



Craig McNamara  
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Owner, Sierra Orchards

Joshua Eddy  
Executive Director

Kiran Black  
Sacramento Valley  
Walnut Growers

Ashley Boren  
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Sustainable Conservation

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Bransford Farms

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University of California

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Drake Enterprises

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Produce & Collaborative  
Communications

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Grimmway Farms

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Partner, Meyers/Oxford  
Farms

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Water Conservation  
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Kerry Tucker, CEO  
Nuffer, Smith, Tucker,  
Inc.

Arlan Van Leeuwen  
Owner, New Hope Dairy

David J. Wehner, Dean,  
CA Polytechnic State  
University, San Luis  
Obispo

May 4, 2011

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

Dear Chairman Isenberg:

RE: Comments by the California State Board of Food and Agriculture on the Delta Plan (Third Staff Draft)

Please accept the California State Board of Food and Agriculture's comments on the Delta Plan (Third Staff Draft).

As the members of the Delta Stewardship Council begin deliberations on the final draft of the Delta Plan we would like to call your attention to a fundamental flaw in the Third Staff Draft Delta Plan that persists despite substantial comments by other stakeholders to previous drafts. This draft continues to rely on the erroneous premise that the Delta Stewardship Council has the statutory authority to regulate actions outside the Bay-Delta proper.

Unless the fundamental issue of the Delta Stewardship Council's statutory jurisdiction is revised in the final Delta Plan, attempts to undertake the other parts of the plan will be subjected to disputes, competition for resources and perhaps legal actions that threaten to continue 30 years of near-impasse leading to current uncertainties about California's water supplies. Factors that we urge you to consider include the following:

- Clear Statutory Limits of the Delta Stewardship Council's Jurisdictional Scope

The Water Code, in section 85057.5(a) (1) provides a geographic scope of "covered actions" that is limited to those that occur at least in part within the Delta. That does not include the ability for the Delta Stewardship Council to regulate integrated water management plans, water-use reporting, groundwater use, rate structures or other actions taken by water agencies outside of the Delta and Suisun Marsh.

- Avoiding Unforeseen Impacts

In asserting statutory authority for actions taken by water agencies that do not involve any geographical portion(s) of the Delta and Suisun Marsh, the Third Staff Draft Delta Plan does not present any means for dealing with the cost and



supply implications agencies must face for a variety of regulations and responsibilities that the plan does not incorporate or foresee. For example, recently proposed public health goals for perchlorate and hexavalent chromium by the Office of Environmental Health Hazards Assessments (OEHHA) under the Safe Drinking Water Act may cost as much to treat in areas that receive some State Water Project (SWP) and Central Valley Project (CVP) supplies as the solutions the Delta Stewardship Council is proposing for the Delta area itself.

The Third Staff Draft Delta Plan also identifies actions to expand groundwater monitoring (Chapter 4) through actions taken by local agencies, the California Department of Water Resources and the State Water Resources Control Board in context of Chapter 3 of the Third Staff Draft Delta Plan allowing the Council to determine if activities meet the definition of “covered actions.” Once again, by over-stating the statutory authority of the Delta Stewardship Council, the effect of the plan is to create the potential appearance of duplication and unpredictable regulatory burdens that may discourage proactive actions.

- On-Going Actions

Already in preparation for the 2013 Water Plan Update, the Department of Water Resources’ Water Plan Steering Committee has compiled comprehensive profiles of 86 current water related projects by various state, federal, local, and non-government entities in California. Nothing in the Third Staff Draft Delta Plan accounts for these activities, reconciles their scopes with those of improving the Delta, or foresees disputes arising from the general assertion of jurisdiction stated in the Third Staff Draft Delta Plan. In fact, the Third Staff Draft Plan makes only one reference to DWR’s water plan update with respect to groundwater although the water plan overlaps into most areas that the Third Staff Draft Delta Plan claims potential jurisdiction over.

- Defining Economic Impacts

While proposing the need to levy a list of fees and assessments, the Third Staff Draft Delta Plan does not define how the Delta Stewardship Council would impose, replace and/or share financial resources with other state agencies and local government, as well as the economic impacts related to uncertainty, dislocations, and incentives - resulting in potential disincentives.

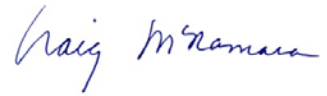
Excessive emphasis on regional water self-sufficiency fails to acknowledge that there are economically vital regions of the state that simply cannot be self sufficient in water supply. While it is appropriate to maximize management of regional water supplies, establishing a goal of regional self sufficiency is no more logical than calling for Los Angeles to be food self sufficient or the Sacramento basin to be petroleum self sufficient.

In summary, it is not enough to claim the power of asserting jurisdiction on a selective basis over much of the state’s water infrastructure, land use planning, local water resources, water related fees and assessments. We cannot avoid California’s recent history of impasse in finding solutions to our environmental challenges in providing a reliable water supply. The challenge calls for a fresh, cooperative, transparent, forthcoming and well-defined approach.

Regretfully, the Third Staff Draft Delta Plan still relies upon attempting to manage ambiguity and evolving definitions through a span of proposed jurisdiction that is simply not supported by statute.

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Sincerely,

A handwritten signature in blue ink that reads "Craig McNamara". The signature is written in a cursive style with a large initial "C" and "M".

Craig McNamara  
President

cc: The Honorable Karen Ross