needs to be amended, why now, why in this or that section of the Plan—all without having to justify the need for changing conveyance or reinterpreting past droughts, etc., which opens the Council up to all manner of disputed interpretation of this or that aspect of the project’s history, or the ecology of the Delta.

Sometimes less is more, especially if that “less” amounts to a truthful and direct accounting of events in the Council’s history that led to this point. That’s all you really need here.

Problem Statement

The Council has problems here too. For one, there is no obvious formulation of the “problem statement” for the reader to access immediately. In journalistic terms, this passage “buries the lead,” a stylistic problem with the writing of this amendment overall, but it also reflects the staff and Council’s own lack of clarity in justifying need for dual conveyance, and by implication the Tunnels project.

This section is where the Council should formulate what the problem is, succinctly and clearly. What is the need for dual conveyance? What problems does dual conveyance purport to solve?

The problem statement section begins on page 7, but does not get to the problem statement itself until the bottom of page 12 with the section “need for new and improved conveyance, water storage, and the operations of both.” It is unclear why the previous five pages were needed before getting to this section.

Page 13:6-12: The problem before the Council is: what does the Act’s language concerning the objective of new and improved conveyance, storage and operations of both mean in the context of achieving the coequal goals and reduced Delta reliance? “The current system of natural and engineered conveyance infrastructure in the Delta lacks sufficient capacity and flexibility to manage water operations to benefit the ecosystem and enhance water supply reliability. (13:6-8)”

Reduced Delta reliance, however, is ignored in this part of the problem statement. But we recognize that reduced Delta reliance is acknowledged and that Attachment 5 makes useful and important points about reduced Delta reliance.

On pages 11:28-29, and 12:1-29, the Council’s problem statement does acknowledge a role for reduced Delta reliance by importers of Delta water “in both meeting water supply reliability goals and protecting the ecosystem, especially in times of lower flow when there is maximum stress on both goals” (12:1-2) and that “Many agencies have made significant investments in developing their local and regional supplies, including groundwater banking, on- and off-stream surface water storage, recycled water, and desalinated supplies, while also achieving significant decreases in imported water demand through conservation and water use efficiency efforts. Reduced reliance on the Delta can be achieved through diversification of water supply portfolios at the regional and local levels, which will provide greater overall supply reliability during periods when water exports from the Delta are reduced. (12:5-11)” These are important, crucial, and

encouraging points about reduced Delta reliance for meeting California's future water needs.

The section goes on to state that “not all areas of the state have the same opportunities and resources to uniformly reduce reliance on Delta exports” and provides examples about limitations for wastewater reclamation, desalination, and so forth, but Council narrative here concludes the second paragraph by stating, “Although new supply development opportunities may vary throughout the State, all regions reliant on Delta exports can reduce their reliance by increased water efficiency and aggressive water conservation. (12:20-22)”

The final paragraph of this section suggests that “new and improved conveyance, system storage, and the operations of both can complement water conservation and local supply development activities by providing a more stable and reliable source of supply....[C]onveyance and storage can provide the flexibility local water managers need to sustainably manage their local supplies and reduce reliance on the Delta, especially during dry periods when the ecosystem is most vulnerable, water quality is degraded, and exports are limited. (12:23-29)” Implicit in this passage is an assumption about what is referred to by water industry advocates of the Tunnels project as the “big gulp, little sip” hypothesis for Delta export water operations moving forward with the Tunnels. The Tunnels, the hypothesis goes, will be located and its diversions timed so that it can take “big gulps” of water from the Sacramento River in the north Delta during wet, high flow events, so that these large diversions could be stored in reservoirs south of the Delta. A portion of the time, these flood season diversions would provide the cushion of carryover storage in south of Delta reservoirs that could be the basis for perhaps greater water supply reliability.

This theory has a major problem going forward. While it remains true that with or without the Tunnels, the state's water systems could continue diverting “big gulps” of water during wet seasons of wet years, climate scientists are finding that their models will yield longer periods of dry climate, and likely fewer wet years interspersed among them in the decades to come as long-term and continuing greenhouse gas emissions continue to change our climate. “Big gulp, little sip” thus is a hypothesis that relies on climate “stationarity”—an assumption that our past climate will be a reliable guide to our future climate, an assumption most scientists regard as fallacious. The Council's narrative here in the context of reduced Delta reliance fails to recognize that continued reliance on some kind of new and improved conveyance and storage methods will founder because they are vulnerable to a changing climate, while other methods of local and regional water self-sufficiency can be less vulnerable.

