

CITY AND COUNTY OF SAN FRANCISCO

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Via Electronic and U.S. Mail

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95814-0100
commentletters@waterboards.ca.gov



Re: Comment Letter – Bay Delta Plan SED

Dear Ms. Townsend:

I write on behalf of the City and County of San Francisco (“CCSF”) and its Public Utilities Commission (“SFPUC”)¹ to address the draft Substitute Environmental Document (“SED”) prepared for the potential changes to the water quality control plan for the San Francisco Bay-Sacramento/San Joaquin Delta Estuary (“Bay-Delta Plan”) and, in particular, the proposed revised San Joaquin River (“SJR”) flow objectives which apply to the Tuolumne River. Most relevant to the SFPUC are the draft SED Chapters 5 and 13, which attempt to analyze the environmental impacts of the proposed action on water supply and service providers, and Appendix H, which attempts to analyze the environmental impacts of replacement water supplies and infrastructure. Accordingly, this comment letter focuses on these portions of the draft SED. The SFPUC appreciates this opportunity to comment on the draft SED.²

As explained in more detail below, the draft SED fails to satisfy the California Environmental Quality Act’s (“CEQA”) mandate to analyze the whole of a project and to provide an accurate and stable project description, and therefore, it contains an inadequate environmental analysis in violation of CEQA. The project description and environmental setting are incomplete, inadequate and misleading because the draft SED improperly and inaccurately limits the scope of analysis of the Tuolumne River to the area below the Don Pedro Project³, and excludes the SFPUC’s upstream facilities and service area. In addition, the draft SED assumes, without supporting evidence, that the proposed action will not affect or modify the SFPUC’s

¹ The Public Utilities Commission is the department of the City and County of San Francisco responsible for managing and operating the City’s water, clean water and power utilities.

² CCSF also made a presentation to the SWRCB on the adequacy of the SED at its March 21, 2013 public hearing. CCSF’s PowerPoint is enclosed as Attachment A

³ Although the name “New Don Pedro” is frequently applied to the project, FERC ordered the project name changed to “Don Pedro” in 1973.

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operations. These deficiencies preclude an adequate analysis of environmental impacts and compliance measures. In addition, the proposed program of implementation does not satisfy the requirements of the Water Code and does not allow analysis of the full scope of the environmental impacts of the proposed action.

Detailed Comments on Draft SED and Proposed Bay-Delta Plan Amendment

I. The SFPUC's Water Infrastructure and Operations on the Tuolumne River

The SFPUC operates numerous water supply and hydroelectric facilities in the Tuolumne River watershed upstream of the Don Pedro Project, including O'Shaughnessy Dam and Hetch Hetchy Reservoir, Eleanor Dam and Lake Eleanor, Cherry Valley Dam and Lake Lloyd, and associated tunnels, pipes, powerhouses and smaller reservoirs ("the Hetch Hetchy Project"). Water in Hetch Hetchy Reservoir, Lake Eleanor, and Lake Lloyd is used to meet instream flow requirements, the Districts' water entitlements, and to provide hydropower for San Francisco's municipal load, the District's municipal and agricultural pumping loads, and for sale to public entities. Except in emergencies, Hetch Hetchy Reservoir is the only SFPUC Tuolumne River facility supplying water to the Regional Water System, providing on average 85% of deliveries to San Francisco and other Bay Area cities. The U.S. Environmental Protection Agency and the California Department of Health Services have approved the use of Hetch Hetchy Reservoir water without requiring filtration at a treatment plant. In the event emergencies necessitate water from Lake Eleanor or Lake Lloyd be diverted into the Regional Water System for delivery to the Bay Area, filtration of all water delivered from the Hetch Hetchy Project is required.

The SFPUC provides retail water delivery service within the CCSF and to the 26 member agencies of the Bay Area Water Supply and Conservation Agency ("BAWSCA"). The SFPUC Regional Water System serves residential, commercial, industrial and government customers in five counties –San Francisco, Alameda, San Mateo, Santa Clara, and Tuolumne. The SFPUC also has a water bank account in Don Pedro Reservoir under the Fourth Agreement, by and among the SFPUC, Modesto Irrigation District and Turlock Irrigation District (collectively, "the Districts").⁴ The water bank account is a physical solution that allows the SFPUC to satisfy its water rights obligations to the Districts under the Raker Act and to other senior water rights holders.⁵ The water bank account facilitates the SFPUC's deliveries from the Hetch Hetchy Project to approximately 2.6 million customers of the Regional Water System.

