

April 25, 2012

VIA EMAIL - COMMENTLETTERS@WATERBOARDS.CA.GOV



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

Re: **Comment Letter from the City of Tracy on Bay-Delta Plan Supplemental NOP -
Comprehensive Review** (Client-Matter No. 07547.00004)

Dear State Water Board Members:

The City of Tracy provides the following comments on the Supplemental Notice of Preparation and Notice of Scoping Meeting for Environmental Documentation for the Update and Implementation of the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. Tracy appreciates the efforts of the State Water Resources Control Board (“State Board”) to address these pressing water issues, but believes additional work is needed.

Comments on the 2012 Technical Report

Although the supplemental public notice did not specifically request comments on this report, we understand that the new Supplemental Environmental Document (“SED”) and new proposed objectives and implementation plan for southern Delta salinity standards are imminent, so we believe these comments will help in that process.

First, although the February 2012 *Technical Report on the Scientific Basis for Alternative San Joaquin River Flow and Southern Delta Salinity Objectives* (“2012 Technical Report”) implicitly acknowledges a potential tie between Delta flow patterns and salinity in the interior Southern Delta (*see id.* at 3-49 and Appendix A-6 to A-7 at para. iii), there is no direct cause and effect linkage made in that report. Thus, Tracy believes that the State Board must determine what direct effect, if any, modifications to the flow objectives will have on salinity levels in the interior Southern Delta, not just the review the secondary effect of the salinity objectives at Vernalis. (*Id.* at 4-7 to 4-10.) Without this information, the objectives and implementation plan for Southern Delta salinity will be missing an important aspect of the effect of the flow regime in the Delta on salinity standards attainment in the interior Southern Delta. If increases or modifications in flow assist or result in the attainment of the beneficial uses and proposed

salinity objectives at Vernalis and other places in the Southern Delta (*id.* at 4-2 to 4-6), the implementation program for and burdens on other salinity sources may be greatly reduced.

Second, Tracy appreciates the explicit recognition that “[p]oint sources of salt in the southern Delta have a small overall salinity effect” and the incorporation of the DWR Modeling Study of NPDES dischargers that was done for the City of Tracy’s permit. (2012 Technical Report at 4-7 and 4-10.) As that modeling showed, “the City of Tracy discharge under reasonable worst-case conditions has limited impacts on the salinity problem in the southern Delta as compared to other sources of salinity...” (*Id.* at 4-10.) Thus, based on these conclusions, it is not clear that municipal dischargers need to be further regulated with the proposed objectives under the proposed implementation plan. Since flows from the southern Delta treatment plants are regulated and the salinity levels in those discharges are known and have in many cases, such as with the City of Tracy, been decreasing due to altered source water supplies and other activities, it is unclear why additional regulation is needed for these point sources.

Third, the State Board should include a showing that the proposed salinity objectives not only are protective of the agricultural and MUN uses, but also protective of the other designated uses. There is no evidence that the salinity levels are adversely affecting any beneficial uses, but the 2012 Technical Report and Environmental Review would be more complete and less subject to challenge with this additional information added.

Finally, the City fails to understand why there is no discussion of the State Board’s legal obligations under the *City of Tracy v. SWRCB*, Sacramento Superior Court Case No. 34-2009-80000392 (Final Statement of Decision, May 10, 2011). That matter is critical to what the State Board is currently doing in relation to the salinity objectives and implementation plan for the same since the Court held that the State Board failed to conduct a proper Water Code section 13241 analysis and must reconsider the salinity objectives after it properly considers the 13241 factors. The Court also held that the Bay-Delta Plan’s implementation plan for the salinity objectives was inadequate in relation to municipal dischargers and must be readopted to include the nature of the actions necessary for municipal dischargers to achieve the objectives, a reasonable time schedule for such actions, and a description of the monitoring or surveillance required to determine compliance. The Court further enjoined the Board from applying these legally infirm objectives to Tracy and other municipal dischargers pending reconsideration of the objectives and adoption of an adequate implementation program for municipal dischargers in compliance with the Court’s ruling. All of this is highly relevant information that is completely lacking from the record for this matter and must be incorporated. In addition, the writ entered by the Court requires the following:

If new EC objectives are not adopted, Respondent [State Board] shall conduct the required analysis pursuant to Water Code section 13241 for the current EC Objectives. In so doing, Respondent must comply with section 13241 in accordance with the interpretation of that statute set forth in the Court’s Statement of Decision.

If [the State Board] instead adopts new EC Objectives, consider the Water Code section 13241 factors in accordance with the interpretation of that statute set forth in the Court's Statement of Decision and the requirements of Water Code, including section 13147.

It is not clear from this Technical Report that all of the 13241 factors have been considered or an adequate implementation plan has been proposed in relation to the objectives being maintained and the new objectives being proposed in Appendix A.

Comments on Appendix A of the 2012 Technical Report: Draft Objectives and Program of Implementation

Although Appendix A recognizes that “[t]he exact language of alternative changes may change and will be provided in the draft Substitute Environmental Document prepared for this project,” Tracy submits the following comments on the current draft related to the Southern Delta Agricultural Water Quality Objectives and the Program of Implementation for the same in hopes of influencing the direction and scope of the final document to make it consistent with applicable legal requirements.

First, while some of the salinity objectives are proposed to change, others (such as the objectives at Vernalis) are proposed to remain the same. While Tracy supports the proposed changes to the salinity objectives at the interior southern Delta compliance locations, it is not clear from the documents provided that the State Board has complied with the Court's order to perform a 13241 analysis on both the modified and unmodified objectives.

Second, the conclusion that elevated salinity in the southern Delta is caused by various factors, including municipal discharges is unsupported by the 2012 Technical Report. In the absence of all other factors, municipal discharges would not cause elevated salinity at levels of concern to agriculture. This list of factors should be set forth in order of importance and actual impact to salinity.

Third, Tracy appreciates that the State Board clarified the implementation schedule for the current and new objectives as being “no later than December 2020 in coordination with implementation of San Joaquin River flow objectives.” (2012 Technical Report, Appendix A at A-7.) However, the implementation program fails to comply with the Court's Writ to identify: 1) the nature of the actions necessary for municipal dischargers to achieve the objectives, 2) a reasonable time schedule for such actions, and 3) a description of the monitoring or surveillance required to determine compliance. Although it states that the Regional Water Board may use its NPDES and other permitting authorities to regulate salt discharges in coordination with the ongoing CV-SALTS process (*ibid.*), this does not specify what actions municipal dischargers will be expected to take, if any, to comply with the salinity objectives.

Fourth, Appendix A contains outdated information, such as the presumption that a “variance policy and interim program is anticipated to be considered by the CVRWQCB before the fall of 2011.” (2012 Technical Report, Appendix A at A-7.) As of the date of these comments in April of 2012, the variance policy is still in the discussion phase and has still not been formally considered by the Regional Board, so reliance on this not yet adopted policy is inaccurate and unreasonable.

Finally, there was no analysis or discussion as to why a “maximum 30-day running average of mean daily EC” is being maintained when the scientific study conducted by Dr. Hoffman, the peer review by Dr. Grismer, and the 2012 Technical Report itself at 4-11 recognize that the agricultural beneficial use and other beneficial uses are “affected more by longer term salinity averages.” Alternatives such as annual averages, seasonal averages coinciding with the seasons reflecting different EC objectives (e.g, Apr-Aug and Sept-Mar), or multi-month averages should also be considered in the SED.

The City hopes that the State Board can incorporate these suggestions into the final Delta Plan modifications and SED soon so that these revised objectives and implementation plan can be adopted within this calendar year.

Respectfully submitted,

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