Reduced Delta reliance is still treated as an unwanted stepchild in relation to the actual conveyance problem statement. This passage (13:13-31) recycles BDCP and California WaterFix talking points concerning seismic, flooding, and “other hazards” vulnerability but fails to note that continuing and expanding investments in Delta levees can buttress these risks while also accommodating anticipated sea level rise concerns as we move further into the 21st century and its changing climate. These passages do not

acknowledge any potential interaction between reduced Delta reliance strategies at the local level and whether there is a true and demonstrable need for new and improved conveyance; only that “Conveyance options considered over time have taken many different routes, forms, sizes, and configurations.[footnote] They have included isolated conveyance[;]...improvements to existing Delta channels and new Delta channels; and combinations of both isolated conveyance and through-Delta channels (also known as dual conveyance). (13:23-26)” This is simply an acknowledgement that these studies have occurred; the Council apparently assumes that the sheer weight of their tomes collecting dust on engineers’ shelves deserves deference by readers as to their solemnity and veracity.

Reduced Delta reliance undercuts such an analysis of “need” for dual conveyance or any isolated conveyance alternative by reducing demand for Delta exports in the long run. Please recall: it is a policy mandate from the State Legislature to reduce reliance on the Delta for California’s future water needs. This is a prime objective of the Act, while new and improved conveyance could mean many things: investment in fortifying and raising levees in the Delta and elsewhere to protect what exports could still occur in the South Delta for continued through-Delta conveyance; improving “conveyance” by adding fish screens to the facilities at Banks and Jones pumping plants; improving conveyance by overall reductions in exports that facilitate ecosystem recovery as well as increasing the reliability (if not the supplies) of the export pumps. With the Council failing to treat the mandate as vital to the achievement of the coequal goals in a manner that preserves Delta values as an evolving place, its conveyance narrative reads like just more talking points for California WaterFix.

Dual conveyance’s vaunted “flexibility” for water system operators would indeed provide them more options for taking Delta exports elsewhere when fish are near export facilities. But that same flexibility would add new diversions in locations where other ecological or fish impacts could occur. Consequently, this increased “flexibility and capacity” praised on page 13:6-12, would be constructed at the expense of redirecting some fish-related impacts from the south to the area of the north Delta diversions and adjacent sloughs, as well as impacts to water levels (stages) and water quality of north Delta farmers that they do not presently experience. Reduced Delta reliance as a mandate is a key means to reduce impacts overall, rather than the redirection of impacts that would result from “new and improved” conveyance options.

Page 14:24-30: We take issue with the Council’s statement that “Significant cost is associated with maintaining existing through-Delta conveyance and export operations. In addition to costs associated with improving levees and channels, increased salinity will impose higher water treatment [costs] on Delta water users on the order of hundreds of millions of dollars per year. The cost of a large scale levee failure from an earthquake, though difficult to estimate, would also be very high - both in terms of repair and restoration of affected levees and in terms of habitat loss and environmental harm.”

First, “significant cost” is hardly a persuasive fact. BDCP documents place the Tunnels cost as of 2013 at about \$16 billion. It must be remembered that California WaterFix

modeling in the environmental reports states that the Tunnels may be operated only about 52 percent of the time. Because “dual conveyance” is considered here by the Council, through-Delta-conveyed exports at Banks and Jones will still occur a significant part of the time if the Tunnels are built. So it will remain essential for the state to invest in Delta levees to preserve through-Delta conveyance. (This point is made by the Council at 14:34-36.) An excellent analysis of Delta levee reinvestment and upgrading is provided in the Delta Economic Sustainability Plan of 2011.⁹

Moreover, while Governor Brown and major water contractors for the state and federal projects push to establish the Tunnels’ financing plan after 11 years of planning, there still is no funding approach that will equitably engage most water contractors to help pay for the Tunnels project. Tunnels water will be expensive, especially for agricultural irrigators in the San Joaquin Valley, and the \$16 billion cost remains unaddressed at this writing. Such facts would be true for probably any dual conveyance alternative that came to the fore, but this is the one before the California public now.