II. Plan Area, Project Description and Environmental Setting

The draft SED does not include SFPUC's Hetch Hetchy Project facilities upstream of the Don Pedro Project and the SFPUC's service area in the "plan area" analyzed in the draft SED. Figure 1-2 shows the plan area, which excludes the areas on the Tuolumne above the Don Pedro Project. Figure 2.5 shows the service areas for several water districts that divert from the three

⁴ The Fourth Agreement is enclosed as Attachment B.

⁵ Pursuant to the Fourth Agreement the SFPUC releases an additional 66 cubic-feet-per-second to satisfy the water rights of the Waterford Irrigation District, which was merged with Modesto Irrigation District in 1978.

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eastside tributaries but excludes the SFPUC's service areas in Tuolumne County and the Bay Area.

A. Failure to Consider the Full Environmental Setting

CEQA requires a description of the environmental setting, which is normally the baseline physical conditions by which a lead agency determines whether an impact is significant. (14 CCR § 15125(a).) “Knowledge of the regional setting is critical to an assessment of environmental impacts,” and the draft SED “must permit the significant effects of the project to be considered in the full environmental context.” (14 CCR § 15125(c).) Here, the draft SED failed to consider the full environmental context because it did not describe the upstream facilities of the SFPUC in adequate detail and excluded the SFPUC's service area from consideration. For example, the description of the environmental setting for water supply conditions, surface hydrology conditions, and water quality conditions in Chapter 5 ignores the upper Tuolumne River upstream of the Don Pedro Project, other than a cursory reference. This description mentions the SFPUC's upstream diversions but focuses on the operation of the Don Pedro Project and other facilities downstream. (Draft SED, at p. 5-22.) In addition, the draft SED excludes the SFPUC's service area from the description of the environmental setting for water supply in Chapter 5 and the environmental setting for service providers in Chapter 13; however, the environmental setting discussion does include the Central Valley Project (“CVP”) and State Water Project (“SWP”) exports and export service areas. (Draft SED, at pp. 5-22 – 5-26, 13-1.)

B. Inconsistent and Confusing Project Description

The project description should be accurate and consistent throughout the environmental document. In fact, “[a]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.) An inconsistent project description confuses the public and commenting agencies, drawing “a red herring across the path of public input.” (*Id.* at 197-198.) The draft SED contains a confusing project description because it acknowledges that there are water diversions and facilities upstream of the rim dams, which may affect flows draining to the reservoirs of the rim dams, while at the same time disclaiming that the proposed action will affect those diversions.

The draft SED concludes that the amendments to the Bay-Delta Plan “could directly affect portions of the SJR Basin and Delta that drain into, divert from, or otherwise obtain beneficial use (e.g. surface water supplies) from the following water bodies”, including the “Tuolumne River from and including New Don Pedro Reservoir to the confluence of the LSJR.” (Draft SED, at p. 1-2.) Furthermore, Chapter 2 provides a brief description of the SFPUC's facilities on the Tuolumne River although they are outside the plan area because the upper Tuolumne River “is drained by the Tuolumne River.” (Draft SED p. 2-16.) “Obviously, meeting [a flow] objective may be achieved, among other ways, by reducing the amount of water that upstream water right holders divert from the watercourse or by increasing the amount of water released into the watercourse.” (*State Water Resources Control Board Cases* (2006) 136

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Cal.App.4th 674, 701-702.) Despite this obvious logic, the draft SED concludes without substantial evidence, and contrary to its own conclusions elsewhere, that diverters upstream of Don Pedro Reservoir will not be affected by the revised flow objectives. This is an incorrect assumption and leads to a flawed environmental impact analysis.

C. Incorrect Assumptions About the Project Description

An incorrect assumption about the project description can lead to failure to recognize and analyze potentially significant impacts and to adopt mitigation measures to address them. Downplaying the effects of a changed policy or failing to consider the ultimate consequences that the policy would have on the physical environment is a violation of CEQA's requirement to analyze the whole project and to provide an analysis of the effects of the project at the earliest possible stage in the planning process. (*City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 410.)

