



Submitted via electronic mail to commentletters@waterboards.ca.gov

March 17, 2017

The Honorable Felicia Marcus, Chair
Jeanine Townsend, Clerk of the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



RE: ACWA Comments – 2016 Bay Delta Plan Amendment & SED

Dear Chair Marcus:

The Association of California Water Agencies (“ACWA”) appreciates the opportunity to comment on the State Water Resources Control Board’s (“Water Board’s”) Draft Revised Substitute Environmental Document in support of Potential Amendments to the Bay-Delta Plan (“draft Bay-Delta Plan amendment”). ACWA is a statewide association that represents more than 430 public water agency members that collectively supply approximately 90 percent of the water that is delivered for agricultural, municipal and industrial uses in California. As explained in the comments that follow, ACWA is concerned that the approach taken in the draft Bay-Delta Plan amendment does not provide reasonable protection of all beneficial uses of water and fails to appropriately balance the multiple competing uses of water as required by state law. The approach is inconsistent with the coequal goals of improving water supply reliability and enhancing the Delta ecosystem established in the Delta Reform Act of 2009. The approach is also inconsistent with the Sustainable Groundwater Management Act (“SGMA”) and would undermine implementation of the California Water Action Plan, particularly in the areas of improving water supply reliability, sustainably managing groundwater, and providing safe drinking water for all communities.

On March 10, 2017, ACWA’s Board of Directors unanimously adopted the attached policy statement on Bay-Delta flow requirements, which is incorporated into the following comments by reference. In the policy statement, ACWA expresses deep concerns regarding the draft Bay-Delta Plan amendment’s proposal to base flows on a percentage of unimpaired flow, and presents an alternate approach that supports the Governor’s request that flow requirements be developed through a negotiated, collaborative process.

I. COMMENTS

ACWA's members overwhelmingly believe the draft Bay-Delta Plan amendment's singular focus on unimpaired flows is the wrong choice for the state's future. The proposed "percentage of unimpaired flow" approach outlined in the draft Bay-Delta Plan amendment fails to account for all beneficial uses of water, fails to consider economic impacts, contradicts existing state policy, and does not incorporate the best available science. The only way to achieve a vision for a future that includes a healthy economy as well as healthy ecosystems and fish populations is through comprehensive, collaborative approaches that include "functional" flows as well as non-flow solutions that contribute real benefits to ecosystem recovery.

A. The Bay-Delta Plan must provide reasonable protection for all beneficial uses of water and must factor in economic considerations.

The current draft Bay-Delta Plan amendment fails to recognize the beneficial uses of water on affected waters outside of the Delta, does not provide reasonable protection for those beneficial uses, and fails to consider economics and other key factors in the required public interest balancing. The Water Board is responsible for amending the Bay-Delta Plan in a manner that establishes water quality objectives that ensure the reasonable protection of *all* beneficial uses of water, including domestic, municipal, agricultural and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources. (Wat. Code § 13050.) In doing so, the Water Board must consider past, present and probable future beneficial uses, environmental characteristics, water quality conditions and economic considerations, among other things. (Wat. Code § 13241.) Thus, when setting water quality objectives, the Water Board must consider "all demands being made and to be made on those waters." (Wat. Code § 13000.)

In their singular focus on flows for wildlife beneficial uses, the draft amendments to the Bay-Delta Plan fail to protect other beneficial uses. Further, the draft amendments fail to consider the economic impacts that will occur as surface water supplies for water supply are reduced. For example, the proposal could lead to widespread fallowing of agricultural land in the region. The California Water Action Plan ("Plan") underscores the policy objective that "the Water Board's action will balance competing uses of water including municipal and agricultural supply, hydropower, fishery protection, recreation, and other uses" (Plan at p. 10). To accomplish this, the Water Board must first examine the beneficial uses of the waters of the tributaries, and then engage in the required statutory balancing. These procedural steps are mandatory because they reflect the State's policy determination that, in our climate where water is relatively scarce in many areas, the public interest requires balancing of the multiple competing uses for this precious resource. These important steps must be taken before the Water Board can appropriately consider the draft amendments to the Bay-Delta Plan.

B. The Bay-Delta Plan must be consistent with established state policy.

As explained below, the draft Bay-Delta Plan amendment contradicts existing state policy.

