

CENTRAL DELTA WATER AGENCY

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July 27, 2018

Via Email Only to LSJR-SD-Comments@waterboards.ca.gov

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Re: Comment Letter – Revisions to Proposed Bay-Delta Plan Amendments (re Flows in the Lower San Joaquin River and its Tributaries and Water Quality in the Southern Delta).

Dear Ms. Townsend:

The Central Delta Water Agency (CDWA) has previously submitted extensive comments on this matter that continue to be directly relevant and applicable to the adequacy and propriety of the instant Proposed Amendments and Final Substitute Environmental Document (“Final SED”). Those comments include the following, which are hereby incorporated by reference:

- (1) “Comment Letter – Bay-Delta Plan Draft SED re San Joaquin River Flows and Southern Delta Water Quality,” dated March 29, 2013 (which themselves incorporate and include copies of six [6] additional sets of CDWA comments previously submitted on this matter); and
- (2) “2016 Bay-Delta Water Quality Control Plan Proposed Degradation of South Delta Water Quality and SED,” dated March 17, 2017.

The CDWA also hereby joins in all of the comments the South Delta Water Agency (SDWA) has previously submitted on this matter orally and in writing and joins in the comments the SDWA will be submitting to the SWRCB in response to the instant request for comments on the Proposed Amendments and Final SED.

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As explained in those comments, along with other concerns, the CDWA continues to strongly oppose the proposed relaxation of the water quality standards in the South Delta. The fact that the SWRCB suggests that water quality in the South Delta will be improved if those standards are relaxed confirms the significant and prejudicial flaws in the SWRCB's analysis of the water quality impacts as explained in those comments.

The CDWA hereby briefly supplements those comments with the following procedural comment.

1. The SWRCB's Refusal to Accept Written Comments on Any Aspect of the Final SED, Except Appendix K, Prejudicially Thwarts Public and Judicial Review.

Notwithstanding that this is the first time the public has had an opportunity to review the Final SED, including its voluminous responses to comments on the Draft SED, the SWRCB's "Notice of Public Meeting" states the following on page 3:

The public comment period on the Recirculated SED closed on March 17, 2017 and, except for Appendix K as specified below, no additional written comments on the Final SED will be accepted

This refusal to accept written comments on any aspect of the Final SED, except for Appendix K, is inconsistent with the duty to raise alleged grounds of noncompliance with CEQA "up to the close of the public hearing on the project before the issuance of the notice of determination." As Public Resources Code section 21177, subdivision (a), provides:

[A CEQA] action or proceeding shall not be brought pursuant to Section 21167 unless the alleged grounds for noncompliance with this division were presented to the public agency *orally or in writing* by any person during the public comment period provided by this division *or prior to the close of the public hearing on the project before the issuance of the notice of determination.*

(Emphasis added; see also, *Bridges v. Mt. San Jacinto Cmty. Coll. Dist.* (2017) 14 Cal.App.5th 104, 117 [public "meeting" constitutes a public "hearing" for purposes of 21177].)

While section 21177, subdivision (a), does not apply if "there was no public hearing [or meeting] or other opportunity for members of the public to raise those objections orally or in writing prior to the approval of the project . . ." (Pub. Resource Code, § 21177, subd. (e)), the SWRCB is required by the Bagley-Keene Open Meeting Act (Gov. Code, § 11120 et seq.) to provide such an opportunity at its upcoming public meeting.

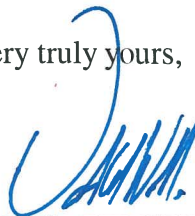
Because the SWRCB's Notice does not prohibit *oral* comments at the upcoming public meeting regarding the inadequacies of any aspect of the Final EIR (nor could it legally prohibit such comments under the Bagley-Keene Open Meeting Act), members of the public will

presumably be required to raise any such inadequacies at that meeting or else lose the right to seek judicial review of those inadequacies. That opportunity, however, will be very restricted (generally [3] minutes per person). Such a restricted opportunity is both unnecessary and unwarranted and prejudicially thwarts CEQA's public review process as well as meaningful judicial review of the SWRCB's approval of the Final SED.

Because of the significance and scope of the Proposed Amendments and Final SED, as well as the sheer magnitude of the voluminous additions made to the Draft SED, meaningful public review as well as judicial review require that members of the public be allowed to present written comments on any aspect of the Final SED and not be unfairly and prejudicially limited to a restricted oral comment period to raise such comments. To that end, the SWRCB should reschedule its meeting to approve the Proposed Amendments and Final SED and reissue a public notice for that meeting that invites and encourages the submission of written comments *on any aspect of the Final SED* and provides ample time for members of the public to do so.¹

Thank you for considering these comments and concerns.

Very truly yours,



Dante J. Nomellini, Jr.
Attorney for the CDWA

¹ Contrary to the SWRCB's contention, the SWRCB's refusal to accept written comments on any aspect of the Final SED, other than Appendix K, is *not* "consistent with" the SWRCB's regulation, title 23, section 3779, subdivision (e). That subdivision refers to the refusal to accept comments on a Draft SED, not a Final SED. Moreover, that subdivision does not condone the instant situation where the SWRCB is entirely prohibiting written comments while at the same time allowing a very restricted opportunity for oral comments, which, as discussed above, prejudicially thwarts both public and judicial review.

From: Dante Nomellini, Jr. <dantejr@pacbell.net>
Sent: Friday, July 27, 2018 11:55 AM
To: LSJR-SD-Comments@waterboards.ca.gov; WQCP1Comments
Cc: Dante Nomellini, Jr.
Subject: CDWA Comment Letter - Revisions to Proposed Bay-Delta Plan Amendments
Attachments: CDWA Comment Letter - Revisions to Proposed Bay-Delta Plan Amendments_July 27 2018.pdf

Categories: Red Category

Please see the attached comments submitted by the Central Delta Water Agency.

And please reply to this email acknowledging receipt of those comments.

Thank you,
Dan Jr.
Attorney for the CDWA

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