

Department of  
Conservation and  
Development

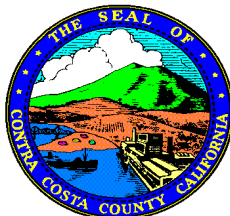
**Contra  
Costa  
County**

John Kopchik  
Director

**Water Agency**

30 Muir Road  
Martinez, CA 94553

Phone: 925-674-7824



March 17, 2017

State Water Resources Control Board  
Attention: Jeanine Townsend, Clerk to the Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814-0100

**Re: Contra Costa County Comments on Draft Revised SED on proposed updates to  
WQCP for Bay-Delta Estuary**

Dear Board members,

Contra Costa County has reviewed the draft revised Substitute Environmental Document (SED) on proposed updates to the Water Quality Control Plan (WQCP) for San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan). The draft revised SED was released to the public by the State Water Resources Control Board (SWRCB or State Board) on September 15, 2016.

The State Board's proposed updates include:

- a new and revised SJ River flow objectives for protection of fish and wildlife beneficial uses;
- a revised salinity water quality objective for protection of the Delta agricultural beneficial uses; and,
- a program of implementation for those objectives.

Contra Costa County includes a large area of the nationally-significant Delta. The County borders on Old River to the east and the County's entire northern border is bounded by a waterfront that flows from the Delta to the Bay. The County is the ninth most populous county in California, with more than one million residents. Many of our residents rely on the Delta for their municipal, industrial and irrigation water supplies, for their livelihood, and recreation.

Contra Costa County submitted initial comments on the draft revised SEP on December 14, 2016. Those comments addressed policy-level issues with the environmental document. The present letter addresses issues related to the adequacy of SED as a decision-making document.

Contra Costa County again thanks the Board members and staff for all the effort put into developing the various drafts of the SED. We support the State Board's proposal to restore river flows in the San Joaquin Valley to protect fish and wildlife, setting minimum flow requirements as a percentage of unimpaired flow. These improved flow requirements and those proposed as part of Part II of the WQCP update will help restore and sustain the health of the Bay-Delta estuary and its tributaries. They will also set an important realistic baseline for regulatory decisions on future Delta and Central Valley water supply, water quality and ecosystem restoration projects.

However, Contra Costa County opposes the Board's proposal to degrade, rather than improve, water quality in the Delta by relaxing the April-August irrigation water quality standard in the South Delta. The 2009 Delta Reform Act established as new State policy achievement of the coequal goals of ecosystem restoration and improved water supply reliability. The Act also established as State policy the inherent objective of improving water quality to protect human health and the environment consistent with achieving water quality objectives in the Delta (California Water Code section 85020(e)). Relaxing water quality objectives in the south Delta is contrary to this policy of the State of California, and to State and federal antidegradation statutes.

### **The Plan Area is Insufficient for Disclosing Environmental Impacts of the Proposed Action**

The revised draft SED is inadequate because it fails to include the Delta and San Francisco Bay in the Plan Area. The SWRCB's plan amendments involve changes in flow objectives in the SJR Basin and changes in water quality objectives for the southern Delta but those changes will have the potential to adversely impact Delta water quality and the Delta ecosystem. The proposed changes will not only affect beneficial uses on the Stanislaus, Tuolumne and Merced Rivers and down the San Joaquin River to Vernalis, they will also impact beneficial uses downstream in the Delta and San Francisco Bay. The proposed actions will also change the water quality at, and operation of, diversion and export facilities in the Delta. These are not analyzed in the SED. Contra Costa County requests that the Phase 1 SED be revised to analyze and disclose any significant adverse impacts on the Delta and Bay. A new draft SED should then be released for public review and comment.

### **The SED Fails to Disclose Impacts on Restoration of the Upper San Joaquin River**

The SED is inadequate because it fails to analyze the potential impacts of the proposed actions on restoration of salmon runs on the upper San Joaquin River below Friant Dam. The SED asserts that the San Joaquin River upstream of the Merced River confluence is not currently a salmon-bearing tributary of the Lower San Joaquin River. However, in 2004, the Ninth Circuit Court of Appeals confirmed that Fish and Game Code section 5937<sup>1</sup> does apply to the San

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<sup>1</sup> **Fish and Game Code section 5937:** The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam. During

Joaquin River below Friant Dam. This led to a September 2006 settlement agreement between the parties and development of the San Joaquin River Restoration Program. After significant delay, some restoration flows have been released into the upper San Joaquin River to begin the process of restoring salmon runs. Contra Costa County requests that the Phase 1 SED be revised to analyze and disclose any significant adverse impacts of the proposed actions on the recovery and sustainability of fish species on the upper San Joaquin River. The proposed action should also be revised to include new minimum flow requirements below Friant Dam. A new draft SED should then be released for public review and comment.

### **The SED Fails to Analyze the Full Flows Recommended in the 2010 Delta Flow Criteria**

The SED is inadequate because it fails to analyze and disclose the environmental benefits and impacts of 60% of unimpaired flow on the San Joaquin River at Vernalis. The SWRCB's 2010 report, *Development of Flow Criteria for the Sacramento–San Joaquin Delta Ecosystem*, determined this percentage of unimpaired flow was needed at Vernalis from February–June to fully protect fish and wildlife beneficial uses in the three eastside tributaries and the lower San Joaquin River when considering flow alone.