- i. The draft Bay-Delta Plan amendment is inconsistent with the coequal goals established in the Delta Reform Act of 2009.

Since enactment of the Delta Reform Act of 2009, state law has set forth the coequal goals of improving water supply reliability for California and protecting, restoring and enhancing the Delta ecosystem. ACWA is committed to furthering the coequal goals and has supported a comprehensive approach to ecosystem management for more than two decades. In 2014, the Brown Administration released its California Water Action Plan outlining priority actions addressing water use efficiency, groundwater sustainability, ecological restoration, Delta conveyance solutions, water storage, safe drinking water and more. Stated clearly in the California Water Action Plan is the Brown Administration’s commitment that planned actions “will move California toward more sustainable water management *by providing a more reliable water supply for our farms and communities*, restoring important wildlife habitat and species, and helping the state’s water systems and environment become more resilient” (Plan at p. 4).

ACWA believes the policy of coequal goals and the commitment embedded in the California Water Action Plan have the potential to put California on a path that includes both a vibrant agricultural and urban economy on the one hand, and a healthy ecosystem on the other. ACWA is concerned that the draft Bay-Delta Plan amendment, as currently written, undercuts and threatens that potential and cannot lead us to the future we want for California.

- ii. The draft Bay-Delta Plan amendment would undercut the state’s groundwater sustainability goals.

The draft Bay-Delta Plan amendment would also undercut current state policy on groundwater sustainability. The draft amendment notes that the proposed “percent of unimpaired flows” proposal will increase groundwater overdraft. Since the 2014 adoption of SGMA, the state has made clear that its goal is to achieve sustainable management of groundwater basins. Increased groundwater pumping to replace lost surface supplies in groundwater basins that are already in a condition of overdraft will undermine groundwater sustainability goals. Therefore, the outcome of reducing surface water supplies is likely to be widespread following, as noted by many commenters from the counties and irrigation districts in the affected areas.

Increased groundwater pumping would also affect water quality in the drinking water wells in the impacted area, which includes a significant number of disadvantaged communities. The California Water Action Plan notes that “the state will identify drought-vulnerable public water systems” and “help prevent or mitigate any anticipated shortfalls in supply” when needed (at p. 18). The current draft Bay-Delta Plan amendment promotes an anticipated shortfall in supply that is flatly inconsistent with this state policy.

C. The proposed Bay-Delta Plan amendments must be based on the best available science.

The current draft amendments to the Bay-Delta Plan do not incorporate all of the best available science. The Water Board needs to incorporate the best available science to inform its work and assist with the development of voluntary settlement agreements. The 2012 Delta Independent Science Board peer review of the “unimpaired flows” approach states that “flow is but one of many stressors affecting fish and wildlife” and “the choice of flow criteria and metrics needs to serve the broader needs of ecosystems as well as individual species.” (May 22, 2012 letter at p. 1) The draft Bay-Delta Plan amendment’s “percent of unimpaired flows” proposal, in which flow objectives are not tied to any specific ecological outcome, fails to incorporate the best available science and will not lead to the desired improvement in fisheries. The plan amendment needs to focus on the entire life cycle of affected species and multiple stressors that affect their status, such as predation, food, and habitat availability, and incorporate all current scientific information.

ACWA’s member agencies have invested significant resources into scientific study of the fish populations that would be affected by the implementation program outlined in the Bay-Delta Plan amendments, and the science demonstrates that connecting flows to other types of activities such as habitat restoration or food production can benefit species in ways that unimpaired flow requirements cannot. Examples abound of collaborative, innovative projects currently underway by local water agencies and stakeholders that include “functional flows” and non-flow solutions that reconnect land and water to restore habitat and address the full life cycle of species needs. These efforts contribute real benefits to ecosystem recovery while maintaining water supply reliability, and can form the basis of integrated solutions that provide ecosystem benefits with far less impact on water supply, the California economy and the public interest.

D. The best way to achieve the desired outcomes and provide reasonable protection for all uses of water is through a collaborative, negotiated process.