In addition, higher treatment costs mentioned in the above quote was the issue addressed in a substantial mitigation settlement between Contra Costa Water District (CCWD) and the California Department of Water Resources (DWR).¹⁰ Without admitting that the Tunnels would unacceptably worsen CCWD’s water quality at its Middle River and Victoria Island diversions, DWR accepted mitigation investments it would make in altering the Tunnels’ design so that CCWD could arrange to have “small straws” in the Tunnels that would allow CCWD to obtain water from the north Delta that it could divert to the Folsom South Canal, or alternatively to its southern Delta pipeline. In each case, water diverted in the north Delta by the Tunnels project could be provided to CCWD for delivery to Los Vaqueros reservoir when water quality conditions are unacceptable for its treatment facilities in the western Delta. CCWD’s position in this settlement vaults its access to fresh water well upstream from its current diversions because of the salinity impacts the Tunnels would cause in south and central Delta channels. This is an instance where DWR has agreed to accept the “significant cost” of mitigating Tunnels impacts on CCWD, rather than CCWD merely accepting higher water treatment costs.¹¹ Thus any dual conveyance alternative in the abstract would impose high water treatment costs on local and regional municipal water systems long-reliant on the Delta as their home water source.

If the Tunnels are to go forward, other mitigations for municipal water systems may have to be forthcoming as well. The City of Stockton protested the California WaterFix change petition on grounds that DWR has ignored its municipal water intake at Empire

⁹ https://www.delta.ca.gov/regional_economy/economic_sustainability/.

¹⁰ <http://www.ccwater.com/317/Bay-Delta-Conservation-Plan-Comments>.

¹¹ The cities of Antioch and Brentwood have also engaged in mitigation discussions to settle their respective protests of the California WaterFix change of diversion points petition before the State Water Board, but no settlements have yet been reached as of this writing.

Tract, a facility that received a State Water Board water right in 2008 to obtain surface water from Disappointment Slough as long as the City of Stockton was also releasing good quality treated wastewater upstream along the San Joaquin River, and in compliance with its discharge permit there. Stockton officials have complained since 2014 that DWR officials have failed to analyze potential impacts of north Delta diversions and greater San Joaquin River presence (with attendant poorer water quality) in the Delta at its Empire Tract diversion. DWR did not analyze impacts to the City of Stockton directly in any of its EIR/EIS modeling work, preferring instead to use a saltier site, Buckley Cove, as a proxy for the fresher Empire Tract location. Tunnels impacts on Stockton could impose increased water treatment costs on Stockton, and a significant environmental justice community lives there and forms a large portion of the Stockton municipal system's customer base.¹²

Page 15:17-21: Adaptive management is indeed quite visible as a program *intention* of the adopted Delta Plan. However, the “dual conveyance” project and water rights change petition submitted by DWR and the Bureau to the State Water Board contains only a sixteen-page “framework” that merely outlines concepts for creating an adaptive management and monitoring program for California WaterFix. It is devoid of specifics, including organization for the program, and a program budget. Nothing further than this skeletal approach has been submitted to justify its presence as part of this “dual conveyance” proposal to the Water Board. It may be true that adaptive management “can provide a framework for adjusting operations to changing conditions and our evolving understanding of ecosystem needs” (15:18-20) but after eleven years of planning, adaptive management is further from reality than it appeared to be when California WaterFix was Conservation Measure 1 in BDCP up until early 2015. The Council is naive if its members believe that adaptive management reliant on best available science will save the Delta from the impacts of any dual conveyance project. At present, adaptive management as applied to the primary dual conveyance proposal before the public is a farce.

Pages 15:22-32 and 16:1-20 should be relocated to a section on page 6 (if that section is to be retained despite our comments recommending removal). The section on page 6 (6:18-24) states that “this draft amendment should be read in tandem with the Delta Plan, including Delta Plan requirements to reduce reliance on the Delta and increase regional self-reliance, and with the Delta Plan’s guidance regarding more natural functional flows for the ecosystem.” We think this page 6 passage, if retained, should specify specific sections of the Delta Plan where such “tandem readings” are found and

¹² See the City of Stockton’s case in chief and rebuttal case at http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/Stockton/stkn_10.pdf, and http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/Stockton/stkn_26.pdf. Restore the Delta also testified concerning environmental justice implications of Tunnels effects on Stockton’s water treatment facilities and cost in http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/RestoretheDelta/RTD_10_rev2.pdf and http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/RestoretheDelta/RTD_20.pdf.

apply. The passages on pages 15 and 16 cited above actually do some of that work for you by identifying specific policies and recommendations where such “tandem reading” may be found. If retained, this material would be suitably shifted to the Introduction of Attachment 5.

