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DELTA STEWARDSHIP COUNCIL

A California State Agency

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April 23, 2012

Mr. Daniel W. Hancock
Chairman, Little Hoover Commission
925 L Street, Suite 805
Sacramento, CA 95814

Dear Mr. Hancock:

Governor Jerry Brown has proposed Government Reorganization Plan 2012 that includes merger of the Delta Stewardship Council into the Natural Resources Agency (Agency). We are opposed to the proposal as it affects the Council.

The Delta Stewardship Council is proud of its close work with the Natural Resources Agency and other departments and agencies of the state. Many of our operational functions are currently handled by other state agencies, including:

1. The Attorney General is the main provider of our legal services,
2. The state information technology system we use is linked through the Department of Water Resources,
3. The DSC personnel functions are handled by CalFire, and
4. The Department of General Services provides accounting services for us.

None of these agencies have used their operational support to influence our policy determinations. We also acknowledge that nothing in the draft bill language appears to changes our statutory designation as 'an independent state agency', nor appears to limit our existing authority.

However, our concerns remain. The history of California strongly suggest that if the statutory 'independence' of the Council has a role to play in resolving water and environmental conflicts, then it should be supported in appearance, as well as substance and form.

The following background information may be useful as the Commission discusses this issue.

The Delta Stewardship Council is an 'independent agency of the state'

In November 2009, the Legislature enacted SBX7 1, the Sacramento-San Joaquin Delta Reform Act of 2009, which took effect on February 3, 2010. The statute said :

> *The Delta Stewardship Council is hereby established as an independent agency of the state. (WC Sec. 85200 (a))*

Council duties requiring an 'independent' status:

- Appointment of the Delta Independent Science Board, Water Code Sec. 85080

- Adoption of an Interim Plan, WC Sec. 85084
- Adoption of Administrative Procedures, WC Sec. 85225.30
- Consultation with local, state and federal agencies, WC Sec. 85300 (b)
- Commenting on state agency environmental impact reports for projects outside the Delta, WC Sec. 85210 (j)
- The direction to develop, adopt, and commence implementation of the Delta Plan by January 1, 2012, WC Sec. 85300 (a)
- Determining state and local agency consistency with the Delta Plan, when 'covered actions' come before the Council, WC Sec. 85225-85225.30.
- Serving as a potential appellate body for review of the Department of Fish and Game's determination that BDCP (Bay-Delta Conservation Plan) has met the requirements of state law, WC Sec. 85320(e).

There are several reasons we oppose merger into the Agency:

1. It is more difficult to reconcile the Council's legal status as an independent agency if it is merged into the Natural Resources Agency.

2. The merger would complicate the legal charge to oversee state and local agency compliance with the Delta Plan:

   The council shall establish and oversee a committee of agencies responsible for implementing the Delta Plan. Each agency shall coordinate its actions pursuant to the Delta Plan with the council and the other relevant agencies.
   (WC Sec. 85204)

3. While the Council is optimistic that all state and local agencies will ultimately conform their actions to the Delta Plan, this will not happen overnight, and it is reasonable to expect complications and controversy. There are many stakeholders throughout California who expect the Council to provide leadership in the fulfillment of the statutory goals of achieving a more reliable water supply and restoring the ecosystem of the Delta. Given the myriad of governmental agencies with partial authority over the state's water supply and the management of the Delta, the Legislature decided to empower the Council as an independent body to pursue compliance with the co-equal goals.

4. Merging the Council into the Agency, which is coordinating development of the BDCP, complicates our role as a potential appellate body with respect to the BDCP. When completed, it will provide the basis for the issuance of endangered species permits for the operation of the state and federal water projects. The heart of the BDCP is a long-term conservation strategy that sets forth actions needed for a healthy Delta. A merger would undercut public confidence that the Council is an 'independent' body that will determine whether the Department of Fish and Game has correctly concluded that the BDCP complies with state and federal law.

5. We are also concerned that the role of the Delta Independent Science Board as a neutral scientific investigative body could be undercut by this merger. The Council appoints the

6. Independent Science Board and this merger suggests that members may be selected by the Agency, not the Council.

Other studies have suggested the need for independence

In 2005, the Commission reviewed the CALFED Bay-Delta Program and published *Still Imperiled, Still Important*. Among many other suggestions, your Commission recommended that water and Delta environmental policy-making must include stronger consolidated executive leadership. One result of your work was the Legislature's adoption of the 2009 water bill package, which created the Delta Stewardship Council. It is too early to start changing what few initial steps have been taken to establish policy, and guide state action across many departments and agencies.

The Public Policy Institute of California made a similar recommendation in 2009, calling for establishment of an institutional framework to address Delta problems featuring political independence, an appropriate budget, the technical capability to explore alternatives, and the management capability to direct multidisciplinary research and development.

For these reasons, we respectfully request that the Commission recommend to the Legislature that this proposed merger of the Council into the Natural Resources Agency not be adopted.

Sincerely,

Phil Isenberg
Chair

Randy Fiorini
Vice Chair

cc: Honorable Jerry Brown, Governor
Mr. Jim Humes, Office of the Governor
Mr. John Laird, Secretary for Natural Resources
Mr. Stuart Drown, Executive Director