The draft SED contains several incorrect assumptions about the project description which result in disregarding or downplaying the effect that the proposed revised SJR flow objectives will have on the physical environment. For example:

- The draft SED characterizes CCSF as a contracting water district with the Districts as the primary water rights holders and surface water diverters. (Draft SED, at p. 13-5.) This is an inaccurate characterization. CCSF holds its own water rights to the Tuolumne River and does not receive water under contract with the Districts. The Raker Act requires CCSF to recognize the prior rights of the Districts and the Fourth Agreement simply established an accounting procedure to implement the Districts' water entitlements. The Districts hold all rights to divert and store water at the Don Pedro Project. San Francisco has neither the means nor the right to divert water into the Hetch Hetchy Project from Don Pedro Reservoir.
- The draft SED describes CCSF's storage allocation under the Fourth Agreement as a "740-TAF water right", although it is not a water right but rather a water bank account in Don Pedro Reservoir that allows CCSF to satisfy the Districts' entitlement to daily natural flow. (See Fourth Agreement, Article 7, 7(a).) In addition, the statement that SFPUC has a right to store or a water bank credit for 740 thousand acre-feet-per-year in Don Pedro Reservoir is incorrect. The SFPUC has the right to a maximum water bank credit of 570 TAF at any time, and has the right to an additional credit in the water bank of up to 170 TAF when and only when storage in Don Pedro Reservoir physically encroaches into space reserved for flood control. (See Fourth Agreement, Article 5.) The United States Army Corps of Engineers flood control manual requires the Districts to maintain 340 TAF of flood control space in the Don Pedro Project from October 7th to April 27th of the following year, unless additional space and time are indicated by snowmelt parameters. The SFPUC does not include the 170 TAF in its operational planning for the Regional Water System because the additional credit occurs infrequently, is intermittent, and cannot be carried past October 6th.

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- The draft SED states: “The 740-TAF water right is senior to TID and MID water rights.” (Draft SED, at p. 13-5.) This is incorrect; the Districts have senior water rights to natural flows in the Tuolumne River, which the draft SED recognizes elsewhere, and possess rights to all water stored in Don Pedro Reservoir. (See Draft SED, at p. 5-22; Fourth Agreement, Article 7(g).) In any water rights proceeding to implement this water quality objective, the rule of priority, any applicable exceptions to that rule, and the obligations between the parties established by statute and agreement will be taken into account, and the draft SED should not draw conclusions in its current analysis about how water rights issues will be addressed between the SFPUC and the Districts. (*El Dorado Irr. Dist. V. State Water Resources Control Bd.* (2006) 142 Cal.App.4th 937, 944.)
- The draft SED calculates that CCSF’s share of water rights under the Fourth Agreement’s Water Bank Account is usually greater than the aqueduct diversions, and on this basis concludes that it will not be impacted by the revised flow objectives. (Draft SED, at pp. 5-88, 5-89, 5-90.) Even if the draft SED’s calculations and estimates were correct, whether or not CCSF will be affected by the revised flow objectives depends on a variety of complex and interdependent factors and not simply a comparison between the limits of the water bank account and the SFPUC’s most recent diversion volumes.⁶

III. Flawed Environmental Impacts Analysis

An inadequate description of the environmental setting precludes the proper analysis of project impacts. (*Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1121-1122.) “[O]nly through an accurate view of the project may the public and interested parties and public agencies balance the proposed project’s benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives.” (*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1454.) Because the project description incorrectly assumes that the SFPUC’s operations will not be affected or modified, the draft SED fails to consider the impacts of reduced water supply on the SFPUC, its customers and contracting agencies, the resulting economic impacts on the Bay Area, and the environmental impacts of replacement water supply and infrastructure.

⁶ “The average calculated water rights for CCSF were about 750 TAF/y, about 40 percent of the Tuolumne River unimpaired flow of 1,853 TAF/y for the 1922–2003 period (Environmental Defense 2004). This is higher than the average aqueduct diversion of about 290 TAF/y, so much of this water is stored in Don Pedro and eventually transferred or spilled during flood-control releases. The current CCSF demand for water is about 290 TAF. (Environmental Defense 2004). This CCSF diversion is therefore about 15 percent of the average unimpaired flow.” (p. 5-22).

This cursory analysis is unfounded and confusing in no small part because using simple averages misrepresents the situation where the SFPUC gets little or no water in extended droughts. During extended droughts the Regional Water System demand remains the same, but water availability can be far less than demand. As noted during the hearing, the SFPUC is heavily dependent on storage. If CCSF has a share of responsibility for the proposed action, and the Regional Water System already experiences shortages in deliveries, then an additional downstream demand can only exacerbate such shortages.

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A. Unsupported Conclusion that the SFPUC's Operations Will Not Be Affected or Modified

The conclusion that the water supply, operations and water infrastructure of CCSF will not be affected by the proposed flow objectives is not supported by substantial evidence, and thus violates Public Resources Code section 21168.5. “[A]rgument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous” is not considered substantial evidence. (Pub. Res. Code §21080(e)(1).) The draft SED offers only conclusory and unsupported statements and inaccurate assumptions to support its conclusion that the SFPUC's water operations will not be affected by the proposed action.

