



O'Laughlin & Paris LLP

Public Comment
Bay-Delta Plan Supplemental NOP
Deadline: 04/25/12 by 12 noon

Attorneys at Law

SENT VIA E-MAIL

April 25, 2012



Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
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commentletters@waterboards.ca.gov

Re: Comment Letter – Bay-Delta Plan Supplemental NOP – Comprehensive Review

Dear Ms. Townsend:

The San Joaquin Tributaries Authority (“SJTA”) reviewed the Supplemental Notice of Preparation for the Update and Implementation of the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary: Comprehensive Review (“NOP”) dated January 24, 2012.

The NOP states that the process to review the southern Delta salinity and San Joaquin River flow objectives is already underway. (NOP, at 2.) The process that is currently being noticed covers the “comprehensive review of the other elements of the Bay-Delta Plan.” (*Id.*) This comprehensive review will include the review of objectives that (a) the 2009 Staff Report recommended for further review, (b) have been identified as part of the development of the Bay Delta Conservation Plan, (c) were identified by the Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem (“Delta Flow Report”), and (d) will be identified through the scoping process. (*Id.*, at 3.)

The NOP suggests that the “comprehensive review” will include objectives that may implicate San Joaquin River flows. For example, the Delta Flow Report recommended San Joaquin River flows intended to benefit fish and wildlife, and the 2009 Staff Report recommended several objectives (reverse flows, export/inflow ratios, and floodplain habitat flows) whose review may involve San Joaquin River flows.

Comprehensive Nature of Basin Planning Precludes Phasing

Historically, the State Water Board’s review of the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (“Bay-Delta Plan”) has been performed in one comprehensive process. Although the objectives therein are complex and multi-faceted, the Bay-Delta Plan is a single basin plan that sets forth water quality measures which contribute to the beneficial uses

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in the Bay-Delta Estuary. (See 1995 Bay-Delta Plan, at 3.) Because the water quality objectives aim to benefit a single basin, they are often inextricably interrelated. For example, the San Joaquin River flow objective, set for the purpose of doubling the natural production of salmon, is affected by and affects the objectives which set reverse flows, export/inflow ratios, and floodplain habitat flows.

The State Water Board has split the review of the Bay-Delta Plan into phases by reviewing south Delta salinity and San Joaquin River flow objectives in a process preceding and separate from the remainder of the “comprehensive” review. This separation causes several problems.

First, the Bay-Delta Plan is a basin plan covering a single designated area. Separating south Delta and San Joaquin River flows from the remainder of the basin plan review will result in a piecemealed analysis that is non-comprehensive. The San Joaquin River is one of the two rivers whose confluence makes up the Delta. Separating the flow objectives on the San Joaquin River from the larger “comprehensive” review of the remainder of the Bay-Delta Plan makes little sense. The quantity of San Joaquin River flows that will reasonably be required to protect the beneficial uses in the Delta is affected by reverse flows, exports, and other objectives that may be reviewed in the “comprehensive” review. For this reason, evaluating San Joaquin River flows in isolation, without considering the other basin-wide mechanisms that are interrelated, will not properly protect beneficial uses in the Delta, which is the purpose of the review of the Bay-Delta Plan.

Second, separating the processes will require water users on the San Joaquin River to expend twice the resources to achieve the same result. Because SJTA interests will be subject to all “phases” of the Bay-Delta Plan review, it will be required to participate in two different review processes in front of the State Water Board, review at least two different environmental documents, and to the extent the adoption and/or implementation of any revised objectives do not comply with law, the SJTA will have to challenge two different actions adopting objectives and two different implementation plans.

Third, the piecemealed process is not conducive to properly evaluating the cumulative impacts of the proposed objectives on SJTA members and other San Joaquin River water users. The substitute environmental document (“SED”) that evaluates the proposed amendment to the south Delta salinity and San Joaquin River flow objectives will not take into consideration the impact of the potential subsequent amendment of objectives in the later “comprehensive” review. As noted above, these subsequent objectives may require different flows from San Joaquin River water users or impact the efficacy of the flows required by amended south Delta salinity and San Joaquin River flow objectives.

Fourth, the California Code of Regulations, title 23, section 3777, requires a single SED be performed for each basin plan amendment. (Code of Regs., tit. 23, § 3777.) Section 3777 specifically states that “Any water quality control plan . . . proposed for [State Water] Board approval or adoption must be accompanied by a SED.” This code provision does not provide or otherwise allow for multiple SED’s for a single basin plan amendment.

For these reasons, the SJTA requests the State Water Board reconsider the current plan to review the Bay-Delta Plan in phases. The State Water Board’s review of the Bay-Delta Plan has evolved into a process that is unmanageable, impractical, and unlawful. In order to put the process back on track, the SJTA requests that the State Water Board re-notice the process as a single comprehensive review of the Bay-Delta Plan.

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Environmental Analysis of Implementation is Unclear

The NOP is contradictory regarding whether the environmental analysis of implementation will be included in the SED. The NOP references the continued validity of the February 13, 2009 Notice, which defined the “proposed project” as including:

“both: 1) the review and update of water quality objectives, including flow objectives, and the program of implementation in the Bay-Delta Plan; and 2) changes to water rights and water quality regulation consistent with the program of implementation.” (NOP, at 4.)

While later, the NOP states the proposed project “does not include amendments to water rights and other measures to implement a revised Bay-Delta Plan. A separate Environmental Impact Report will be prepared for these actions.” (*Id.*, at 6.) The SJTA requests the State Water Board clarify the definition of the proposed project and whether it will analyze the environmental impacts of the implementation in the SED or in a later EIR.

Very truly yours,

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cc: San Joaquin Tributaries Authority
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