

TABLE 1 – REVIEW OF SELECTED RESPONSES TO COMMENTS ON THE FINAL SED

Proposed Amendments to the Bay-Delta Water Quality Control Plan  
Stanislaus, San Joaquin and Merced Counties, CA

Comment Number/Description	Was Requested Change Made?	Was a Good Faith Reasoned Analysis Provided in Response?	Is there a new significant impact, increase in severity of an impact and/or feasible alternative or mitigation measure, and/or is the analysis fundamentally inadequate or conclusory?	Does the Draft Final SED identify and sufficiently describe the Project's environmental effects (including direct, indirect and long term)?
1178-1, 2, 12 and 13. The approach to impact analysis in the Substitute Environmental Document (SED) is imbalanced. The analysis of impacts to groundwater resources, water supplies, service systems and agriculture is so generalized that the impacts on water supply resilience cannot be properly understood or commented on by the public. Conversely, the environmental effects on aquatic resources are understood in great detail, which they must be in order to support the proposed Plan amendments. However, this approach de-emphasizes the potential adverse impacts on water supply resilience and the resulting impacts to our urban and rural communities, and the agricultural business sector at large.	No changes were made to the SED or impact analysis approach.	<p>No – Comment 1178-1 was a summary comment in the County’s transmittal letter that is discussed in greater detail under Comment 1178-12 and 1178-13. The response is dismissive and does not address the described deficiency in the SED analysis. Instead, it attributes balancing of the co-equal goals of water supply resilience and eco-system restoration to a program it claims is separate and distinct from the Bay Delta Water Quality Control Plan (Plan) amendments, and dismisses the comment without providing a good-faith reasoned analysis. As discussed below, this ignores the fact that balancing human and ecological water demands is required in the SED analysis regardless of whether the Delta Reform Act directly governs the Plan amendments. Such balancing cannot occur if the approach to impact description and analysis in the SED is imbalanced.</p> <p>The response references Master Response 1.1, which states, among other things, that “[t]he amendments to the 2006 Bay Delta Plan are separate and distinct from any other program, plan, project, or proceedings.” It goes on to point out that the Delta Reform Act established state policy with regards to managing the delta “... in support of the co-equal goals of ‘providing a more reliable water supply for California and protecting, restoring and enhancing the delta ecosystem ...”, that under the act the co-equal goals represent the “... the basic goals for the state of the Delta ...”, that the act stipulates that “[e]ach region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts ...”, and that “[t]he plan amendments do not impede the development of such regional water investment strategies.” Master Response 1.1 goes on to point out that although “[t]he Act does not require the State Water Board to achieve the coequal goals of protecting water supply reliability and the Delta ecosystem in adopting water quality objectives in the Bay-Delta Plan”, it “... must conform to the policies of the Porter-Cologne Water Quality Control Act”, which requires considering and balancing “...all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.”</p> <p>We contend that the language in the Delta Reform Act does not eliminate the responsibility of the State Board to include a balanced analysis of environmental effects in the SED that does not favor one of the co-equal goals over the other and that objectively informs the public. However, regardless of how the legal language of the Delta Reform Act is parsed, it is clear that the Porter-Cologne Water Quality Control Act requires objective balancing of human and ecological water demands. A reasoned response to the comments was not provided.</p>	<p>As discussed in detail in Comment 1178-12 and 1178-13, the generalized approach to evaluation of impacts to groundwater resources, water supplies and agriculture, compared to the specific approach used to evaluation of the ecological effects, makes it impossible for the SED to support the balancing of human and ecological water demands required in the Delta Reform Act and the Porter-Cologne Water Quality Control Act. Furthermore, this imbalanced approach makes it impossible to adequately identify and evaluate mitigation measures that could reduce the potential impacts to groundwater resources, service systems and agriculture. As such, the SED is fundamentally inadequate and must be updated and recirculated.</p>	The description of environmental impacts to groundwater resources uses a generalized and regionalized approach that does not allow the public to sufficiently understand or comment on the environmental analysis.
