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October 16, 2018

Via email: [waterfixcert@deltacouncil.ca.gov](mailto:waterfixcert@deltacouncil.ca.gov)

Jennifer Pearson, Executive Director  
Delta Stewardship Council  
980 Ninth Street, Suite  
Sacramento, CA 95814

**Subject: Restore the Delta Comments and Additional Materials concerning  
WaterFix C20185 Written Statement**

Dear Ms. Pearson:

This written statement and attached additional materials are submitted in advance of the October 24-26, 2018, public hearing and incorporate by reference the October 15, 2018 statement, responses to Delta Stewardship Council questions, attached additional materials, and requests for official noticed supplied to the Council by Friends of the River and California Sportfishing Protection Alliance, et al (which included Restore the Delta as signatory).

These are the points we make:

1. The California WaterFix project is not consistent with the Delta Plan policy to reduce reliance on the Delta for California's future water needs.
2. The Delta Stewardship Council's Delta Plan consistency certification process (process) fails to address environmental justice issues associated with California WaterFix implementation, and therefore does not comply with a variety of statewide policies concerning civil rights and environmental justice.
3. The process fails to address constitutional issues of reasonableness of Delta Plan certifications, especially whether the proposed California WaterFix conveyance is a reasonable method of diversion of water.

***The California WaterFix project is not consistent with the Delta Plan policy to reduce reliance on the Delta for California's future water needs.***

The California Department of Water Resources' (DWR's) consistency certification document (#C20185) argues that the California WaterFix project is consistent with the Plan's policy of reduced reliance on the Delta. We argue that the policy formulation of the Delta Plan and the consistency determination on which it relies are faulty.

The consistency argument submitted by DWR stresses a few key arguments on behalf of its claim of consistency with reduced Delta reliance.

- The policy does not apply to California WaterFix because [the project] does not propose any new exports associated with existing water rights.
- None of the Delta Plan triggers for increased reliance are tripped, therefore the project is consistent with the Delta Plan.
- The need for California WaterFix was not significantly caused by failure of one or more water suppliers to reduce reliance on water exported from the Delta.
- Long-term average annual Delta exports with the project "would remain about the same or decrease slightly as compared to exports under existing conditions....Thus there is no significant change in amount of water exported that could cause a significant adverse environmental impact in the Delta."

The reduced Delta reliance policy is a quantitative matter: will the project increase, maintain, or decrease reliance of the major Delta exporters on diverted exports from the Delta? Environmental impacts, while deemed relevant if "significant" by the Delta Plan policy, are beside the point for purposes of the plain statutory language of this policy (Water Code section 85021). What is relevant is whether exports with the project will increase, stay about the same, or decrease?

The proposed project is repeatedly described in its Environmental Impact Report/ Statement and other supportive publicly available documents as increasing water transfers and exports because its facilities will increase engineered capacity to move water from north of to south of the Delta. (See attachments RTD-12, pages 6-11 and 49-57; SJC-337-Revised, pages 5-7 and 11-15.) Elsewhere DWR and the Bureau argue that it will maintain exports from the Delta.

The second and third arguments listed above are supplied by DWR as justifying compliance with WR P1 (a) in the Delta Plan. This Delta Plan policy has always been problematic because it fails to establish criteria for evaluating reduced Delta export reliance in the aggregate as well as in specific cases (on which the policy relies). An aggregate criterion would be relevant to California WaterFix, but is not part of the consistency certification process.

Finally, DWR's justification that Delta exports would "decrease slightly" is contrary to many other arguments they, Westlands Water District, Kern County Water Agency, and

the Metropolitan Water District of Southern California have put forward. (See attachment RTD-12, pages 49-57.) We conclude that, contrary to DWR's claim in #C20185, the proposed project is inconsistent with Water Code section 85021, and the consistency certification should be denied by the Council.

***The Delta Stewardship Council's Delta Plan consistency certification process (process) fails to address environmental justice issues associated with California WaterFix implementation, and therefore does not comply with a variety of statewide policies concerning civil rights and environmental justice.***

We are aware that the Delta Reform Act appears to be silent as to the relevance of environmental justice concerns—that is, questions of disproportionate environmental and economic impacts on racial and ethnic minorities, the poor, and subpopulations facing language barriers. Nonetheless, there are several areas of state law—and the Delta Stewardship Council is an agency of the State of California—that require all state agencies to prevent and avoid discrimination, strive in planning efforts toward environmental justice, and ensure an ongoing human right to water.

Moreover, Restore the Delta documented in its case in chief before the State Water Resources Control Board on the California WaterFix Change Petition that DWR and the Bureau have been ineffectual at addressing environmental justice issues associated with the project. We seek to include in the administrative record Restore the Delta's case in chief testimony as well as its recently published report to the Delta community, *The Fate of the Delta*. See also RTD-10, pages addressing Stockton water supply; RTD-12, pages 6-8; RTD-20 (entire); and RTD-22 for discussion of public interest and environmental justice impacts on the Delta region.

***The process fails to address constitutional issues of reasonableness of Delta Plan certifications, especially whether the proposed California WaterFix conveyance is a reasonable method of diversion of water.***

We are also aware that the Delta Reform Act appears to be silent as to the relevance of California's reasonable use doctrine to Delta Plan consistency matters. But since the Act is part of the Water Code, where reasonable use provisions are codified, we urge the Council to consider the reasonableness of the proposed project, California WaterFix, as to whether it is a reasonable method of diversion. Restore the Delta argued to the State Water Resources Control Board that it is not. (See RTD-12, pages 59-68.) The evidentiary record of the project's environmental and economic impacts on legal users of Delta water is abundantly documented of the variety of unreasonable effects project diversions will have on the Delta.

We thank you for the opportunity to comment on the proposed consistency certification of the California WaterFix project. Our attachments are provided as active URLs; the

record of this letter is only complete when these documents are obtained by the Council from the attached URLs. If you have questions concerning our comments, please do not hesitate to contact either of us.



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Attachments:

Restore the Delta's *The Fate of the Delta: Impacts of Proposed Water Projects and Plans on Delta Environmental Justice Communities* (Accessible at <https://www.restorethedelta.org/wp-content/uploads/The-Fate-of-the-Delta-final.pdf>)

*Testimony of Tim Stroshane*, RTD-10 from Part 1B of California WaterFix Hearing (Accessible at [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/exhibits/docs/RestoretheDelta/RTD\\_10\\_rev2.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/RestoretheDelta/RTD_10_rev2.pdf))

*Testimony of Barbara Barrigan-Parrilla*, RTD-20 from Part 1B of California WaterFix Hearing ([http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/exhibits/docs/RestoretheDelta/RTD\\_20.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/RestoretheDelta/RTD_20.pdf))

*Testimony of Tim Stroshane*, RTD-12 from Part 2 of California WaterFix Hearing (Accessible at [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/exhibits/docs/RestoretheDelta/part2/RTD\\_12.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/RestoretheDelta/part2/RTD_12.pdf))

*Testimony of Barbara Barrigan-Parrilla*, RTD-22 from Part 2 of California WaterFix Hearing (Accessible at [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/exhibits/docs/RestoretheDelta/part2/RTD\\_22.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/RestoretheDelta/part2/RTD_22.pdf))

*Testimony of Tim Stroshane*, SJC-337 from Part 2 Rebuttal Phase of California WaterFix Hearing (Accessible at [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/exhibits/docs/COSJ%20et%20a/part2rebuttal/SJC\\_337.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/COSJ%20et%20a/part2rebuttal/SJC_337.pdf))

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