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CITY MANAGER

Public Comment
2016 Bay-Delta Plan Amendment & SED
Deadline: 3/17/17 12:00 noon



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March 16, 2017

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814-0100

Re: Comment Letter - 2016 Bay-Delta Plan Amendment and SED

Background on the City of Turlock

The City of Turlock has a population of 72,000 and the City supplies drinking water to its residents and business with 19,000 connections. We are entirely dependent upon groundwater for our drinking water supply and we supply our customers with 19 active wells. In the past two years we have lost five wells due to increasing levels of contaminants, including arsenic, nitrate and PCE. In the case of nitrate and arsenic, increasing levels of contaminants may be related to the drought and the recent accelerated decline of the aquifer.

Our main employers are food processors, examples of which include but are not limited to: Foster Farms, California Dairies, Sunnyside Farms, Land of Lakes, Blue Diamond Growers, and SupHerb Farms. These food processors are part of a vast vertically integrated network of growers and processors that put milk, cheese, butter, and turkeys on our dining tables. Other products are exported further boosting our State's and our nation's balance of trade. All of these industries are dependent upon a safe and reliable water supply for their existence.

We take the health of the salmon fisheries very seriously. Since 1922, we have discharged treated wastewater into the San Joaquin River. Over the years, we have made significant investments - almost \$60 million in the past 10 years - in our wastewater treatment processes to improve the quality of the final effluent. Right now we are designing the next phase of our recycled water conveyance pipeline that will remove our recycled water entirely from the San Joaquin River and put it to beneficial use as part of the North Valley Regional Recycled Water Program. This effort will cost the City a further \$50 million when we are all done.

Furthermore, we understand our responsibility to conserve water. Last year, we pumped about 5.6 billion gallons (17,000 AF) about the same amount as we did in 1994. As a point of comparison, last year our population was 71,181 and in 1994 it was 47,079. So despite adding 24,000 residents in the past 21 years our water consumption is the same. This equates to a per capita reduction of 34%. We have far exceeded the water conservation requirements of SBX7-7 as well as our 2010 Urban Water Management Plan. Like Ceres and Modesto, we continued

with mandatory water conservation (like only 33 of 379 water agencies in California). Even though only a 16% conservation standard was required pursuant to the “Stress Test” in the SWRCB’s May 2016 emergency regulation, we elected to implement a 20% target based on our knowledge of local water supplies. And yet, our aquifer is at a record low level. We have shown that we cannot conserve our way out of the situation. This reality undermines one of the key arguments in the SED that conservation is the solution to offsetting the impacts of a reduced water supply in the region.

The Turlock and Modesto sub-basins are the only two basins in the San Joaquin Valley that are not critically over-drafted. This is no coincidence. Our single largest source of recharge is surface water irrigation from the Turlock and Modesto irrigation districts. Nevertheless, groundwater in our region is a diminishing resource. We know that we need to expand our portfolio of water resources and for the past 30 years we have looked at various options to develop a surface water supply.

During the past two years, we have been a member of a JPA with the City of Ceres, the Stanislaus Regional Water Authority, and we have been pursuing a surface water treatment plant on the Tuolumne River with the raw water supplied by TID. The SRWA has a Water Sales Agreement with TID to obtain up to 30,000 acre feet per year of Tuolumne River water. The SRWA’s water treatment plant is in the planning stages. Right now, we envision that Turlock will take 10,000 AFY and Ceres 5,000 AFY. Over time, the agencies have a need for 20,000 AFY and 10,000 AFY, respectively. Not only will the SRWA’s project provide an alternative source of high quality drinking water, it will also assist in our region’s efforts to comply with the Sustainable Groundwater Management Act of 2014 (SGMA).

Concerns with the 2016 Bay-Delta Plan Amendment and SED

As an operator of a Public Water System, the City of Turlock has a number of concerns with the 2016 Bay-Delta Plan Amendment and SED which are summarized below:

1. Failing to comply with the coequal goals of ecosystem restoration and water supply reliability as required by the California Water Code.
2. Deliberately reducing drinking water supply reliability and degrading drinking water quality.
3. Denying thousands of Californians the right to safe, clean, affordable and accessible water.
4. Failing to mitigate the environmental impacts of the flow proposals.
5. Illegally delegating the State’s obligation to mitigate the impacts of its flow proposals to local agencies.