		<p>No – Comment 1178-2 was also a summary comment in the County’s transmittal letter that is discussed in greater detail under Comments 1178-12 and 1178-13. Master Response 1.1 defended the generalized approach and level of detail of the impact analysis for groundwater, utilities and service systems and agriculture using conclusory statements. Comments that more detailed analysis is needed to inform the public, allow a meaningful opportunity for comment, and support the objective balancing of human and ecological water demands were dismissed by incorrectly claiming that <u>any</u> additional detail would be speculative and conjectural. Master Response 1.1 states that “... the level of analysis in Chapter 19 is capable of being more detailed regarding benefits to fish because the amount/volume of water and habitat conditions, such as temperature, in the tributaries can be reasonably estimated and evaluated using the modeling tools available because there are a limited number of variable inputs. It is unreasonable and inappropriate to evaluate impacts to other resources at a similar level of detail because there are too many unknown variable inputs, such as the myriad of options that regulated entities could take in response to the plan amendments, that any attempt at such an analysis beyond what is contained in the SED would be speculative.” This response ignores the fact that the tools and data to conduct a more detailed analysis that would better inform the public are readily available (for example, detailed water budget data, the Department of Water Resources’ (DWR’s) C2VSim model, the USGS CVHM model and other models) and dismisses the comment using a typical straw-man fallacy. The requirements for a more detailed analysis that provides more specific and informative data are not as onerous as the State Board’s response implies, and the response appears to be an attempt to justify the lack of a more detailed analysis by presenting an unreasonable extreme. For example, the foreseeable changes in surface water diversions associated with various unimpaired flow alternatives can be readily entered into the DWR’s existing C2VSim groundwater flow model with only relatively minor modifications to assess where drawdown impacts are likely to be most severe. The amount of water demand reduction or recharge increase to offset potentially adverse effects can be incrementally change and used to</p>	<p>As discussed in greater detail in Comments 1178-12 and 1178-13, the approach to the analysis of impacts to groundwater resources, utilities and service systems and agriculture is so generalized that it deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect, or feasible ways to mitigate these effects that the State Board has declined to implement. As such, the SED is fundamentally inadequate and must be updated and recirculated.</p>	

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		evaluate potential impacts to agriculture, municipal water suppliers and disadvantaged communities. The State Board’s assertion that this is not possible without detailed site specific knowledge or the ability to predict future local actions is simply untrue. This comment was not addressed in good faith.		
1178-3, 14, 15, 16 and 25. The SED did not include any analysis of the interplay between implementation of unimpaired flow and the compliance with the Sustainable Groundwater Management Act (SGMA). The SED did not use “best available science” or “best available information” to conduct a groundwater resources and water supply impact assessment, and in fact, did not even use basic available tools and information or follow the common standard of care for CEQA analysis.	No changes were made to the SED or impact analysis approach.	<p>No – Comment 1178-3 was a summary comment in the County’s transmittal letter that is discussed in greater detail under Comments 1178-14. The State Board responds to this comment with unsupported conclusory statements that it used “<i>best available science</i>” and “<i>best available information</i>”, and “<i>wrote the SED as objectively and completely as possible.</i>” As pointed out in detail in Comments 1178-15 and 1178-16, the science (modeling tools) and information (water budget data) for a less generalized analysis of groundwater and water supply-related impacts are readily available, yet the State Board chose not to use them and provides no valid rationale why they should not be used to better understand these impacts and their implications for SGMA compliance. The above example regarding the ability to use the DWR’s existing C2VSim groundwater flow model with readily available data illustrates that with a relatively limited effort, much more insight could be provided to understand the combined effects of the proposed Plan amendments and SGMA implementation. The statement that “[t]he hydrogeological analyses under development in the San Joaquin Valley are site specific, highly technical, and require detailed