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July 27, 2018

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95814-0100

VIA ELECTRONIC MAIL TO: LSJR-SD-COMMENTS@WATERBOARDS.CA.GOV

Re: City of Modesto's Comments on Proposed Amendments to the Water Quality Control Plan for the San Francisco Bay/San Joaquin Delta Estuary and Supporting Environmental Document (Lower San Joaquin River)

Dear Ms. Townsend:

These comments on the proposed amendments to the Water Quality Control Plan (“WQCP”) for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary and the related final Substitute Environmental Document (“Final SED”) are submitted on behalf of the City of Modesto. As described in the Notice of Public Meeting dated July 6, 2018, the proposed amendments to the Bay-Delta Plan include new and revised flow objectives for the Lower San Joaquin River (“LSJR”) and its tributaries.

Modesto is the largest city affected by this phase of the proposed amendments to the Bay-Delta Plan, and the City continues to have grave concerns about both the proposed plan amendments and the environmental analysis contained in the SED. Modesto joins in and incorporates by reference the comments from the other affected regional agencies, particularly the County of Stanislaus, the West Turlock Subbasin Groundwater Sustainability Agency, the East Turlock Subbasin Groundwater Sustainability Agency, and the Stanislaus and Tuolumne Rivers Groundwater Basin Authority. Modesto does not repeat those comments here, but this letter does briefly summarize the City’s most serious continuing concerns about the proposed plan amendments and the SED’s environmental analysis.

First, the proposed plan amendments still focus exclusively on unrealistic flow levels that impose severe costs and environmental impacts on the City and other water users without attaining a significant benefit for the fisheries they are meant to protect. According to the Final SED, the “fundamental project purpose and goal” is:

To establish *flow objectives* during the February-June period and a program of implementation for the reasonable protection of fish and wildlife beneficial uses in the LSJR Watershed, including the three eastside, salmon-bearing tributaries

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(the Stanislaus, Tuolumne, and Merced Rivers). (Final SED at ES-8 (emphasis added).)

The proposed flow objectives, as set forth in the Final SED, call for 40% of unimpaired flows for all of the major San Joaquin River tributaries, including the Tuolumne River, at an estimated total water cost of 300,000 acre-feet/year.

As previously noted, Modesto relies on Tuolumne River surface water supplies to augment its groundwater supplies and help meet its customers' municipal and industrial water demands without overtaxing its local groundwater basin. If Tuolumne River water supplies are reduced by 40%, the City's surface water supplies likewise will be reduced – the Draft SED estimated that implementation of the proposed flow objective would reduce the City's surface water supply by 38%. As noted in the City's comments on the Draft SED, Modesto relies on surface water from the Tuolumne River for about half of its water supplies. Thus, implementation of the proposed flow objective would greatly hinder the City's ability to meet its future water demands.

The City submitted comments on the Draft SED explaining that the proposed flow objective would have potentially devastating effects on the City's surface and groundwater supplies. (See generally March 16, 2017 comment letter from City of Modesto, comment no. 1162.) Unfortunately, the Final SED fails to adequately address the issues raised in the City's prior comments, nor does it provide a reasoned, good faith analysis of these concerns. Rather, the Final SED repeats the error of the Draft SED: it does not sufficiently analyze the Project's direct, indirect and cumulative environmental impacts on the City of Modesto, which will be significant and will threaten its very vitality.

The Final SED acknowledges that imposing outflow requirements at this level would cause redirected environmental impacts. For example, the Final SED admits that "Flows provided to meet these numeric objectives" will have to "be managed in a manner to avoid causing significant adverse impacts to fish and wildlife beneficial uses at other times of the year." (Final SED, Appendix K, p. 18.) Thus, the Final SED concedes that implementing the proposed February-June unimpaired flow objective will likely drain the reservoir storage and deplete the cold water pool available for the very fish the water quality objectives are intended to protect. Yet the Final SED essentially ignores this problem by simply mandating that this result be avoided. The fundamental incompatibility between the proposed flow regime and the amount of water maintained upstream in storage cannot be reconciled by a hollow mandate.

