



CALIFORNIA FARM BUREAU FEDERATION

OFFICE OF THE GENERAL COUNSEL

2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 • PHONE (916) 561-5665 • FAX (916) 561-5691

Sent via E-Mail

commentletters@waterboards.ca.gov

LATE COMMENT

March 29, 2013



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

RE: Comments On The Adequacy Of The Draft Substitute Environmental Document In Support Of Potential Changes To The Water Quality Control Plan For The San Francisco Bay-Sacramento/San Joaquin Delta Estuary: San Joaquin River Flows And Southern Delta Water Quality

Dear Ms. Townsend:

The California Farm Bureau Federation (“California Farm Bureau”) is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home and the rural community. California Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing more than 74,000 agricultural, associate and collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

The California Farm Bureau thanks the Board for the opportunity to provide this input. As a threshold matter, the California Farm Bureau would like to clarify that these comments are directed at the San Joaquin River flow aspects of the Board’s Substitute Environmental Document (“SED”). The California Farm Bureau expresses no opinion on the South Delta salinity issues, except to say that our statewide organization supports adequate protection of established beneficial uses throughout the watershed on an equitable basis. Having clarified the scope of these comments in that regard, we now turn to the matter of the adequacy of the Board’s Draft SED in the context of the proposed San Joaquin River Flow standard.

In setting flow standards to protect fisheries and public trust resources, the State Water Board Resources Control Board (“Board”) must reasonably balance these values against other beneficial uses of water, consider relevant factors including economic, technical and practical

NANCY N. MCDONOUGH, GENERAL COUNSEL

ASSOCIATE COUNSEL:

CARL G. BORDEN • KAREN NORENE MILLS • CHRISTIAN C. SCHEURING • KARI E. FISHER • JACK L. RICE

feasibility, potential impacts to legal water users of water, environmental impacts under the California Environmental Quality Act (“CEQA”), etc. To properly balance competing demands, the Board must accurately characterize and analyze impacts and adopt mitigation to avoid or reduce impacts to the extent possible. In addition, the Board must consider a reasonable range of feasible alternatives, including alternatives that can avoid or minimize adverse impacts, while at the same time achieve most of the basic objectives of the project.

It is true, CEQA does not require that Board’s analysis be “perfect.” However, for the SED to serve its intended purpose, not only from a CEQA perspective, but also to adequately support the Board’s decision making under the Porter-Cologne Act, the Clean Water Act, the Water Code, and California’s dual system of water rights, the SED must present at least a legally adequate picture of a proposed regulatory program’s probable impacts. Because the Board has not, in our assessment, properly analyzed the impacts of its proposal, adopted feasible mitigation measures, or considered a reasonable range of feasible alternatives to avoid or minimize the proposed Board’s proposed 35 percent unimpaired flow alternative (or the other alternatives), the Board cannot therefore competently, and in good conscience, engage in the “balancing” exercise required of it.

The balance of these comments attempt to briefly catalogue some of the Draft SED’s major defects and omissions. To the extent these or other related points are echoed or covered in greater detail by other parties, Farm Bureau joins in the comments of those parties.

Current Defects and Omissions in the Board’s Draft Substitute Environmental Document

1. The SWRCB does not consider potential interaction or compatibility with the ongoing FERC relicensing processes.
2. The 60 percent or greater unimpaired flow recommended by the fisheries agencies corresponds exactly to the 60 percent that was considered in the SWRCB Flow Criteria Recommendation to be fully protective of the public trust *without* balancing—with is to say, without *any* consideration of other beneficial uses or system demands. With balancing, therefore, it should be self-evident that anything on the order of 60 percent or greater does not adequately protect or account for other competing needs.
3. The SED only *recommends* nonflow measures such as floodplain habitat, predator control, pollution control, hatchery and fishery management, scientific study of causal relationships and multiple stressors as part of an adaptive management framework, cooperative management with local agencies, formal coordination with other regulatory efforts and programs, etc. Without consideration of such nonflow measures as part of an alternative that could feasibly reduce or optimize the recommended instream flow measures, the SED fails to consider a reasonable range of feasible of alternatives and also fails to clearly establish the efficacy or reasonableness of the current single-variable approach.
4. The Board’s 35 percent unimpaired proposed preferred alternative is not actually analyzed in the Draft SED. Rather, what is analyzed in detail is a variety of differing alternatives, none of which is the preferred alternative, with a single chapter added late in the day as a mere

stand-in for proper analysis of the proposed project. But, if the impacts of the proposed project are only approximately estimated in light of the differing alternatives receiving actual full treatment in the document itself, how then is the public—or the Board—to understand the true impacts of the Board’s proposal?