location-specific analyses of the basin geology, hydrology, local water use, and recharge” is misleading because adequate models that can be used for a more detailed assessment of impacts are already in existence. When such tools and information is readily available, performance of such an analysis is reasonable and appropriate for a Tier 1 program-level document that needs to inform future projects and regulatory actions, such as implementation of projects under SGMA. In fact, it should be expected. The response that “... a location-specific groundwater analysis is outside the scope of the SED, because the State Water Board cannot reasonably foresee the mitigation actions local water users would take in response to surface water reductions, and quantification of the impacts of the proposed LSJR flow objectives would be speculative” is not supported by the facts. The example provided in the response that “... if local water users chose to build new wells or deepen existing wells in response to the plan amendments, the State Water Board could not forecast the location of the new wells, the depth of the wells, or the new extraction rate” represents a level of understanding that is not needed in order in order to perform such an evaluation.</p> <p>Master Response 3.4 summarizes information provided in response to comments that the SED did not adequately consider how the proposed Plan amendments will affect SGMA compliance. This response includes new information that is inaccurate and misleading. The response broadly characterizes all of the groundwater subbasins in the plan area as being in a state of overdraft, when in fact groundwater level data in the State’s CASGEM database indicate that large portions of the subbasins are in balance. It cites the fact that groundwater levels in the Modesto area declined by 0.5 feet/year between 1970 and 2000, but makes no reference to the fact that this trend was corrected and reversed through the implementation of a conjunctive use program that started in 1995 and was increased in the early 2000’s. It then goes on to state that “[d]espite conditions of overdraft, local agencies (e.g., San Joaquin, Stanislaus, and Merced Counties) typically approved the drilling and pumping of groundwater wells through ministerial actions without discretionary review that would require environmental analysis”, ignoring the fact that in 2014 and 2015, Stanislaus and Merced Counties (respectively) adopted groundwater ordinances that make the installation of new wells in many areas subject to discretionary approval. In fact, the ordinance in Stanislaus County was the first in the State to be deliberately aligned with the sustainability criteria in SGMA. Rather than acknowledging this fact, the response states that “[l]ocal ordinances could restrict the installation of new wells, but in 2015 alone, 2,500 new wells were installed in the San Joaquin Valley ... (Sacramento Bee 2016)”, and then claim that “... the high number gives some perspective to the current problem.” The information provided is incomplete, clearly misleading and sounds subjective.</p> <p>Finally, Master Response 3.4 argues that “[t]he State Water Board could not evaluate the project-specific impacts of implementing a particular GSP as a mitigation measure, because GSPs have not been developed and the specific actions GSAs decide to take to achieve sustainability under SGMA are currently unknown”, yet acknowledges that “... cumulative impacts on agricultural resources are potentially significant and unavoidable, because SGMA implementation could change irrigation water availability.” As discussed above, the data and models that could be used to evaluate the impact of potential changes in surface water diversions on groundwater resources exist and are readily available. The amount of water demand decrease or groundwater recharge needed to offset potential adverse impacts can</p>	As discussed in greater detail in Comment 1178-14, the approach taken to cumulative impact assessment is fundamentally inadequate. It is incorrect to state that the environmental effects analysis in the SED relied on “best available science” and best available information” when readily available tools and information were not used. As a result, the analysis of the effects of the Plan amendments on SGMA implementation is fundamentally flawed and deprives the public of a meaningful opportunity to comment on potential impacts and mitigation measures. As such, the SED is fundamentally inadequate and must be updated and recirculated.	The description of environmental impacts to groundwater resources uses a generalized and regionalized approach that does not reflect best available science, or even the ordinary standard of care in hydrogeologic impact analysis. The combined effects of implementing the proposed Plan amendments with the foreseeable requirements of SGMA are not evaluated in a meaningful way. As a result, cumulative impacts are not adequately identified or described.