In response to the City's comments about the potentially significant impacts on its water supply and the resulting environmental impacts, the Final SED simply claims that the City will be able to purchase replacement water. There is no evidence whatsoever to support this assumption, which appears to be nothing more than "magical thinking." There are two sources of water supply available to the City, surface water and groundwater. Implementation of the flow objective will eliminate sources of surplus stream water that have historically been available for transfer, while implementation of SGMA will reduce the amount of groundwater available for extraction. The SED acknowledges that the flow objective will reduce the surface water supplies available to the City of Modesto by 38%. There are no other sources of water to replace this loss, and the Final SED's contrary assumption is simply not factual. For this reason, the proposed flow regime will have significant impacts on Modesto's water supply, just as it will

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cause significant impacts to the groundwater basins in Stanislaus County. And with such a significant cut in the surface water available to the City of Modesto, its \$300 million investment in the Modesto Regional Water Treatment Plant and related water infrastructure is threatened. The Final SED fails to analyze any of these impacts in a meaningful way, and it offers no viable solutions.

While the Final SED asserts that imposing these severe costs on the people who currently depend on surface water from the Tuolumne River and other streams is necessary to protect cold water fish, it is not clear that the flow objective would serve the fishery well. The stated reason for imposing the unimpaired flow objective is to improve the condition of the fisheries in the San Joaquin system. (See SED at ES-12 (LSJR Proposed Final Amendments are aimed at “maintaining viable native migratory San Joaquin River fish populations”).) However, if the proposed flow objective were to be imposed without modification, it would create potential risks for the very fish it is designed to protect. (See Final SED, Appendix K, p. 28 (noting potential for “significant adverse temperature or other impacts on fish and wildlife” from draining the reservoirs and depleting the cold water pools).) Moreover, the Final SED estimates that implementing these proposed water quality objectives would result in an increase of only 1,100 fish.

Given the tremendous human cost as referenced in our previous comment letter that would be imposed by implementing the objective, the City is disappointed that the State Water Board’s documents do not appear to conduct the public interest balancing required by Water Code section 13241. (See also Water Code, § 13000 (State Water Board must consider whether the proposed changes would be reasonable “considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible”).) The proposed amendments would amend the Bay-Delta Plan to add new water quality objectives for the Lower San Joaquin River and its tributaries upstream of Vernalis. However, the waters of the Merced, Tuolumne, and Stanislaus Rivers are *not* within the legal Delta. (See Water Code, § 12220). The Tuolumne River thus is not included within the waters protected by the Bay-Delta Plan. The Final SED attempts to address this procedural deficiency by proposing an eleventh-hour change to the geographic scope of the plan, so that it reaches these upstream tributaries. This effort is not sufficient to cure the fatal flaw.

Water Code section 13241 requires the State Water Board to consider how the proposed new objectives would affect the past, present and future beneficial uses of the water that will be subject to the regulation. But here, the vast majority of the impacts resulting from the new Bay-Delta Plan objectives would occur *upstream*, far outside of the legal Delta, in areas such as Modesto. As the City previously commented, if the State Water Board wishes to supersede the existing water quality objectives for the Tuolumne River as set in the Central Valley Basin Plan, it must undertake the statutorily mandated analysis of the competing uses of water in the affected area. (See Water Code, §§ 13170, 13240-13244.) The Final SED acknowledges the need to adjust its geographic scope in order to make the objectives applicable outside of the Bay-Delta, but it continues to ignore the balancing requirement. The State Water Board cannot legally impose new flow objectives on the tributaries to the San Joaquin River without balancing the competing uses for the affected water. The statute was crafted as it was to ensure that the State Board considers all aspects of the public interest, including the human uses of the water, before implementing a regulatory decision such as this. Modesto urges the State Water Board to revise

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the SED to include this analysis and to follow the balancing procedure mandated by the statute. Taking into account the competing needs of people, farms, and fisheries is the means by which the State Water Board can avoid creating a needless travesty.

Thank you for your consideration of these comments. Modesto respectfully requests that a copy of these comments, as well as its prior comments, be included in the record of proceedings for this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ted Branvold". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ted Branvold, Mayor
City of Modesto

From: Edgar Garcia <edgarcia@modestogov.com>
Sent: Friday, July 27, 2018 11:53 AM
To: LSJR-SD-COMMENTS@WATERBOARDS.CA.GOV; WQCP1Comments
Subject: City of Modesto Comments on Proposed WQCP Amendments and SED
Attachments: Final Letter v4.pdf

Categories: Red Category

Ms. Townsend:

Please find attached the City of Modesto's Comments on Proposed Amendments to the Water Quality Control Plan for the San Francisco Bay/San Joaquin Delta Estuary and Supporting Environmental Document (Lower San Joaquin River) dated July 27, 2018.

Please acknowledge receipt at your convenience.

Best,

Edgar Garcia
City Manager's Office
City of Modesto
E: edgarcia@modestogov.com