Coequal Goals

The SED does not provide balanced analysis of how the proposed regulatory scheme of unimpaired flows achieves a balance of ecosystem restoration on one hand and water supply reliability on the other. The SED clearly recognizes the potential ecological benefits but tends to generalize, downplay and de-emphasize the potential adverse impacts on water supply reliability and sustainability.

For instance, California recognizes water for domestic purposes as the most important use of water; however, the State Board's document states (p. 13-67): substantial reductions in groundwater supplies would, in turn, impact service providers... who are relying heavily or primarily on groundwater sources for municipal and domestic uses. These entities would likely experience significant reductions in their groundwater supply, particularly over the long term and in dry years. Similarly, "Drinking water sourced from domestic wells would be affected..., and it is assumed that those affected would need to find an alternative drinking water supply such as bottled water or drill additional groundwater wells, and impacts would be significant" (page 13-65). It is not acceptable mitigation to require our region to find an alternative drinking water supply, such as bottled water; this is inconsistent with CWC §106. It does not represent a balance; it puts fish ahead of humans.

The document fails to adequately identify or quantify the benefits to fish and wildlife uses at the expense of water supply reliability for agricultural or potable uses. The SED does not demonstrate a rational connection between the factors the State Water Board is required to consider when establishing water quality control objectives (See Water Code §§ 174, 13000, and 13241).

Drinking water supply reliability and degrading drinking water quality

The potential impacts of the flow proposals in the SED on our region's municipal water supplies is staggering. The document notes that groundwater supplies and groundwater impacts will be severely impacted.

"The average annual groundwater balance is expected to be substantially reduced in the Modesto, Turlock, and Extended Merced Subbasins...which would eventually produce a measureable decrease in groundwater elevations. These substantial reductions in groundwater supplies would, in turn, impact service providers and private groundwater users. These entities would likely experience significant reductions in their groundwater supply, particularly over the long term and in dry years. Service providers at particular risk include those that have a higher potential for a well to run dry in the future. For example, Hickman, Hilmar CWD, Hughson, and Keys [sic] CSD in the Turlock Subbasin..." (page 13-67).

Therefore, the SED further exacerbates our region's drinking water supply and water quality problems.

As noted in the introduction, the City of Turlock is entirely reliant upon groundwater. The SED notes on page 13-79: "The potential reduction in groundwater quality...could degrade drinking water quality for those service providers relying entirely, or in large part, on groundwater for municipal supply." The City of Turlock is one of those service providers. The State Water Board is deliberately and consciously undermining the drinking water supply and security in the City of Turlock and our entire region.

As previously stated, the City of Turlock is a member of the Stanislaus Regional Water Authority. Together with the City of Ceres, we are attempting to develop a surface water supply of drinking water in partnership with the Turlock Irrigation District. Preliminary estimates indicate that the SRWA water treatment project will cost \$200 million. For our two communities this is our single largest infrastructure investment since our communities incorporated. But recognizing how critical a surface water supply is to our communities, the Turlock and Ceres City Councils embarked on this forward-thinking and ambitious project.

Unfortunately, preliminary estimates from TID indicate that they will lack an adequate supply of Tuolumne River water to make the SRWA's drinking water project viable.

The bottom line is this: Ceres and Turlock lack the resources to invest millions of dollars with no assurance that a surface water supply will be available. Furthermore, the SED is taking away the City of Turlock's main opportunity to comply with SGMA and attain groundwater sustainability in our region. Finally, and ironically, one of the advantages of the SRWA project was that it increased flows in a 20-mile stretch of the Tuolumne River that is salmon spawning habitat. Now that project and its potential fisheries benefit is unlikely to occur.

Denying Californians the Human Right to Water

The document acknowledges California Water Code §106: "It is hereby declared to be the established policy of this State that the use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation."

On February 14, 2107, the SWRCB launched its Human Right to Water web portal. The City of Turlock currently operates a Public Water System that is listed as having current exceedance/compliance issues on that very website. While the human right to water is a state law, the SED, by its own admission, could mimic the crisis situation from East Porterville and replicate it on a vast scale throughout this region. Unfortunately, the situation in East Porterville has been overshadowed by the tragic events in Flint, Michigan. A Washington Post article by Darryl Fears entitled "No running water and no solutions as California's driest county despairs", (February 2016) provides distressing examples from East Porterville where residents have been without running potable water for two years or more.