The revised draft SED considers three alternatives:

- between 20 and 30% of unimpaired flow on each of the three tributaries, with 20% as the starting percentage (LSJR Alternative 2)
- between 30 and 50%, with 40% as the starting percentage (LSJR Alternative 3), and
- between 50 and 60%, with 60% as the starting percentage (LSJR Alternative 4)

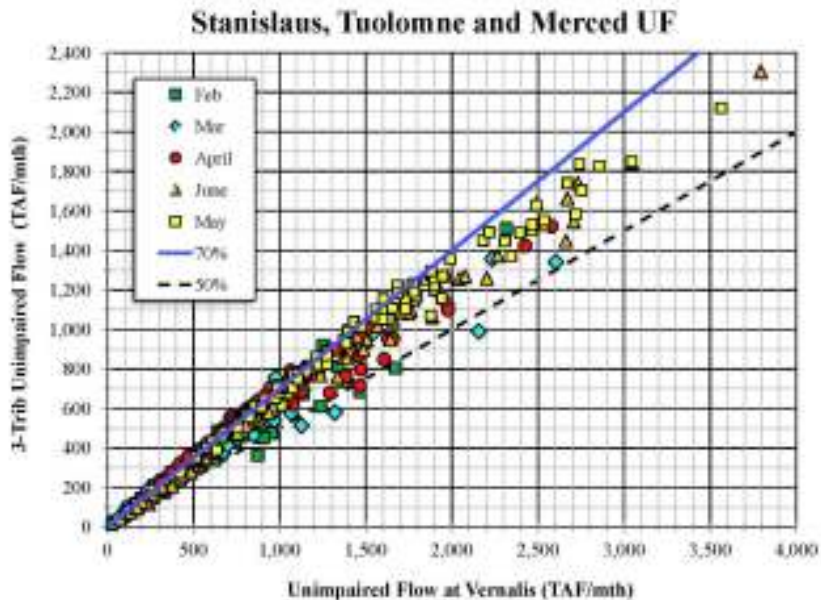
However, these are percentages of the unimpaired flow on each of three tributaries but a contribution of 20-60% was not required from the upper San Joaquin River below Friant Dam. As shown in Figure 1, the combined contribution of unimpaired flow from the three tributaries (Stanislaus, Tuolumne and Merced) for February-June is only 70% or less of the total unimpaired runoff from the San Joaquin Valley. The largest percentage of unimpaired tributary flow analyzed in the SED was 60% which means that the actual flow reaching Vernalis was **only 42% or less** of total San Joaquin unimpaired flow, *i.e.*, much less than the 60% recommended in the 2010 report.

The recirculated Draft SED recommends Alternative 3, which increases flow on the San Joaquin River and its tributaries between a range of 30 to 50% of unimpaired flow from February through June, with a starting point of 40%. The 40% of unimpaired flow on each of the three tributaries **only represents about 28% or less** of total San Joaquin unimpaired flow at Vernalis. This is

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the minimum flow of water in any river or stream, permission may be granted by the department to the owner of any dam to allow sufficient water to pass through a culvert, waste gate, or over or around the dam, to keep in good condition any fish that may be planted or exist below the dam, when, in the judgment of the department, it is impracticable or detrimental to the owner to pass the water through the fishway.

again much less than the 60% recommended in the 2010 report to fully restore and sustain fish populations in the San Joaquin River.



**Figure 1:** Ratio of total three-tributary unimpaired flow to total San Joaquin Valley unimpaired flow for the months of February through June (DWR data, 1922-2014)

Contra Costa County requests that a new draft SED be prepared that analyzes and discloses the environmental impacts of an alternative that provides the full 60% of total San Joaquin unimpaired flow recommended by the SWRCB and the California Department of Fish and Wildlife<sup>2</sup> in 2010. The new draft SED should then be released for public review and comment.

As discussed in Contra Costa County's December 14, 2016 initial comments, the new draft SED should also consider flow requirements for July through January to ensure that the proposed flow requirements for February-June do not redirect adverse impacts to fish and the environment in subsequent months. The new draft SED should also consider flow requirements downstream of Vernalis to ensure the outmigrating and returning anadromous fish species are able to pass safely through the Delta and San Francisco Bay. As discussed earlier, this will require expanding the Plan Area to include the Delta and San Francisco Bay. The new draft SED should discuss Areas of Concern and how they are been addressed.

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<sup>2</sup> California Department of Fish and Game (November 2010), "*Quantifiable Biological Objectives and Flow Criteria for Aquatic and Terrestrial Species of Concern Dependent on the Delta*"

It is imperative to leave the increased unimpaired flow in the river for fish. Therefore, Contra Costa County requests that the State Board ensure that any settlement agreements or alternative proposals, based on habitat restoration or payments to a restoration fund, actually provide sufficient flow in the river to meet the minimum flows necessary to restore and sustain anadromous fish and other components of the San Joaquin River and Bay-Delta ecosystem.

Thank you for considering the County's comments on the draft revised SED. Contra Costa County and Contra Costa County Water Agency are willing and available to work with the SWRCB and Bay-Delta stakeholders on all aspects of the update to the Bay-Delta WQCP.

If you have any questions, please contact me at (925) 674-7824, or Dr. Richard Denton, our Water Resources consultant, at (510) 339-3618.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ryan Hernandez".

Ryan Hernandez  
Manager  
Contra Costa County Water Agency

cc: Board of Supervisors  
John Kopchik, Director, Department of Conservation and Development  
Maureen Toms, Conservation Planning Deputy Director