The draft SED estimates that the upstream “CCSF diversion is... about 15 percent of the average unimpaired flow,” and that “[i]n some dry years, very little of the Tuolumne's unimpaired flow belongs to CCSF, and CCSF would have to withdraw from its water bank to meet the Raker Act entitlements.” (Draft SED, at p. 5-22.) Nonetheless, the draft SED concludes that CCSF's water supply operations will not be affected by the proposed flow objectives even though the preferred alternative will require 35 percent of unimpaired flow to remain in the stream and affect the Tuolumne River by a water supply change of close to 20 percent from baseline. (Draft SED, at pp. 5-22, 5-85.)

Furthermore, the draft SED recognizes that, in the event revised water release requirements in a FERC license for the Don Pedro Project adversely affect the Districts' water rights, the Fourth Agreement provides that there will be a re-allocation of storage credits so as to apportion such burdens on the following basis: 51.7121% to CCSF and 48.2879% to the Districts. (Draft SED, at p. 5-54.) The draft SED also concludes that “[s]ome portion of the increased release flows from New Don Pedro Reservoir could be shared by CCSF” and that “[t]he water accounting for New Don Pedro Reservoir would likely be modified by the LSJR alternatives.” (Draft SED, at pp. 5-56, 5-88.) Contrary to its other conclusions and unsupported by substantial evidence, however, the draft SED inexplicably concludes that “the upstream CCSF operations (storage, hydropower, and water diversion) are expected to be unchanged” and that changing the bank account “would not likely interfere with the CCSF diversions.” (Draft SED, at pp. 5-56, 5-88, 5-89, 5-90.)

SFPUC's analysis of the proposed action shows there would be dramatic and significant impacts on the SFPUC's diversions from the Hetch Hetchy Project to its Regional Water System service area and the Bay Area economy assuming – as the draft SED recognizes – that revised water release requirements ordered by FERC could result under the Fourth Agreement in a re-allocation of water bank credits so as to apportion an additional burden on CCSF of 51.7121%.⁷ Assuming current demands and a recurrence of the 1987-1992 drought, the SFPUC's annual diversions from the Tuolumne River could be reduced by 111,700 AF for each of the six years of the drought. This additional annual reduction in supply – when added to reductions in deliveries

⁷ In presenting potential water supply and socioeconomic effects from certain interpretations of the Raker Act and the Fourth Agreement San Francisco does not thereby waive arguments it may have about how the Raker Act or Fourth Agreement should or will be interpreted in future proceedings before the SWRCB or other bodies.

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of up to 20% already imposed by the SFPUC to ensure delivery of water to customers throughout the 1987-1992 drought – results in a single year of reduction in deliveries of 42%, and five years of reduction in deliveries of 52%. (Attachment C, CCSF Exposure to SWRCB 35 Percent February-June Flow Requirement by Daniel B. Steiner, Consulting Engineer.)

In 2009 the SFPUC presented testimony to FERC on the economic impacts of 41% and 51% rationing within the service area of the Regional Water System.⁸ The area served by the SFPUC Regional Water System is one of the largest centers of employment and economic activity in the United States. There are over 1.6 million jobs located in the service area. Firms located in the service area produce over \$280 billion in goods and services each year.

The impacts of such levels of rationing on the Bay Area economy are staggering. The Bay Area would experience job losses of 139,146 from Regional Water System water delivery reductions of 41%, and 188,000 from reductions of 51%. The lost sales associated with 41% and 51% rationing are \$37 and \$49 billion respectively. Further, with respect to lost consumer and producer surplus, the potential rationing would result in significant impacts of \$324 million in the 41% rationing scenario and \$471 million annually in the 51% rationing scenario. It should be noted that the SFPUC already includes rationing of up to 20% as a policy and practice in its water supply strategy to address shortages during droughts. (Attachment D, Answering Testimony of David L. Sunding on Behalf of San Francisco Public Utilities Commission Before the Federal Energy Regulatory Commission (Don Pedro Project P-2299, September 2009, and attachments thereto.)

