



	<p>42 N. Sutter Street, Suite 506 Stockton, CA 95202 (209) 475-9550 www.restorethedelta.org</p>
---	---

March 1, 2017

Via email: commentletters@waterboards.ca.gov

Felicia Marcus, Board Chair
Frances Spivy-Weber, Vice-Chair
Steven Moore
Dorene D'Adamo
Tam Doduc
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Subject: 3/7/17 BOARD MEETING–ITEM #7: Consideration of a proposed Resolution adopting a comprehensive response to climate change

Dear State Water Board Members:

Restore the Delta advocates for local Delta stakeholders to ensure that they have a direct impact on water management decisions affecting the water quality and well-being of their communities, and water sustainability policies for all Californians. We work through public education and outreach so that all Californians recognize the Sacramento-San Joaquin Delta as part of California's natural heritage, deserving of restoration. We fight for a Delta whose waters are fishable, swimmable, drinkable, and farmable, supporting the health of the San Francisco Bay-Delta Estuary, and the ocean beyond. Our coalition envisions the Sacramento-San Joaquin Delta as a place where a vibrant local economy, tourism, recreation, farming, wildlife, and fisheries thrive as a result of resident efforts to protect our waterway commons.

Restore the Delta provides the State Water Board with our comments on the above agenda item.

General Comments:

First, Restore the Delta thanks the Board for delaying consideration of this item until the March 7th meeting, giving us and other interested parties a chance to review and offer the Board our comments in a timely fashion.

RTD Comments on 3/7/17 BOARD MEETING–ITEM #7 - Climate Change Response

March 1, 2017

Page 2 of 4

Second, Restore the Delta supports the resolution in the main, while offering what we hope you will find are constructive suggestions for improving the framing and content of the draft resolution prior to Board adoption.

Third, our specific comments below seek to strengthen the resolution's internal connections between findings in the first part and the Board's contemplated actions regarding climate change in the second part.

The Board's attention in the draft resolution seems to be on foregrounding gubernatorial emergency orders and California Natural Resources Agency (CNRA) statements on climate change. The Board is a state agency located in neither the Governor's Office nor the CNRA. It is part of the California Environmental Protection Agency. The resolution's current framing ignores a number of established, highly relevant, and applicable legislative policies and non-CNRA studies that are either mentioned only in passing or omitted altogether. These policies and studies should be noted in the Board's resolution. Our specific comments are intended to encourage the Board to move these neglected policies from the shadows of this resolution into sharing the light with all of the state's climate change-related findings, policies and goals.

Specific Comments

1. The Board should mention in the "whereases" its dual role of water quality and water rights regulation. The Board, with its dual role, turns 50 this year. This finding should indicate how and why the Board's dual role is important to the state's overall program of responding to climate change. By doing so, this will build more connection between the Board's mission, and the findings and commitments to action thereby making a strong case for why its dual role is essential to the state's overall program of climate change response. We also respectfully suggest you connect these dual powers with other Board authorities, including enforcement actions, permittee reporting and condition compliance, data management and analysis, and Delta Watermaster activities.
2. The various statewide goals of the Delta Reform Act of 2009 should be addressed directly in both major sections of the draft resolution on climate change. These policies include not just the "co-equal goals" but also reduced reliance on the Delta for California's future water needs, use of comparatively drought-proof water supply strategies for local and regional self-sufficiency, and continued recognition that the public trust and reasonable use legal doctrines remain foundational to state water policy and are applicable to the Bay-Delta Estuary. (Water Code Sections 85021 and 85023.)
3. Strengthen the Board's climate change resolution by including the state's human right to water policy (Water Code Section 106.5), which states that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. The Board's climate change responses and actions can help all California residents adapt as smoothly as possible to inevitable impacts of climate change, including continuous provision of safe, clean, affordable, and accessible water for human uses and public health. Addition of the state's human right to water

RTD Comments on 3/7/17 BOARD MEETING–ITEM #7 - Climate Change Response

March 1, 2017

Page 3 of 4

policy in the findings should result in parallel planning and policy opportunities where the State Water Board is to ensure that the human right to water applies. Such opportunities should include all water quality control plan updates (including that of the Bay-Delta Estuary), new and revised beneficial use designations, National Pollutant Discharge Elimination System programs, and any drinking water-related plans the Board works on.

