
State Water Resources Control Board

December 22, 2016

The Honorable Edmund G. Brown, Jr.
Governor of the State of California
State Capitol, Suite 1173
Sacramento, CA 95814

Dear Governor Brown:

Last September you wrote to ask that the State Water Board use its authorities to accelerate efforts to improve our aquatic ecosystems and to be open to voluntary settlements in accomplishing that aim. The need for urgent action in the Delta ecosystem is apparent. In response to your letter, State Water Board staff have worked closely with your office and the California Natural Resources Agency staff to develop a credible, feasible plan to accelerate our Delta planning efforts. These efforts are designed to carry out the board's statutory mandate, but also to accommodate voluntary agreements that reasonably protect beneficial uses, improve flows, and restore habitat.

The State Water Board has just completed receiving comments on a scientific basis report that will serve as a foundation for action in the Sacramento River Basin. This key analysis will allow the State Water Board to accelerate planning in the Sacramento Basin as requested in your letter. Our planning effort will build on the scientific analysis, public comment received, input from the Delta Independent Science Board, and scientific peer review through our contract with UC Berkeley. The State Water Board has also committed additional staff and resources to be ready to propose and begin public review on a draft plan amendment and supporting environmental documentation by next summer. The release and development of the scientific basis report also provides a foundation for efforts by the California Natural Resources Agency to negotiate basinwide voluntary agreements.

As noted in your September letter, the State Water Board staff has already released a draft proposal to update flow requirements for the Lower San Joaquin River and its major tributaries. Throughout the fall, State Water Board members and staff have engaged in extensive public outreach on the draft proposal. In addition to numerous staff-level workshops and meetings, the board members have presided over four all-day hearings in Sacramento and throughout the affected region to receive comments with an additional hearing day to come on January 3. We have received extensive, thoughtful oral comments. Throughout the process board members and staff have emphasized the flexibility built into the proposal, including the flexibility to incorporate voluntary agreements. Board Members and staff recognize that sufficiently protective voluntary agreements can reduce uncertainty, be more durable, and be implemented more quickly than traditional regulatory processes.

One thing that has been clear in the oral comments is that there are a number of community members and institutions open to pursuing voluntary agreements. Many commenters asked for extensions of the public comment period in order to create space for negotiations. I understand that efforts by the California Natural Resources Agency and other negotiating parties to help reach a compromise are intensifying. While the State Water Board has already provided an extensive 120-day public comment period, earlier today my staff provided notice of a further two-month extension of the public comment period on the Lower San Joaquin proposal. This extension will allow commenters additional time to assess what they have read in the documents and heard at the hearing, and to better propose improvements to the draft to accommodate and achieve flow and non-flow actions that can achieve improvements in ecosystem health on the lower San Joaquin River and its tributaries. It will also provide the negotiating parties additional time to see whether a larger negotiated solution is possible.

Granting the extension of the comment period on the Lower San Joaquin proposal was a difficult decision. At first blush, the extension may seem to run counter to your call for urgent action to address the Delta ecosystem. The State Water Board only granted the extension after determining that it would not prevent the board from acting on a final proposal in 2017, nor would it affect the accelerated schedule to circulate a proposal for the Sacramento River Basin next summer. At the same time, our understanding is that the additional time may create positive opportunities for engagement and negotiation. In the end, though, the State Water Board will use its authorities in 2017 to accelerate improvements in the Delta ecosystem and its tributaries.

Sincerely,



Felicia Marcus
Chair