The draft SED similarly concludes that that CCSF is not expected to need to construct or expand new water treatment facilities or water supply infrastructure, which is not supported by any, let alone substantial, evidence. (Draft SED, at p. 13-33 – 13-34.) The draft SED assumptions outlined above are flawed, not supported by substantial evidence, and conflict with other conclusions in the draft SED. The draft SED must analyze the feasibility and cost of developing 111,700 AF in drought water supply to replace existing supplies for the Regional Water System, and must account for the environmental impacts associated with developing such supplies.⁹

It is misleading for the draft SED to equate CCSF's estimated average annual water deliveries to the maximum available water account in Don Pedro Reservoir or to the average amount of water available to CCSF. Reaching conclusions using such a comparison reveals a lack of understanding of the operations of the SFPUC and the allocation and use of water among Tuolumne River interests. The SFPUC's actual operations and water bank accounting is done on a daily basis, depending on the amount of daily natural flow in the Tuolumne River, whereas

⁸ The levels of rationing were the result of a joint NMFS, USFWS and CDFG proposal presented to FERC for potential interim flow requirements for the Don Pedro Project. (INCLUDE CITE TO FERC LIBRARY)

⁹ For an analysis of the feasibility and impacts associated with various alternatives for developing 25,000 AFY in new supplies for Regional Water System customers see Chapter 9 CEQA Alternatives and Chapter 13 pages 13-22 to 13-26 Water Supply Options in the *Program Environmental Impact Report for the Water System Improvement Program, October 30, 2008* (available at <http://www.sf-planning.org/index.aspx?page=1829>)

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service area demands occur differently during different times of year. (See Raker Act, Sect. 8(c); Fourth Agreement, Article 7(a).)

Finally, the SED is flawed in assuming water bank accounting will be changed or modified by the SFPUC and the Districts if the SWRCB adopts the proposed action. (pp. 5-88, 5-89, 5-90, and 5-56) The Fourth Agreement provides that CCSF shall not be entitled to have a debit balance in its Water Bank Account without prior approval of the Districts and that the Districts own and has exclusive control of the withdrawal and release of the water in Don Pedro Reservoir. (Fourth Agreement, Article 7(e), (g).) Therefore, the SFPUC does not have complete control over its water bank account – and certainly not the unilateral right to modify the Fourth Agreement – and further cannot unilaterally adjust the operation of the Don Pedro Reservoir to satisfy any release obligations resulting from the flow objectives or to avoid adverse impacts to its ability to meet Regional Water System service area demand.

B. Failure to Analyze Reasonably Foreseeable Consequences

Project descriptions and related impact assessments should account for the reasonably foreseeable consequences of proposed projects. (*Laurel Heights Improvement Assn v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 396.) Future effects of a project must be included in the environmental analysis required by CEQA when they are a reasonably foreseeable consequence of the initial project and they will likely change the scope or nature of the initial project or its environmental effects. (*Id.* at 395; See also *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 734 (holding that the failure to consider the expansion of the wastewater treatment plant as part of the project under consideration resulted in an inaccurate project description and incomplete identification and analysis of the environmental effects of the development project).)

The draft SED is flawed because it fails to analyze the reasonably foreseeable consequences to CCSF from the proposed revised SJR flow objectives. As described above, the draft SED concludes that the water accounting between the Districts and the SFPUC will likely change as a result of the revised flow objectives and that CCSF will share some portion of the increased release flows from Don Pedro Reservoir. Therefore, it is reasonably foreseeable that water supply from the Tuolumne River which is available to the SFPUC to divert and deliver to its service area will be reduced. In fact, the draft SED concludes that under Alternative 3, 40% unimpaired flow contribution from each tributary, surface water diversions on the Tuolumne River would be reduced and could result in the construction of new or expanded water supply infrastructure, the construction of which could result in significant environmental impacts, and that this impact is significant and unavoidable. (Draft SED, at p. 13-2.) However, the draft SED did not analyze any impacts of the SFPUC's having to construct replacement water supplies or infrastructure because of the flawed assumptions and inadequate project description discussed above. (Draft SED, at pp. 13-33 – 13-34.)

