



August 6, 2014

State Water Resources Control Board
Division of Water Rights
Attn: Mark Gowdy
P.O. Box 2000
Sacramento, CA 95812

Dear Mr. Gowdy,

In a letter dated May 6, 2014 to the San Francisco Public Utilities Commission (“SFPUC”), the Division of Water Rights outlined certain “key assumptions” that State Water Resources Control Board (“State Water Board”) staff will use in its impact analysis for the revised Draft Substitute Environmental Document in Support of Potential Changes to the Water Quality Control Plan for the Bay-Delta: San Joaquin River Flows and Southern Delta Water Quality (“SED”), to evaluate impacts to the City and County of San Francisco (“CCSF”) that may result from the proposed Tuolumne River flow alternatives. The Modesto Irrigation District and the Turlock Irrigation District (“Districts”) support the comment letter from the San Francisco Public Utilities Commission (“SFPUC”) dated July 29, 2014, and wish to add the following additional comments.

In the May 6, 2014 letter, the State Water Board staff (“staff”) makes a number of erroneous assumptions regarding how CCSF will fulfill its obligations to its customers in the Hetch Hetchy Regional Water System (“RWS”) and to the Districts under the Raker Act and the Fourth Agreement as a result of new instream flow requirements on the Tuolumne River.

Staff proposes that socioeconomic impacts to CCSF from increased instream flow requirements will be limited because CCSF will be able to purchase sufficient water from the Districts to avoid water shortages and consequent reductions in water deliveries throughout the RWS service territory. Additionally, the letter explains that staff will use two divergent interpretations of CCSF’s responsibility under Article 8(b) of the Fourth Agreement to estimate the volume of water that CCSF would need to purchase from the Districts to avoid reductions in water deliveries.

Regarding the purchase of water from the Districts, while it is theoretically possible to do so, such a scenario is neither reasonable nor feasible. Any sale of District water is and will be subject to a broad variety of unpredictable forces and independent decision makers unique to each District and the Districts as Tuolumne River partners. Neither the SWB nor the Districts can reasonably depend on whether or to what extent a water sale of unknown and unprecedented scope to CCSF would survive such an unpredictable gauntlet. The Phase 1 SED will be legally insufficient if the State Water Board fails to review the impacts born of the most likely scenario to its imposition of the

Lower San Joaquin River instream flow proposal, namely that CCSF and its customers will experience critical water shortages in the RWS.

First and foremost, there is a broad variety of customers to which the Districts' water is already pledged, and any potential sale would necessarily have to be subject to those needs. The Districts' duty to serve its existing customers' varying demands is the paramount use of District water, if not the very purpose of the Districts' locally-financed water distribution and storage system.

Next, and as this most recent drought has highlighted, it is hydrological reality that in certain dry years water will not be available to sell to CCSF, willingly or as otherwise contemplated by the State Water Board. Therefore, the State Water Board should and must incorporate into its Phase 1 SED analysis the relevant socioeconomic impacts from water shortages and consequent reductions in water deliveries to RWS outlined in CCSF's Comment Letter to the Phase 1 SED dated March 29, 2013.

Additionally, each District is governed by a locally elected Board of Directors. Each Director has a duty to govern and direct District activities in his or her best judgment, and all District goals and activities are subject to the Board of Directors' ability to reach agreement. Adding yet another layer of complexity, each Director and the District itself are subject to the will of the electorate. CCSF's comment letter dated July 29, 2014 aptly cites to two (of several) newspaper articles reflecting the District-electorate's currently negative tone towards the sale of District water to CCSF. While public displeasure with District action does and should not always control District decision-making, the Districts denied the then-proposed water transfers to CCSF due to concerns with evolving circumstances like customer demand and the infrastructure-related logistics of transfer. The State Water Board must recognize the (at least) two recent instances where a proposed transfer of water to CCSF was not feasible due to independent decisions and actions by the public officials and the relevant electorates within each District. In so doing, the State Water Board must then incorporate the reasonably foreseeable impacts of water shortage to RWS, as more fully described in CCSF's above referenced Comment Letter dated March 29, 2013, due to the reasonable likelihood that CCSF will not be able to purchase water from the Districts as proposed in the State Water Board letter to the SFPUC dated May 6, 2014.

Once again, the State Water Board has failed to consult with responsible agencies. The San Joaquin Tributary Authority ("SJTA") pointed out in its March 29, 2013, comments on the SED that neither the Board nor the staff consulted with the SJTA members (which include the Districts and CCSF) concerning the extent or content of environmental review. Prior to the release of the SED, neither the Districts nor CCSF were consulted about the Fourth Agreement and how operations on the Tuolumne River comply with the Raker Act despite numerous opportunities to do so. Rather, staff used a report from NRDC as the source of their information.

Quite unfortunately, more than one year later, staff has once again embarked on a course without consulting with the Districts or with CCSF, the entities with the most knowledge and expertise.

As you know, the SED must consider a reasonable range of alternatives which could feasibly attain the basic objectives of the project. (Pub. Resources Code § 15126(d); *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 873.) It is well established that environmental review is not required to analyze every conceivable alternative; however, the SED is

required to analyze a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation. (Preservation Action Council v. City of San Jose (2006) 141 Cal.App. 4th 1336.)

It is not reasonable to assume that the Districts have water available to sell to CCSF to meet the SED's desired flow objectives. As was pointed out in the SJTA's March 29, 2013 comments on the SED, any additional flow requirements will have significant water supply, economic, and groundwater impacts to the Districts and the customers they serve. It is pure speculation to assume that CCSF will be able to purchase water from the Districts in order to meet a share of the SED's desired flow objective. There have been no discussions, much less agreements, between the Districts and CCSF regarding the purchase of water to meet some "share" of Tuolumne River instream flow as envisioned in the SED and no such discussions have been planned.

Furthermore, assuming that such an arrangement between the Districts and CCSF were feasible, the agreement would require full environmental analysis and review under CEQA. The revised SED must analyze the environmental effects of any alternative it proposes and identify the mitigation measures.

Finally, such an analysis is unnecessary as the water users most affected by the SED's proposed flow alternatives have already provided the State Water Board with an estimate of the potential economic impacts. (See the comments submitted to the State Water Board by CCSF at the March 21, 2013 hearing on the adequacy of the draft SED and the March 29, 2013 comment letter from the Bay Area Water Supply and Conservation Agency.)

It bears repeating that the Districts, with their several decades of information and expertise surrounding the Tuolumne River and its operations, welcome the opportunity to be consulted concerning the extent or content of the environmental review of Phase 1.

Sincerely,



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cc: Barbara Evoy, State Water Resources Control Board