- Residents can only drink bottled water
- Toilets are flushed with water from a bucket

- 3,000 gallon emergency tanks provide non-potable water; they often run dry on week-ends and holidays. (“The igloo-shaped containers dominate browning front yards.”)
- A water delivery worker states: “The struggle is affecting relationships between spouses and kids. It’s a stress and a burden on them. The kids are dirty. Feces stays in toilets. You can sense the tension. You can feel it and see it in their eyes.”
- Children don’t want to go to school because they are embarrassed that their clothes have not been laundered
- Residents take showers at two trailers located in a church parking lot.

Last summer, the Sacramento Bee wrote: “California has leapfrogged France and Brazil to become the world’s sixth-largest economy, according to figures released Tuesday by Gov. Jerry Brown’s administration.” California has a larger economy than France or Brazil and the State Water Resources Control Board is deliberately and consciously creating a Third World water supply situation. We would not tolerate this in coastal California; it should not be acceptable for the San Joaquin valley. The document needs to further analyze the social and economic impacts of depriving access to drinking water in the San Joaquin Valley.

But this is not just a groundwater issue. Even those communities not entirely reliant on groundwater will lack access to an adequate drinking water supply. On page 13-61, the document states: “... if other water districts that supply domestic uses are receiving water through contracts with irrigation districts, then these uses would not necessarily be protected. For example, if MID experiences water shortages, its deliveries to service providers serving urban uses (e.g., City of Modesto) could be cut back proportionally, as described in MID’s various plans and policy documents.”

Again, the SED fails to comprehensively analyze the social and economic impacts that will result from an inadequate drinking water supply that denies our region a basic human right.

Failing to mitigate the environmental impacts of the flow proposals

The SED states (p. 13-67) that there is a significant impact on drinking water providers as follows: “These substantial reductions in groundwater supplies would, in turn, impact service providers (Tables 13-3a and 13-3b) and private groundwater users in these subbasins who are relying heavily or primarily on groundwater sources for municipal and domestic uses. These entities would likely experience significant reductions in their groundwater supply, particularly over the long term and in dry years.” Furthermore, on page 13-64, the document notes: “An SED must identify feasible mitigation measures for each significant environmental impact identified in the SED. (Cal. Code Regs., tit. 23, § 3777, subd. (b)(3).)”

Yet whenever there is an opportunity for the State Water Board to mitigate the impacts of the project, the SED takes the following approach: “Since the State Water Board would not be responsible for or have discretionary authority to approve the construction of any new or modified facilities or infrastructure, it is not feasible for the State Water Board to impose the

possible mitigation measures listed in Table 16-38” (page 13-64). Effectively, the State is proposing a regulatory scheme with significant environmental impacts and is accepting no responsibility to mitigate those impacts. This is not permitted under CEQA.

To mitigate the various significant impacts on domestic water supply, the State proposes a two-pronged approach:

1. Require local agencies to control groundwater through the authority granted under the Sustainable Groundwater Management Act (SGMA).
2. Develop a number of alternative water supplies which are analyzed in Chapter 16.

First, assuming local agencies acting under their SGMA authority could effectively address impacts to drinking water supplies on a vast scale is speculative and disingenuous, “...local agencies can and should nevertheless exercise their authorities under SGMA to prevent and/or mitigate any degradation of groundwater quality from the migration of contaminants.” (p. 13-80). As noted above in the high profile case of East Porterville, even with State intervention, local agencies lacked the resources to address the water supply shortages. Residents in East Porterville have lacked a reliable drinking water supply for more than two years. Rather than relying on local agencies to address the adverse impacts of the SED, the State Water Resources Control Board must step up to ensure that it mitigates groundwater impacts as it is statutorily obligated to do.

