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VIA EMAIL

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Delta Stewardship Council
980 Ninth Street, Suite 1500
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**Re: WaterFix C20185 Dismissal of Appeal C20185-A1 Challenging
California Department of Water Resources' Certification of Consistency**

Dear Delta Stewardship Council and Staff:

On behalf of appellants North Coast Rivers Alliance, et al., in appeal C20185-A1, we request the Council reconsider its December 7, 2018, dismissal of the C20185 Appeals. The Department of Water Resources' attempt to withdraw its certification of consistency for the California WaterFix is procedurally improper, as is the Delta Stewardship Council's dismissal.

The Delta Reform Act mandates that the Council make a decision on any consistency appeal within 60 days of its hearing on the appeal. Water Code § 85225.20.

The Act also requires that "after a hearing on an appealed action, the council *shall* make specific written findings either denying the appeal or remanding the matter to the state or local public agency for reconsideration of the covered action based on the finding that the certification of consistency is not supported by substantial evidence in the record before the state or local public agency that filed the certification." Water Code § 85225.25.

The Delta Reform Act makes no allowance for an agency to withdraw its certification of consistency *after* the hearing but before the Council issues these required written findings. The hearing on the California WaterFix appeals took place on October 24-26, 2018. Therefore the Council's duty to issue findings is now *mandatory*, and those findings are *due December 26, 2018*.

While the Delta Reform Act allows the Council or its Executive Officer to dismiss an appeal “for failure of the appellant to provide information requested by the council within the period provided” if the information is in the appellant’s possession or control (Water Code § 85225.10(c)), it does not provide any other reason that would render a dismissal appropriate.

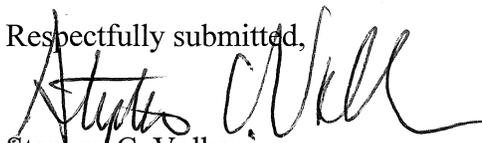
In its regulations governing appeals, the Council has attempted to create an additional reason that it may dismiss an appeal: “the issue raised is not within the council’s jurisdiction or fails to raise an appealable issue.” Appeal Procedures Paragraph 15 (c)(2). By its terms, however, this provision has no application here. The Council’s staff has already concluded that appellants have raised many appealable – indeed, meritorious – issues that fall well within the Council’s jurisdiction. In any event, Paragraph 15(c)(2) is subordinate to and preempted by the detailed provisions of the Delta Reform Act, which allow dismissal only where appellants fail to provide requested information. Water Code § 85225.10(c).

By dismissing the nine appeals of the C20185 consistency certification as moot, the Executive Officer has acted in excess of her authority, as the Delta Stewardship Council has yet to make the findings required by Water Code section 85225.25.

Any return to early consultation – including in particular the closed-door *ex parte* communications between the Department of Water Resources and Delta Stewardship Council respecting the California WaterFix now being considered – would likewise violate the Delta Reform Act, as the Delta Stewardship Council has yet to make these mandatory findings as to that project.

Accordingly, the Council must vacate its unlawful dismissal of the nine appeals, and proceed to make the findings on the issues they raise within the 60-day period prescribed by Water Code section 85525.20.

Respectfully submitted,



Stephan C. Volker

Attorney for North Coast Rivers Alliance, et al.

cc: C2018 Service List