



RURAL COUNTY REPRESENTATIVES
OF CALIFORNIA

August 20, 2018

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

**RE: Comment Letter – Proposed Revisions to Bay-Delta Plan
(Proposed Amendments to the Water Quality Control Plan for the San Francisco Bay/Sacramento–San Joaquin Delta Estuary; Substitute Environmental Document for Lower San Joaquin River and Southern Delta; and Framework for the Sacramento/Delta Update to Bay-Delta Plan)**

Dear Ms. Townsend:

The Rural County Representatives of California represents 35 of California’s 58 counties, encompassing over 50 percent of the State’s land mass and approximately 10 percent of the State’s population. Our Board of Directors is made up of one locally-elected Supervisor from each of our member counties. The implications of the proposed amendments, including the Final Substitute Environmental Document (SED) are very serious to the communities within our member counties. Many of these communities are either disadvantaged or severely disadvantaged and entirely dependent are groundwater.

Background

The San Francisco Bay/Sacramento-San Joaquin River Delta Estuary (“Bay-Delta”) is an important ecological resource of the State as well as the “switchyard” for California’s highly engineered water-delivery system involving both the State Water Project and the Federal Central Valley Project. The Porter-Cologne Water Quality Control and the federal Clean Water Act require the SWRCB to regularly review and update the Bay-Delta Plan, which was last updated in 2006.

Since adoption of the 2006 Bay-Delta Plan, concerns related to adequate flows to meet standards designed to protect fish and wildlife have emerged related to crop salinity tolerances in the southern Delta. Since 2009, the SWRCB has engaged in a “multi-pronged” process to review and potentially update various elements of the Bay-Delta Plan, including addressing Lower San Joaquin River (LSJR) flows and Southern Delta salinity (“Phase I”), and Sacramento River and Delta flows (“Phase II”).

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The SWRCB received a large number of public comments during this process, providing new additional information which resulted in draft “Phase I” documents being released in September 2016. The review and comment period on the 2016 drafts lasted for six months and included a five-day public hearing in four cities that concluded in January 2017. The public comment period for this round ended in March 2017.

The 2016 draft amendments included the following elements relating to the San Joaquin River and Southern Delta:

- (1) A revised narrative and numeric flow objectives for the LSJR, the Stanislaus, Tuolumne, and Merced Rivers;
- (2) Revised salinity water quality objectives for the agricultural beneficial uses in the Southern Delta;
- (3) A program to implement these objectives; and,
- (4) Monitoring protocols and studies to assess the utility of these criteria.

Issue

On July 6, 2018, the SWRCB released (1) the draft final Bay-Delta Plan update for the Lower San Joaquin River and Southern Delta, and the associated Substitute Environmental Document (SED), and (2) a draft “Framework” to update flow requirements for the Sacramento River. These two documents (addressing “Phase I” and “Phase II” respectively) propose new and revised flow objectives (equaling 55 percent unimpaired flow objectives on the Sacramento River and 40 percent of unimpaired flows for all the major San Joaquin River tributaries) as well as other specific requirements and conditions that are proposed as narrative objectives. The major water organizations, including the Northern California Water Association and the Association of California Water Agencies, have characterized the concerns with both documents, and we align ourselves with these comments. However, in addition, we are raise the following points that specifically affect California’s rural counties:

- The proposed Bay-Delta Plan updates and SED fail to fully recognize and adequately evaluate the severe economic impacts to the affected counties and the communities within rural California, and the impacts to the physical environment created by the resulting “urban decay.”¹ As noted above, many of these communities are either disadvantaged or severely disadvantaged and are reliant on dependable ground and surface water supplies to maintain the agricultural economy upon which their success (or failure) is based. The proposed updates would dramatically reduce these water supplies, leading to foreseeable loss of jobs, loss of farms, and business closures - with direct physical consequences ranging from increasingly dilapidated residential and commercial properties in affected communities to decreased investment in the infrastructure necessary to

¹ See *Placerville Historic Preservation League v. Judicial Council of California* (2017) 16 Cal.App.5th 187, 196.

mitigate existing and foreseeable environmental hazards. The SED's failures in this regard render it fatally inadequate as an informational document.

- Both of the proposed, the plan updates and the final draft SED, fail to adequately address the impacts relating to groundwater, giving only lip service to the Sustainable Groundwater Management Act (SGMA) in its analysis; this despite information being provided by various entities that showed the impact of increased flow objectives on the available water supply for SGMA implementation. Surface water is the main tool available to Groundwater Sustainability Agencies to recharge aquifers and improve groundwater quality. And, again, it should be fully recognized that many of the disadvantaged communities in our member counties are entirely reliant on groundwater. The SED essentially assumes that local agencies will “bail out” the Water Board by restricting groundwater pumping to reduce any impacts resulting from decreased surface water supply and recharge. This reliance is deficient for CEQA purposes because, while local agencies can, and will, undertake measures (under SGMA and their police powers) to achieve groundwater basin sustainability, the specific goals, details, and outcomes of those measures are flexible, and remain undeveloped. This does not meet the standards outlined in caselaw for reliance upon another agency's regulatory measures to mitigate impacts.² Perhaps more importantly, the assumed restrictions on groundwater pumping exacerbate the economic (and consequent environmental) impacts of the proposed Delta Plan amendments. Simply put, without access to surface water for recharge, and with restricted access to what little groundwater remains, it is unclear how these communities will achieve a reliable source of safe drinking water. The SED does not adequately address the adverse interaction between the surface water reductions proposed by the Plan and the groundwater use restrictions assumed to mitigate the Plan, and is consequently deficient as an informational document.
- The drafts also incorrectly assumes correlations between higher flows and higher fish populations and disregards the effectiveness of non-flow measures like wetlands habitat restoration that have been demonstrated to improve Delta Fish habitat. And while flow is an important component of habitat, a more holistic approach to enable and restore ecosystem functions, using the interactions of flow with other habitat strategies, promises the most efficient use of water for all beneficial uses.
- Finally, the draft proposals do little to effectively encourage the development of “voluntary stewardship agreements” that many local water agencies are working to develop under the leadership of the Natural Resources Agency and former Interior Secretary Bruce Babbitt. As noted above, this approach is new but based on scientifically-based conceptual models that have been widely applauded.

² See *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884; *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036.

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We appreciate this opportunity to comment. As an organization that represents most of the counties in the Central Valley, both north and south of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, we oppose the Board's moving forward with this proposal. We urge the SWRCB to reconsider opportunities for a holistic approach to meeting the Delta's needs, including improvements that will achieve ecosystem-wide sustainability.

If you should have questions, please contact us at (916) 447-4806 or mwarmerdam@rcrcnet.org or awylene@rcrcnet.org.

Sincerely,



MARY-ANN WARMERDAM
Senior Legislative Advocate



ARTHUR WYLENE, ESQ.
Government Affairs Counsel

cc: RCRC Board of Directors
Diana Dooley, Chief of Staff, Office of Governor Edmund G. Brown Jr.
John Laird, Secretary, California Natural Resources Agency
Karen Ross, Secretary, California Department of Food & Agriculture