The Governor has called for work on a comprehensive agreement on environmental flows in both the San Joaquin and Sacramento River basins. He has asked that Water Board members and staff prioritize analysis and implementation of voluntary agreements. Further, the Brown Administration committed in the California Water Action Plan that the Water Board and the California Natural Resources Agency will work with stakeholders to encourage negotiated implementation of protective Delta standards. ACWA strongly supports the collaborative approach called for by the Governor because it is the least contentious, most effective way to achieve the coequal goals. Negotiated agreements have been demonstrably successful at achieving outcomes and widespread support for appropriate environmental flows; forced regulations have not yielded the same track record. The Water Board should wholly embrace this approach and allow enough time for it to work.

A successful collaborative approach will require comprehensive solutions for both water supply and ecosystem management. Water users will need to continue and build on their

commitment to integrated resources management in order to maintain reliability without undue impacts on the ecosystem. Similarly, ecosystem managers will need to focus on the entire life cycle of affected species and multiple variables, such as predation, food, and habitat availability, to develop integrated management portfolios that accomplish ecosystem goals without undue impacts on water supply. Utilizing the single variable proposed in the “percentage of unimpaired flow” approach will not achieve the desired ecological outcomes and is, by far, the most destructive policy approach from the perspective of protecting and improving water supply. ACWA firmly believes the ecological outcomes can be achieved with even better results through a comprehensive approach that considers multiple solutions and benefits.

II. CONCLUSION

ACWA appreciates the Water Board’s consideration of these comments. ACWA’s Board of Directors has taken a strong policy position in support of comprehensive solutions such as those outlined in the California Water Action Plan. ACWA urges the Water Board to heed Governor Brown’s call for voluntary agreements that are negotiated through a comprehensive, collaborative process. We stand ready to work with the Water Board and the Brown Administration to pursue the collaborative and comprehensive approaches needed to ensure a future for California that includes a vibrant agricultural and urban economy and a healthy ecosystem.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rebecca Franklin". The signature is fluid and cursive, with a large initial "R" and "F".

Rebecca Franklin
Senior Regulatory Advocate

Encl.

cc: The Honorable Members, State Water Board
The Honorable Charlton H. Bonham
Ms. Kim Craig
Mr. Gordon Burns
Ms. Karla Nemeth
Mr. Bruce Babbitt
Mr. William Croyle
Mr. Tom Howard



ACWA POLICY STATEMENT ON BAY-DELTA FLOW REQUIREMENTS

COLLABORATIVE APPROACH IS KEY TO CALIFORNIA'S FUTURE

California is facing a defining moment in water policy. A staff proposal under consideration by the State Water Resources Control Board presents a decision point about the future we want for California and its communities, farms, businesses and ecosystems. The State Water Board's staff proposal to base new water quality objectives on a "percentage of unimpaired flow" would have impacts that ripple far beyond water for fish.

The proposal could lead to widespread fallowing of agricultural land, undercut the state's groundwater sustainability goals, cripple implementation of the Brown Administration's California Water Action Plan, negatively affect water reliability for much of the state's population and impact access to surface water for some disadvantaged communities that do not have safe drinking water. These effects are not in the public's interest.

Local water managers overwhelmingly believe the proposal's singular focus on "unimpaired flow" is the wrong choice for the state's future. California's urban and agricultural water managers are united in their vision for a future that includes a healthy economy as well as healthy ecosystems and fish populations. That vision is best achieved through comprehensive, collaborative approaches that include "functional" flows as well as non-flow solutions that contribute real benefits to ecosystem recovery.

On behalf of its more than 430 member public agencies serving urban and agricultural customers throughout the state, the Association of California Water Agencies (ACWA) adopts the following policy statement regarding the State Water Board's proposed approach to updating the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta.

LOCAL SUCCESS STORIES

Collaborative efforts have been successful on many rivers in the Bay-Delta watershed.

Lower Yuba River: A voluntary, collaborative settlement among Yuba County Water Agency, California Department of Fish and Wildlife, National Marine Fisheries Service, PG&E and conservation groups resolved 20 years of controversy and resulted in a continuing program to improve 24 miles of salmon and steelhead habitat while protecting water rights and the needs of local communities. State Water Board members have specifically recognized the value of the agreement, which was formally implemented in 2008.

