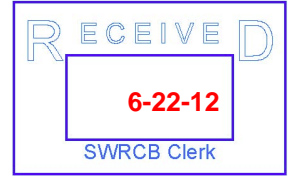




June 22, 2012

Chairman Charles R. Hoppin
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

LATE COMMENT



RE: *Comprehensive Review of the 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary*

Dear Chairman Hoppin,

I write on behalf of the San Luis & Delta-Mendota Water Authority concerning the comprehensive review of the 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (2006 Bay-Delta Plan). As you are aware, the State Water Resources Board's (State Water Board) comprehensive review is of critical importance. The Bay-Delta has undergone ecosystem-wide changes in recent years due to factors principally unrelated to flow. The State Water Board needs to become fully informed about these changes and ways it can provide reasonable protection for beneficial uses, in recognition of these changes.

The State Water Board has taken a significant first step in establishing the foundation for the comprehensive review – creating a forum through a series of facilitated workshops that allow interested parties to present and synthesize the scientific information before and for the benefit of the State Water Board. That effort will benefit from the leadership and guidance of Dr. Brock Bernstein and your staff. However, history teaches us the State Water Board must be mindful of at least two important considerations, as it continues to lay the foundation for the comprehensive review.

First, the State Water Board will need to consider a significant amount of complex information to establish water quality objectives which will “attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved.” (Water Code § 130000). Historically, to accomplish this task, the State Water Board has dedicated a substantial amount of time for the State Water Board, its staff, and interested parties to present and synthesize scientific information. For example, before adopting the 1978 Bay-Delta Plan, the State Water Board conducted **32 days** of hearings over approximately one year (from November 15, 1976 to October 7, 1977). The State Water Board dedicated **60 days** of hearings over almost three years before adopting the 1991 Bay-Delta Plan (from July 7, 1987 to August 23, 1990). And, the 2006 Bay-Delta Plan was informed by at least **16 days** of workshops between October 27, 2004 and

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March 22, 2005. Even for the 1995 Bay-Delta Plan, which was preceded by a separate, collaborative Bay-Delta Accord process, the State Water Board conducted **9 days** of workshops between March and October 1994.

For the current process, some State Water Board members encouraged the parties to limit their oral presentations to 30 minutes. The Water Authority appreciates the opportunity to submit extensive written documents and the need to concisely summarize that material. However, it is critical the State Water Board provide each interested party a fair opportunity to orally summarize written material and to address the written material submitted by others. From the Water Authority's perspective, 30 minutes is not adequate. There are as many, if not more, issues before the State Water Board today as existed when the State Water Board adopted prior Bay-Delta Plans, and the scientific information relevant to those issues is more extensive.

One possible resolution that responds to the comments of the State Water Board members, while accommodating the concerns of interested parties, would be for the State Water Board to hold pre-workshop conferences with all the interested parties shortly after the written materials are submitted. The purpose of the pre-workshop conferences would be to seek recommendations from the interested parties on the time they will need to make their presentations. In that way, workshop days could be planned and better organized. If a given workshop needs to run late or even span a few days to allow for adequate time to present and synthesize information, then the State Water Board would be able to make adjustments ultimately needed to satisfy the needs of the State Water Board and the interested parties, and maintains the integrity of the process.

Second, the framework in which the State Water Board is conducting the comprehensive review is different from that employed by the State Water Board in prior Bay-Delta Plan reviews. Today, the State Water Board, in the water quality control planning process, cannot conflate its water right **and** water quality authorities. (*United States v. State Water Resources Control Bd.* (1986) 182 Cal.App.3d 82.) When conducting the comprehensive review and considering the efficacy of existing objectives or new proposals, the State Water Board must focus on the level of water quality that provides reasonable protection for beneficial uses. This may require rethinking the appropriateness of those existing objectives developed through joint water right and water quality processes and those new proposals that are directed towards water rights. Some of the existing objectives do not and some of the new proposals may not fall within the definition of "water quality objective", (Water Code § 13050(h)), and therefore the State Water Board will need to reserve consideration of them to a future water right proceeding. That distinction is important. To do otherwise would deprive water right holders of due process protections they must be afforded before the State Water Board affects water rights.

The Water Authority therefore respectfully requests that the State Water Board adjust its workshop process consistent with the suggestions above to (1) allow the

interested parties sufficient time to summarize their material and respond to material submitted by others, and (2) be cognizant that the current process is not a joint water right/water quality proceeding and that the State Water Board must reserve the water right considerations to a future water right proceeding.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Nelson".

Daniel G. Nelson
Executive Director

cc: Frances Spivey-Weber
Tam M. Docduc
Steven Moore
Thomas Howard
Caren Trgovcich