

July 27, 2018



Submitted via email: LSJR-SD-Comments@waterboards.ca.gov

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

Subject: Comment Letter – Revisions to Proposed Bay-Delta Plan Amendments

The State Water Contractors (“SWC”) appreciate this opportunity to provide comments regarding the Phase 1 Proposed Final Amendments to the 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (“WQCP”). The SWC submit these comments on behalf of itself and its 27 member agencies.

The SWC and its members maintain a commitment to improve Delta water quality and the Delta ecosystem through collaborative scientific efforts, scientific studies, and habitat restoration. We continue to support the Water Board’s consideration of voluntary agreements to help achieve benefits comparable to its proposed objectives. The SWC feel that a comprehensive, science-based, voluntary settlement approach is the best path to providing the durability, and resilience needed to protect and improve Delta water quality and the Delta ecosystem over the long-term.

At the same time, the SWC are concerned about the revised south Delta agricultural salinity standards and implementation described in Appendix K. The program of implementation (Appendix K) for the southern Delta salinity standards appears to pre-determine water right conditions and assign specific water right holders responsibility for implementation of the salinity objectives without providing or enumerating how due process would be honored. An adjudicatory water rights proceeding is the proper forum for identifying water right conditions and assigning implementation responsibility. The draft program of implementation appears to unlawfully conflate the Water Board’s quasi-legislative water quality planning authority with its quasi-adjudicatory water rights authority.

The draft program of implementation is also inequitable as it does not reflect appropriate consideration of the factors contributing to southern Delta salinity concentrations. The Department of Water Resources (“DWR”) has repeatedly demonstrated to the State Water Resources Control Board (“Water Board”) that there are multiple causes of salinity in the south Delta and the State Water Project and the Central Valley Project (“SWP-CVP”) have limited ability to control salinity in that region. See e.g., ICF, 2016 (attached, Appendix A). In response, the Water Board has also acknowledged that multiple factors influence salinity concentrations in the southern Delta, yet only the SWP-CVP are assigned responsibility for addressing south Delta salinity in Appendix K.

The SWC are further concerned about the use of compliance “reaches” rather than compliance locations. The Water Board appears to acknowledge the extreme difficulty in implementing compliance reaches as it defers the creation of a compliance monitoring plan to some point in the future, while inappropriately assigning sole responsibility for the creation of the monitoring plan to the SWP-CVP. Similarly, the Water Board inappropriately defers the creation of “specific performance goals” for its south Delta agricultural salinity standards to some point in the future, while again improperly assigning sole responsibility for the creation and implementation of those performance goals to the SWP-CVP. By imposing open-ended future obligations on the SWP-CVP, the SWP-CVP’s due process rights are further violated as the full scope of the regulatory obligations are undefined in nature and magnitude. The SWP-CVP has insufficient information to further explain concerns because the implementation for which they have been pre-maturely assigned is too vague.

The SWC and San Luis and Delta Mendota Water Authority (SLDMWA) jointly provided detailed comment letters outlining our concerns with the 2013 draft implementation plan and the Draft Substitute Environmental Document. These comments were not addressed in the development of the 2016 Draft SED, and therefore were reiterated in our March 2017 letter regarding the 2016 Draft SED. (See attached, Appendix B.) The SWC urge the Water Board to address these comments.

We look forward to working with the Water Board toward our shared goal of an effective, viable, and integrative proposal for the San Francisco Bay-Sacramento San Joaquin Delta Estuary.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Pierre", with a stylized, cursive script.

Jennifer Pierre
General Manager

Attachments