Lower American River: A broad representation of water suppliers, environmental groups, local governments and others negotiated an historic agreement that led to a flow management standard that was successfully incorporated into a 2009 biological opinion issued by the National Marine Fisheries Service.

Feather River: Six years of negotiations among water users, fisheries agencies and environmental groups yielded a comprehensive agreement that includes a habitat improvement program with specific flow and temperature requirements to accommodate spawning salmon and steelhead. The State Water Board adopted the agreement, with some modification, in 2010 as a water quality certification under the federal Clean Water Act.

CHOOSING OUR VISION FOR CALIFORNIA'S WATER FUTURE

Since 2009, state law has required water resources to be managed in a way that achieves the coequal goals of improving water supply reliability for California and protecting, restoring and enhancing the Delta ecosystem. ACWA and its public water agency members believe that policy requires a commitment from state agencies and stakeholders to advance both water supply and environmental goals together. ACWA and its members further believe that effective implementation of the coequal goals requires transparent, collaborative processes and comprehensive solutions.

In 2014, the Brown Administration released its California Water Action Plan outlining priority actions addressing water-use efficiency, groundwater sustainability, ecological restoration, Delta conveyance solutions, water storage, safe drinking water and more. Embedded in the plan is the Brown Administration's commitment that planned actions "will move California toward more sustainable water management *by providing a more reliable water supply for our farms and communities, restoring important wildlife habitat and species, and helping the state's water systems and environment become more resilient.*"

ACWA believes the policy of coequal goals and the commitment embedded in the California Water Action Plan have the potential to put California on a path that includes a vibrant agricultural and urban economy and a healthy ecosystem.

ACWA and its members believe the unimpaired flow approach proposed by State Water Board staff undercuts and threatens that potential and cannot lead us to the future we want for California. Simply put, any strategy that would result in vast amounts of agricultural land going out of production and ultimately reduce water supply reliability for the majority of Californians is irreconcilable with a policy of coequal goals and blatantly inconsistent with the water policy objectives of the Brown Administration.

ACWA strongly supports the collaborative approach called for by Governor Jerry Brown to move these important decisions out of adversarial processes and into negotiated, comprehensive agreements. The following principles can assure success in that endeavor.

A BETTER PATH TO THE FUTURE

The State Water Board is responsible for updating the Bay-Delta Plan in a manner that establishes water quality objectives that ensure the reasonable protection of all beneficial uses of water (including domestic, municipal, agricultural and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources) while considering past, present and probable future beneficial uses, environmental characteristics, water quality conditions and economic considerations, among other things. (See California Water Code Section 13241.) It also has a responsibility to update the plan in a way that is consistent with the coequal goals and respects and implements the commitments made in the California Water Action Plan.

ACWA and its members urge the State Water Board to set aside the unimpaired flow approach and heed Governor Brown's call for negotiated agreements. ACWA believes that a successful flows policy must be consistent with the following principles:

- **Collaboration:** The governor has called for work on a comprehensive agreement on environmental flows in both the San Joaquin and Sacramento River basins. He has asked that State Water Board members and staff prioritize analysis and implementation of voluntary agreements. Further, the Brown Administration committed in the California Water Action Plan that the State Water Board and the California Natural Resources Agency will work with stakeholders to encourage negotiated implementation of protective Delta standards. ACWA strongly supports the collaborative approach called for by the governor because it is the least contentious, most effective way to achieve the coequal goals. Negotiated agreements have been demonstrably successful at achieving outcomes and widespread support for appropriate environmental flows; forced

regulations have not yielded the same track record. The State Water Board should wholly embrace this approach and allow enough time for it to work.

- **Comprehensive Solutions:** A successful collaborative approach will require comprehensive solutions for both water supply and ecosystem management. Water users will need to continue and build on their commitment to integrated resources management in order to maintain reliability without undue impacts on the ecosystem. Similarly, ecosystem managers will need to focus on the entire life cycle of affected species and multiple variables, such as predation, food, and habitat availability to develop integrated management portfolios that accomplish ecosystem goals without undue impacts on water supply. Utilizing the single variable proposed in the "percentage of unimpaired flow" approach will not achieve the desired ecological outcomes and is, by far, the most destructive policy approach from the perspective of protecting and improving water supply. ACWA firmly believes the ecological outcomes can be achieved with even better results through a comprehensive approach that considers multiple solutions and benefits.
- **Science:** The State Water Board needs to incorporate the best available science to inform its work and assist with the development of voluntary settlement agreements. The unimpaired flow approach, in which flow objectives are not tied to any specific ecological outcome, fails to incorporate the best available science. As noted above, the updated plan needs to focus on the entire life cycle of affected species and multiple variables, such as predation, food, and habitat availability, and incorporate relevant current scientific information. Science alone cannot identify the best policy choice, but it can inform us about the policy tradeoffs we confront and help structure integrated solutions that provide ecosystem benefits with far less impact on water supply, the California economy and the public interest.