Page 17:17-33: We heartily agree that the Council should include in the problem statement that the absence of fish screens on Banks and Jones (and other larger municipal diversions as applicable) is a problem for achieving coequal goals in a manner that preserves Delta values as an evolving place. Thank you for including this passage. However, please delete the passage that states, “fish screens would not address the effect that pumping operations have in reversing flows in some Delta channels and drawing fish toward the south Delta, where they would remain subject to predation and other harmful conditions.” No one asks fish screens to solve all of those other problems; the screens would keep fish out of the pumps, and other systems would have to be devised to move them safely away from predator hot spots and other hazards, and back into safer Delta channels where they can pursue their life histories. This passage should be deleted for having counterposed fish screen installation to a straw man.

Pages 17:34, and 18:1-18: These are only arguably readable as part of the “problem statement” and appear more to be “recommendations” to us. We recommend that these bullet points be shifted to the Recommendations section of Attachment 5 because they read as though they want to “solve” the problem statement’s stated problems, when solutions are not the function of the problem statement section. That is what recommendations are for.

We appreciate that the “New and Expanded Water Storage” and “Improved Operations of Storage and Conveyance” sections are much shorter than the “conveyance” problem statement section.

Pages 18:28-33 and 19:1-35: This section on water storage suffers similar debilities as we describe for the conveyance section. It lacks a clear, succinct statement of the storage problem; “the storage problem relating to the Delta is X.” It ignores the role of the mandate to reduce Delta reliance plays in determining the economic and water supply need for new storage. Also missing is clarification as to whether new storage is needed north or south of the Delta, and for either what the economic and operational justifications are for it. This section also fails to address the possibility that climate change will reduce the viability and reliability of new future surface storage investments for capturing wet year runoff, given the expected shortening of the snowpack season, the lengthening of the flood control season, and the overall expected loss of snowpack to California’s overall water supply picture. What water will be there to be captured, and how often might it be used, according to best available science? In other words, do new storage investments really provide greater water supply reliability and contribute to the coequal goals? This is further called into question because, as the Council writes, “it is recognized that opportunities for increased water storage may be limited by water availability and that on stream reservoirs may be limited by potential ecological impacts.

(19:23-25)” An important part of that water availability problem is that water rights to surface flows on all Sierra streams is spoken for many times over, and investments in new storage on those streams may have very low wet-water yields with very high per-acre-foot costs associated with those yields. The Council has not acknowledged this nor has it done the economic analysis that is badly needed to assess the benefits and costs and water rights situation of potential new surface storage.

Given the Council’s drive to promote new storage, we find it more than a little surprising that Attachment 5 fails completely to follow through with any problem statement analyzing the challenge of addressing critically overdrafted groundwater basins in the San Joaquin Valley. (We note too that this lack of a groundwater-related problem statement begs the question as to what the groundwater storage recommendations are intended to solve, at least in a formal sense; by noting this we are noting that this part of the amendment is not parallel-constructed.) For instance, while RTD is highly critical of DWR’s recent *Water Available for Replenishment Report* (WAFR report)¹³ which calls for about 640,000 acre-feet of supposedly surplus water from the Sacramento River Basin to offset critical overdraft in the San Joaquin and Tulare Lake basins, there is no attempt by the Council to recognize critical overdrafted basins as part of the storage problem statement in Attachment 5. The Council does acknowledge that “new or expanded surface water and groundwater storage across the state can contribute in different ways to achieving the coequal goals. (19:16-17)” But this is not a problem statement as it pertains to groundwater issues, which are a top priority among water managers, irrigators, and communities throughout the Central Valley these days.

Our own critique of the WAFR report was that DWR ought to have considered demand reduction measures in critically overdrafted regions of the San Joaquin Valley (both the San Joaquin River Basin and the Tulare Lake Basin) such as land retirement (where land reverts potentially to dry farming but is removed from service areas obtaining imported surface waters). This is an honest option, albeit a difficult one. But it gets no easier to address the longer that land retirement is ignored as a policy option for implementing reducing Delta reliance to meet California’s future water needs.

But the main point here is that the Council is silent on a problem statement as to whether and how to address groundwater storage as a future storage option achieving the coequal goals in a manner that preserves Delta values as an evolving place.

Page 20:1-33: Concerning “operations of storage and conveyance,” exactly what is the problem statement here? We respectfully suggest that a suitable and succinct problem statement would be: “The problem here is to operate water storage and conveyance facilities in the Delta to achieve the coequal goals amid the ongoing mandates of preserving Delta values as an evolving place and reduced Delta reliance, adapt resiliently to climate change, and devise strategies for achieving sustainable groundwater management of critically overdrafted basins in the San Joaquin Valley.”