4. Further strengthen the draft climate change resolution by including the state's environmental justice policies as an important framework that must also be factored into climate change actions addressed by the State Water Board. The State of California defines "environmental justice" as: "the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." (Cal. Gov. Code Sec. 65040.12, subd. (e).) The State Attorney General's office states that "fairness in this context means that the benefits of a healthy environment should be available to everyone, and the burdens of pollution should not be focused on sensitive populations or on communities that already experience its adverse effects." The State Attorney General adds, "environmental justice requires an ongoing commitment to identifying existing and potential problems, and to finding and applying solutions, both in approving specific projects and planning for future development." (California Government Code [C.G.C.] Sec. 11135(a).)

California's anti-discrimination statute further states:

No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

The State Attorney General's office states that, while this policy does not expressly include the phrase "environmental justice," in certain circumstances it can require agencies to undertake the same consideration of fairness in the distribution of environmental benefits and burdens called for in the state's definition of environmental justice. In addition, the State Attorney General's office notes that agencies "should evaluate whether regulations governing 'equal opportunity to participate' and requiring 'alternative communication services' (e.g., translations) apply. (See Cal.Code Regs., tit. 22, secs. 9801, 98211.)" This will be essential in communicating Board programs and their climate change practices to an increasingly diverse California populace.

5. We recommend the Board include in the "whereases" reference to the Office of Environmental Health and Hazard Assessment's "Indicators of Climate Change in California" reports (including the 2010 report on Environmental Justice Impacts). This set of reports summarizes a number of physical, biological, and other impacts of climate change to which Board program managers should pay heed, such as rising Delta water

RTD Comments on 3/7/17 BOARD MEETING–ITEM #7 - Climate Change Response

March 1, 2017

Page 4 of 4

temperatures. In addition to such benchmark environmental justice/climate change studies by agencies of the State of California, the state's environmental justice policy concerns should also be applied to problems including, but not limited to, increased snowmelt runoff and flood risk to rural and poor communities throughout the Delta and California.

6. The State Water Board has a looming role in the implementation of the Sustainable Groundwater Management Act (SGMA) which should be briefly described, not merely mentioned in passing as the Draft Resolution does in paragraph 14 of the "whereases." SWRCB's role in SGMA of reviewing and determining adequacy of local Groundwater Sustainability Plans (GSPs) will foster local and regional self-reliance and coordination of regional supplies, consistent with Water Code Section 85021. Its role may be among the most important roles the Board assumes in the state's efforts to address and adapt California to climate change effects, to the extent that local groundwater sustainability agencies either fail to complete GSPs, or should submitted GSPs prove inadequate. Taking climate change into account will be pivotal as the Board reviews local plans for their efforts to identify and implement sustained yields for their basins. The Board should acknowledge that role directly here. Whether or not any GSPs are found inadequate, the Board's role will have to take climate change into account.
7. We recommend that in addition to the section on Ecosystem Resilience, which is outstanding, the Board should include a section on Human Systems Resilience that addresses the protection of existing and future beneficial uses of water (broadly construed) that climate change impacts could affect and describe adaptation and GHG reduction efforts that could help address those effects. This section could be the specific location where the Human Right to Water and Environmental Justice policies are placed.

We thank you for the opportunity to comment on the draft State Water Board Climate Change Response resolution. We look forward to the outcome of your deliberations on this matter.

Sincerely,



Barbara Barrigan-Parrilla
Executive Director



Tim Stroshane
Policy Analyst

cc: Trent Orr, Earthjustice
Yana Garcia, Earthjustice
Tom Howard, Executive Director, State Water Board
Colin Bailey, Environmental Justice Coalition for Water
Conner Everts, Environmental Water Caucus