FUNCTIONAL FLOWS: A BETTER APPROACH

Sacramento Valley: Sacramento Valley water users and conservation partners are working together to advance a new generation of innovative projects to promote salmon recovery.

Over the past two and a half years, 12 projects have been completed through the Sacramento Valley Salmon Recovery Program to address fish passage, improve the timing of flows and increase habitat for salmon and other species. Priority projects have included removal of structural barriers to fish passage, modifying riffles, eliminating predator habitat, restoring floodplains and creating side channel spawning and rearing areas.

In addition, program partners are exploring creative ways to reconnect water with the land in floodplains and agricultural areas to enhance habitat and food production and create rearing habitat in rice fields.

While each of these collaborative projects provides independent value, implementation of the entire comprehensive suite is generating unique benefits that can significantly improve ecological outcomes for salmon in the Sacramento Valley.

Merced River: Merced Irrigation District has spent millions of dollars and decades undertaking intense and in-depth scientific research on the Merced River. This research has included analysis of flows, temperatures, biological resources and habitat. MID is poised to put this research into action through its Merced S.A.F.E. Plan (Salmon, Agriculture, Flows, and Environment) to provide certainty for both the environment and local water supply in Eastern Merced County.

The plan would provide increased flows using science to dictate the amounts and timing, restore critical sections of habitat for spawning and rearing juvenile salmon, protect local drinking water quality, upgrade an existing salmon hatchery with state-of-the-art facilities and reduce predation.

Based on in-depth science and technologically advanced computer modeling, MID seeks to take immediate action and dramatically benefit salmon on the Merced River.

- **Functional Flows:** Science shows that functional flows have very promising benefits for fish as well agricultural and urban water users. Timed and tailored for specific purposes, functional flows can benefit species in ways that unimpaired flow requirements cannot. Examples abound of collaborative, innovative projects currently underway by local water agencies and stakeholders that include functional flows and non-flow solutions that reconnect land and water to restore habitat and address the full life cycle of species needs. These efforts contribute real benefits to ecosystem recovery while maintaining water supply reliability.
- **Economic Considerations:** The State Water Board has a statutory obligation to consider economic impacts when establishing water quality objectives that reasonably protect all beneficial uses of water. Having a robust economic analysis is critical. The board also has a policy obligation under the coequal goals to ensure its actions related to a revised Bay-Delta Plan increase water supply reliability and thereby allow for a healthy, growing agricultural and urban economy in California.
- **Consistency with State Policy:** ACWA urges the State Water Board to heed the governor's direction and recognize that achieving the coequal goals will lead to a more reliable water supply and healthy ecosystem. Pursuing the coequal goals should be a guiding principle for the board's decisions related to adopting a revised Bay-Delta Plan. The State Water Board also should ensure that its decisions on the Bay-Delta Plan enable, rather than obstruct, the implementation of the California Water Action Plan.
- **Leadership:** The best policy choice will come through the give and take of the negotiating process and the enlightened leadership of the State Water Board members. Ultimately, the board must establish water quality objectives that ensure the reasonable protection of all beneficial uses of water as it implements negotiated solutions. The State Water Board should actively engage in this work and lead in a manner that is grounded in an awareness of how its actions can affect the implementation of the California Water Action Plan and the achievement of the coequal goals.

ACWA and its members have taken a strong policy position in support of comprehensive solutions such as those outlined in the California Water Action Plan. We stand ready to work with the Brown Administration to pursue the collaborative and comprehensive approaches needed to ensure a future for California that includes a vibrant agricultural and urban economy and a healthy ecosystem.