¹³ <http://water.ca.gov/groundwater/sgm/wafr.cfm>.

Instead of a succinct problem statement, however, this passage meanders among a number of standard California WaterFix talking points about flexible operations, the conveyance and storage systems being “inextricably linked” to Delta ecosystems, and so forth, without clarifying exactly what the operational problems are that derive from Delta Reform Act mandates and requirements. In this passage too is a shop-worn rehearsal of adaptive management’s role in supporting successful water project operations in Delta conveyance and upstream storage. We have stated before that, to date, adaptive management in relation to the California WaterFix dual conveyance proposal is a farce. The Council should not be parroting such talking points. It needs to draft a problem statement that meets head on the real problems that face the State of California, the people and leaders of the Delta region, and the rest of the Delta’s Central Valley watershed, not just the standard wish list of points put forward by the California Department of Water Resources and their federal and water contractor allies.

We also note that it has been a point of both confusion and consternation before the State Water Board that the initial operating criteria of California WaterFix as a dual conveyance proposal is for modeling purposes only. DWR expects the initial operating criteria for its dual conveyance proposal to change when the biological opinion is released later in June 2017 and may change yet again should the Tunnels project actually be built and operated. In essence, the initial operating criteria are moving targets with dual conveyance. They amount to a shell game foisted on the public and the Council by Tunnels advocates. They undermine the baseline for environmental impact analysis and mitigation. The initial operating criteria at this point are proffered to facilitate modeling of the Tunnels project, which DWR has long since conceded will not be operated as it has been modeled for its water rights review. Instead, there will be the human touch of “real-time operations” in addition to any permit conditions and actual fish behavior that will undergo considerable “trial and error” “learning by doing” in the course of the early days, months and years of Tunnels operation—should they ever be built.

Recommendations (Formerly “Conclusions”)

As we stated earlier, this section is really not conclusory, except in the sense that it ends Attachment 5. More to the point, its provisions “are recommendations, they are not regulations. (21:19)” Therefore we recommend that you retitle this section simply “Recommendations,” since that is what the Council and staff say they are and will function as if adopted.

The formatting problem that we pointed out in our April 17 comments still remains. Given that the draft CSO amendment language is portrayed as “recommendations,” we still fail to see how these recommendations will be incorporated into the format presented in the Delta Plan where recommendations are handled with individual “WR RXX” nomenclature for each separate recommendation in the water resource chapter (where XX is the number of the water resource recommendation in that chapter). The

recommendations in the draft amendment language are presented in an outline format, which does not immediately translate into the nomenclature established for the Delta Plan.

Pages 21:23-33 through 23:35: We recommend deleting Item I.A.1 addressing promoting options for dual conveyance by DWR and the Bureau of Reclamation. Section I.A.1.(b) should be retained, however, including footnote 82.

We think that items I.A.2 and I.A.3 do not need to be included in the plan and should be deleted. The Plan amendments should provide criteria for evaluating new conveyance alternatives that are rooted in Delta Reform Act policies and objectives, and which are consistent with already established Delta Plan policies and recommendations. If DWR, the Bureau, and local agencies have new or improved conveyance projects that they seek to bring forward, the Council should treat them as covered actions and use Delta Plan policies and recommendations to determine whether these covered actions achieve consistency with the Plan.

We agree that fish loss reductions through fish screening and other predation reduction actions should be in the Plan. Please retain the language of I.A.4 in the amendment.

We urge and recommend that the Council change the language of I.B.1 to encourage not only that project proponents select conveyance projects that would meet criteria established in this section, but that the Council will evaluate new conveyance proposals for compliance with these same criteria as forming the basis for consistency of such proposals as covered actions.

Section I.B.2 should add further parameters that require mitigated water quality and water level (stage) impacts to in-Delta diverters regardless of whether they are irrigators, municipal or domestic or industrial users of water in the Delta, or whether their source of water is Delta channels or groundwater. Adding these parameters goes to the heart of ensuring that achievement of coequal goals shall occur in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. Without these parameters, Section I.B.1 would be sharply inconsistent with a holistic reading of the coequal goals policy.

Identical language from Section I.B.2 should be added to I.C.1 for improvements or modifications to through-Delta conveyance as well to protect in-Delta diverters' water quality and water stages as essential and critical to protecting and enhancing the Delta as an evolving place.