In addition, the draft SED analyzed whether the flow objective alternatives would result in substantial changes to San Joaquin inflows to the Delta such that decreased water supplies

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would be available to service providers relying on CVP/SWP exports. The draft SED concludes that impacts would be less than significant because under alternatives 3 and 4, flows would increase and that under alternative 2, there would be only a slight decrease in flow from the Stanislaus River. (Draft SED, at p. 13-38.) It is inconsistent and unreasonable for the draft SED to analyze impacts to service providers relying on CVP/SWP exports and to ignore impacts to service providers relying on the same water resources developed upstream of the rim dams. As stated above, the SFPUC Regional Water System serves residential, commercial, industrial and governmental customers across four counties in the Bay Area – San Francisco, Alameda, San Mateo and Santa Clara. The draft SED's failure to analyze reasonably foreseeable potential impacts to the SFPUC and the BAWSCA member agencies and their service areas is due to an inaccurate project description and results in an incomplete identification and analysis of the environmental effects of the project. This failure extends to cumulative impacts as well, as the draft SED's analysis of cumulative impacts fails to include projects within the geographic scope or otherwise related to the SFPUC and contracting service providers. (See Draft SED, at pp. 13-44 – 13-46.) This failure extends to the draft SED's economic analysis in Chapter 18, which does not analyze the economic impacts to the SFPUC's hydropower operations or to the economy of the San Francisco Bay Area from potential future water shortages or costs associated with developing replacement water supplies, and instead focuses on the regional effects from changes to agricultural production and hydropower generation of other facilities. (See Draft SED, at pp. 18-10, 18-20.)

Although the draft SED evaluated the anticipated methods of compliance, including the anticipated replacement facilities that may be needed by service providers, in Appendix H, it did not analyze several unique factors about the SFPUC because it assumed that the SFPUC would not need to implement any of the methods of compliance. For example, water diverted by the SFPUC from the Tuolumne River is provided to the SFPUC retail agency as well as 26 member agencies spanning four counties and 2.6 million urban water customers. In addition, water agencies in the Bay Area already have implemented many effective water conservation programs and the feasibility of additional water conservation programs in the event of future water shortages is uncertain.¹⁰ The SFPUC and the member agencies of BAWSCA, SFPUC's wholesale customers, have committed significant resources to developing alternative water supplies to meet current water supply shortfalls and future anticipated demands. These projects produce minimal yields (varying from 1,000 AFY to 4,000 AFY on average) and would not produce nearly enough supply to address a 111,700 AFY drought year deficiency that could result from the State Board's proposal.

IV. Implementation Plan

The proposed program of implementation described in Appendix K would require 35 percent of unimpaired flow from February to June from each of the Merced, Tuolumne and Stanislaus Rivers on a 14-day running average, unless otherwise modified by the State Water

¹⁰ CCSF's 85.5 average gross per capita daily water usage ("gpcd") and its wholesale customers' 130.4 gpcd in 2010 were below the statewide average of 160.2 gpcd, and well below the City of Sacramento's average of 207 gpcd.

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Board through the adaptive management framework, and base flows of 1,000 cfs on a 14-day running average at Vernalis during the February through June period. (Appendix K, p. 3.) However, the “specific measures to achieve, monitor, and evaluate compliance with the percent unimpaired February through June flow requirements” are not included in the program of implementation; rather, an Implementation Workgroup will develop recommendations to be included in an Implementation Plan to be submitted to the Executive Director of the State Water Board for approval within 180 days of the Office of Administrative Law’s approval of this amendment to the Bay-Delta Plan. (Appendix K, p. 4.) Furthermore, that Implementation Plan “will then be considered in State Water Board water right proceedings, FERC licensing proceedings, or other implementation actions to achieve the February through June flows.” (Appendix K, p.4.)

The program of implementation does not meet the Water Code’s requirements for the contents of such a program, which should include a description of the actions which are necessary to achieve the objectives, including recommendations for appropriate action by any entity, a time schedule for the actions to be taken, and a description of surveillance to determine compliance with the objectives. (Water Code § 13242.) The proposed program of implementation does not identify necessary actions or particular entities to take action because the development of the Implementation Plan has been deferred. Delaying the development of specific measures until after the completion of CEQA review is an impermissible failure to analyze the whole project under CEQA and results in “piecemealing” the project by separating out a future phase of the project and allowing it to be adopted without any environmental review at a later date. (*Rural Land Owners Assn v. Lodi City Council* (1983) 143 Cal.App.3d 1013, 1025; *Laurel Heights Improvement Assn v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 396.)

Conclusion

The SFPUC pledges to work cooperatively with State Water Board staff and other stakeholders to develop a more defensible SED and program of implementation. The SFPUC urges the State Water Board to ensure that the public and other agencies are fully informed regarding the potentially far reaching impacts of these proposed flow objectives on the water supply of the Regional Water System and the Bay Area economy. The SFPUC appreciates this opportunity to comment and thanks the State Water Board staff for their efforts.

Very truly yours,

DENNIS J. HERRERA
City Attorney

signed in original

Donn W. Furman
Deputy City Attorney

plus: encls.