Second, some of the alternative water supplies make for interesting reading:

- Transfer/Sale of Surface Water
- Substitution of Surface Water with Groundwater
- Aquifer Storage and Recovery
- Recycled Water Sources for Water Supply
- In-Delta Diversions
- Water Supply Desalinization
- New Surface Water Supplies

There is no real analysis of where the additional water supplies would come from, particularly for water transfers, new surface water supplies, and Aquifer Storage and Recovery (ASR). These projects are very speculative and fail to consider how water could be wheeled to the region. Further, the document notes (pp 16-8 and 16-9): “Water transfers involving reservoir storage releases in excess of what would normally be released annually is less likely to occur...because most of the water rights associated with existing reservoirs would be fully used and the reservoir releases would occur regardless of the water transfer.” What will be the source of the additional surface water necessary to develop many of the projects the SWRCB lists in Chapter 16 (transfers, etc.)? Such issues must be analyzed.

Remarkably absent is an analysis of developing additional storage in existing reservoirs on the Merced, Tuolumne and Stanislaus Rivers. Such a concept is not found in the document, not even in the “New Surface Water Supplies” section which is limited to a discussion of new

locations for dams and reservoirs. The document should investigate enhancing storage by increasing the heights of New Exchequer Dam, New Don Pedro Dam, and New Melones Dam. Unfortunately, the document states on page 13-64, "The storage capacities for the reservoirs is fixed." This is not true. Increasing storage may be an appropriate means of meeting fishery flows and retaining enough water to offset the impact of increased flows to irrigation and municipal users.

To offset the impacts of the flow proposals, the document acknowledges in Chapter 13 that local agencies would have to spend millions of dollars on new water and wastewater infrastructure projects. The SED highlights the new and expanded water/wastewater facilities that would be required but does not consider their economic or regulatory feasibility. All of these facilities are projects under CEQA with potential impacts (p. 13-63). The document must consider the feasibility of these necessary alternative water/wastewater projects (financial, political, and regulatory). Without them, the human population of the San Joaquin Valley will lack access to an adequate supply of safe drinking water. Therefore, they cannot be considered mitigation.

Similarly, the State continues to make the argument that it cannot mitigate the impacts of the Project. For instance, (page 13-64) "...there is no feasible mitigation the State Water Board can implement to reduce environmental impacts resulting from the need for new or modified facilities or infrastructure. Impacts would be significant and unavoidable." However, that is factually incorrect as under its Division of Drinking Water and its Division of Financial Assistance, the SWRCB has the ability to make sure that these projects are constructed.

Delegating the State's obligation to mitigate the impacts of its flow proposals to local agencies

The responsibility to mitigate impacts under CEQA is the duty of the lead agency, even when the lead agency is a state agency, in this case the State Water Resources Control Board. Under the Marina Dictum [City of Marina v. Board of Trustees of California State University (2006) 39 Cal.4th 341], a State agency is required to ask the State Legislature to appropriate funding to mitigate a project's impacts. This ruling was affirmed by the California Supreme Court in City of San Diego, et al. v. Board of Trustees of the California State University (2015) 39 Cal.4th 341, 2015 WL 4605356 (Case No. S199557). We ask that you provide the funding to help us construct the water and wastewater projects to help mitigate the impacts of the unimpaired flow proposals.

Page 13-64, the SWRCB tries to argue that it lacks the legal authority to implement some of the mitigation measures. Under the Marina Dictum, a state agency cannot determine mitigation infeasible because it lacks discretionary authority to construct or approve a public improvement that could mitigate a project's impacts. The SWRCB cannot require local agencies to mitigate the impacts of its flow proposals.

March 16, 2017

Conclusion

The City of Turlock is very concerned that the flow proposals will cause significant harm to our region and our residents without achieving the stated objective; it is inconsistent with the concept of "co-equal goals." Like you, the City of Turlock is concerned with the declining salmon population; however, it appears that you are using faulty science to justify a one-sided approach to the problem. Like many others (including the local irrigation districts and the PPIC in their recent paper), we request that the Board take a more scientific, comprehensive and balanced approach to the declining salmon populations. Furthermore, the State Water Board must seriously consider the human impact of the proposed project and SED on the citizens of the City of Turlock and the entire San Joaquin Valley. The SED notes that impacts will be significant; the question is: are they unavoidable?

Sincerely,

A handwritten signature in blue ink, appearing to read "Gary R. Hampton".

Gary R. Hampton
City Manager