5. Many comments by Fish and Wildlife and the other fisheries and regulatory agencies suggested that 35 percent is insufficient to do both “unimpaired flows” and pulse or peak flows, natural variability, geomorphic mobilization, year-round protection, etc., and that doing one thing, while failing to do the other will not meet the minimal needs of the fish, according to various metrics, including the elusive, imprecise, and completely unscientific “fish doubling” goal. These comments fail to understand that our state has a finite amount of water, whereas the competing demands and varied societal interests in how that finite amount of water is apportioned are complex and not unidimensional. If it is true that fish protection agencies cannot reasonably expect society at large to devote *so much* of our limited water supply to a single objective that our economy becomes a “sand box” for uncertain experimental manipulation without limit, then it may well be that our strategy for fish protection should properly be an *optimized strategy* that conforms, like other uses of water, to the universal applicable declaration of Article X, Section 3’s of the California Constitution that “the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare.”
6. As commented by many at the Board’s workshop, the SED’s reverse-image “worst case” assumptions on potential agricultural versus groundwater impacts may predict a potential upper range of impacts in a legal sense for either category. However, it clearly skews the analysis by not accounting for human behavior or long “experiential evidence” of the past. Under the current system, for example, it is well known that much of the lost surface water would almost certainly be made up by groundwater, at least anywhere where groundwater is available as an alternate supply. In agronomic terms, some of the shortfall could result in dry-year or permanent fallowing, but some of it would likely also be made up through groundwater pumping, increased efficiency, and potential crop shifting. The SED alternatives also do not properly characterize baseline or no project conditions or account for realworld operations or water rights priorities. Although the precise mix of these likely responses is complex and difficult to predict with certainty, some credible mix of the foregoing could at least result in a far more realistic scenario, to in turn serve as the basis for better decision-making, more rational consideration of potential trade-offs, and more accurate evaluation of probable economic and environmental consequences and appropriate design of mitigation measures or selection of alternatives.
7. Because the SED does not properly analyze farmland, socioeconomic, groundwater, power, recreational impacts, it cannot properly propose or consider feasible alternatives or design appropriate mitigation.

8. Dry years and wet years are not created equally in terms of the relative severity of potential economic and environmental effects—and this is true from both a fish, as well as an economic and water supply standpoint. Yet, the SED and proposed 35 unimpaired approach imposes the same template on both year types, without considering appropriate off ramps, optimization of limited resources, or additional flexibility in the driest, high impact years.
9. The proposed proposal significantly accentuated dry year hammer fails to account for the relative lack of economic and operational elasticity in terms of the limited ability of farmers in an area uniquely dominated by small, multi-generation family farms of 40 acres or less to forego income through fallowing one year, waiting out the bad times in hopes of better times to come. Predictably, if the Board’s proposal does not eliminate many farms altogether, another probable effect will be consolidation of many small family farms under corporate ownership, with a corresponding loss of rich heritage and diversity.
10. Comments at the Board’s workshop were rife with references to the current proposal’s obvious severe and, currently, insufficiently analyzed and unmitigated impacts to local groundwater resources. These impacts include foreseeable groundwater overdraft, air quality and power generation impacts from additional pumping, increasing competition for limited groundwater resources, greatly reduced and constrained opportunities for sustainable conjunctive use strategies, dropping yield, potential loss of underground storage space through compression, serious impacts to small communities depending on groundwater as their sole drinking water supplies, worsening quality, potential subsidence, and probable worsening and eastward movement of Westside drainage and salinity intrusion problems.
11. The SED’s dismissive treatment of so-called “low-value” crops, and that of many uninformed commentors at the Board’s recent workshop, overlooks the fact that many of these so-called “low value” crops in fact provide indispensable support for California world class “high value” dairy industry.
12. Feasible, surer-thing ways to replace lost jobs and revenues from declining (and long-term unsustainable) commercial ocean fisheries include expanded permitting and improved environmental regulation of large fish farming operations, in addition to intelligent use of modern conservation hatcheries.
13. The SED fails to analyze potential adverse impacts of its proposal to the human food supply.

Conclusion

This concludes the California Farm Bureau's public comments on the Board's SED in relation to the Board's proposed San Joaquin River flows. Thank you once again for the opportunity to comment.

Very truly yours,

A handwritten signature in black ink, appearing to read "Justin E. Fredrickson", with a long horizontal line extending to the right.

Justin E. Fredrickson
Environmental Policy Analyst

JEF:/pkh