Section II's title should simply state "Promote Options for Water Storage" because options implies that proposals will be both new and hopefully improved. The reference in Section II.A.1 to "consistent with criteria in Section III.B" should be improved by adding language that draws on and adapts to storage projects the language of Section I.B.1 (which is itself drawn from Water Code Section 85320) and includes criteria for ensuring that there is water legally and practically available for storage; that there are

operational criteria for storage required to satisfy the criteria for recovering Delta ecosystems and restoring fisheries throughout the watershed under a reasonable range of hydrologic conditions (not just dry or wet years), and which will identify the remaining water available for surface storage and groundwater recharge in both the Delta and in other parts of the Central Valley watershed of the Delta, including those areas with critical groundwater overdraft. Additional criteria for storage projects to be consistent with the Delta Plan should include projects that address climate change impacts with adequate storage space for flood control, and safe controlled releases during storm events to maintain flood space in reservoirs.

In addition, Section I should have language stating that proposed conveyance covered actions that reduce Delta reliance for future water needs of importers will receive priority treatment for Council determinations.

Section I and Section II also need subsections that require the Council to seek consistency opinions of the Delta Independent Science Board concerning conveyance and storage covered actions that come before the Council. The Council should encourage the Board to express a consensus opinion on such covered actions, as well as the expression of minority opinions from within the Board, so that the Council has benefit of both types of opinions prior to making covered action determinations.

Section II.A. needs to have a new subsection that addresses fish ladders on upstream reservoirs that facilitate the access of endangered salmonid fishes to upper watershed spawning grounds. Such access has been important to implementation of the salmonid biological opinion of 2009 and the National Marine Fisheries Service's 2009 salmonid recovery plan, yet implementation has yet to occur. The Delta Plan should continue encouraging salmon recovery actions because they are critical not just for the fish but for tribal cultural subsistence fishing as well as subsistence fishing by human residents throughout the rivers of the Bay-Delta Estuary's Central Valley watershed.

Section II.A.1. should delete reference to "new or expanded on-stream storage" because it is prejudicial to the large impacts to fish, wildlife, human communities, and riparian and channel margin impacts that such projects have on the environment.

Section II.A needs language that clearly indicates that south of Delta storage water sources that reduce Delta reliance for their future water needs will receive priority in Council determinations for new storage covered actions.

Section II.C. should have language added that addresses the availability of water for replenishment of water in the critically overdrafted groundwater basins of the San Joaquin Valley. We recommend that this language state that new conjunctive use projects (coming to the Council as covered actions) identify the source and expected reliability of that source (local or imported) for providing replenishment supplies, as well as identify areas of potential land retirement where demand may be reduced to facilitate replenishment of critically overdrafted groundwater basins. Section II.C. should make clear that covered actions brought to the Council shall be discouraged that do not also

comply with the state mandate to reduce reliance on the Delta, and that determination of a covered action's consistency will be enhanced where project proponents use locally generated supplies to replenish groundwater storage in the Central Valley watershed.

Section III should have language that first, commits the Council to development of model conveyance and storage adaptive management plan programs (that is, minimum scientific, monitoring, research design, data collection, and technology development best practices) that are completed and submitted with their respective covered action proposals. The Council should also include language in Section III that states that proposed conveyance or storage covered actions that lack full and complete adaptive management programs and plans will be treated as incomplete covered action applications and will not be processed until adaptive management programs and plans are completed for submittal with the application.

Concerning Attachment 5's Attachment A, "Timeline of Major Conveyance, Storage and Operations," we fail to see what this timeline contributes to any facet of these Delta Plan amendments. Would it become a Delta Plan appendix? An appendix to Chapter 3? We recommend its deletion.

Performance Measures Amendments

Finally, concerning performance measures listed in Item 9 from May 25 as well as in Attachment B to Item 10, Attachment 5 from May 25, it is our view that Water Code Section 85021 says it is state policy to reduce reliance on the Delta for meeting California's future water needs. We think the new versions of Performance Measures 3.4 and 3.9 continue the DSC's failure to implement and enforce this policy. These current proposals limit the performance measures to dry year Delta exports. This is improper. The Water Code does not limit application of the reduced Delta reliance policy at all. Reduced reliance on the Delta is a policy for all years, all seasons. PM 3.4 also subtly tries to shift focus from reduced reliance to increased reliability for Water Contractors et al. The policy is to reduce Delta reliance, so you need to fix this PM. It is long overdue for the Council to face squarely this mandate as you amend the Delta Plan. Our written comments from April 17th and this current letter provide many suggestions to help.

Once again, thank you for the opportunity to comment on this proposal.