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		<p>also be readily evaluated on a preliminary basis. The fact that these factors will be evaluated in more detail to support the development of GSPs is not a valid reason for not conducting such an analysis. In view of this, it seems nonsensical to identify pumping reductions under SGMA as causing potentially significant and unavoidable cumulative impacts on agricultural resources, and at the same time claim that there are not tools to evaluate these effects on groundwater resources.</p> <p>The comment was not addressed in good faith and a reasoned response was not provided.</p>		
1178-19, 20 and 22. Impacts to small public water supply systems and wells are not adequately evaluated	Minor changes were made to the SED text; no changes were made to the impact analysis approach.	<p>No – The State Board responded to these comments with the following statement:</p> <p><i>The commenter does not specify the small public water systems in the plan area that may be affected. The Environmental Setting in Chapter 13, Service Providers, identifies 93 public water suppliers and approximately 66 domestic wells within the four groundwater subbasins in the area of potential effect; Eastern San Joaquin, Modesto, Turlock, and Extended Merced. These suppliers and wells were identified with the best available information.</i></p> <p>The comment indicated that the standard approach to evaluating the potential for adverse impacts to wells is to identify well and areas with wells that have potentially vulnerable characteristics and then analyze the potential for adverse impacts. As noted in the previous response, the tools and information to perform this analysis are readily available, and the response to this comment is evasive and attempts to place the burden for impact analysis on the commenter. The State Board claims to have identified 93 public water suppliers in the study area based on the “best available information.” During a workshop on November 18, 2016, Board staff were informed that in Stanislaus County alone, there are over 170 small water supply systems that are regulated by the Board’s Division of Drinking Water. A written transcript of that workshop was attached to our comments. In addition, the reference to “66 domestic wells” is puzzling. It is widely known and readily ascertainable that are literally thousands of domestic wells in the study area, and why these 66 wells were singled out is unclear. Finally, while Master Response 2.7 acknowledges that disadvantaged communities (DACs) often operate small water supply systems that may be more vulnerable to adverse impacts, it places all responsibility for further evaluation of potential impacts to water supply systems operated by DACs on studies conducted for the future development of GSPs, claiming that “[i]f GSPs in the plan area are adequate, groundwater supply for human consumption, cooking and sanitary purposes should be protected.” While we agree that sustainable management of local groundwater supplies will ultimately be the responsibility of local GSAs, which must engage with DACs, the potential for adverse impacts to areas where DACs and small community water systems are located should be evaluated in the SED to inform the public about the potential impacts, allow the public to comment, and inform the planning community. A good faith response was not provided.</p>	The analysis of potential impacts to wells and small community water systems is based on incorrect and incomplete information and was not conducted at the minimum level of detail that would inform the public and the planning community, or allow a meaningful opportunity for public comment. As such, the SED is fundamentally inadequate and must be updated and recirculated.	Potential impacts to wells and water supply systems are evaluated in a broadly conceptualized fashion. At a minimum, they should be analyzed in a qualitative or semi-quantitative fashion in order to sufficiently disclose potential impacts.
1178-27. The SED analysis fails to meet the requirement to consider the Human Right to Water contained in the Water Code, as it did not identify potentially disproportionate impacts to Disadvantaged Communities and small water systems.	No changes were made to the SED or impact analysis approach.	No – Master Response 2.7 recognizes that DACs in the San Joaquin Valley often operate wells that are more vulnerable to contamination and other adverse effects than typical municipal supply wells. In addition, the response makes the statement that “ <i>The right of every human being to safe, clean, affordable and accessible water for human consumption, cooking, and sanitary purposes (Wat. Code, § 106.3) has been and will continue to be a part of the State Water Board’s consideration of the proposed LSJR flow objectives.</i> ” However, no additional information is provided that responds to the observation that the broad and generalized approach to impact assessment in the SED does nothing to help the public or the planning community anticipate even approximately where adverse impacts that will result from implementation of the Plan amendments may occur, and which DACs may be affected. As stated previously, the tools and information to make these determinations are readily available, and can be used at the programmatic evaluation level in order to adequately identify disclose potential impacts to the public and decision makers. The response states that “[b]ecause the SED is a program-level document, the State Water Board was not required to model or assess impacts on DACs differently from the rest of the plan area and did not have unique assumptions in regard to DACs,” yet Master Comment 2.7 also recognizes that small water systems are often associated with DACs and are uniquely vulnerable. This is not only because of the construction of the wells as the Master Response acknowledges, but because they have more limited treatment options available and often draw their water from a single source, which cannot be readily replaced or blended. This unique vulnerability was discussed during the November 18, 2016 technical workshop in Modesto, a transcript of which was appended to our comments. The unique vulnerability of small water systems serving DACs requires consideration (and not	The analysis of potential impacts to DACs is based on incorrect and incomplete information and was not conducted at the minimum level of detail that would inform the public and the planning community, or allow a meaningful opportunity for public comment. As such, the SED is fundamentally inadequate and must be updated and recirculated.	Potential impacts to wells and water supply systems are evaluated in a broadly conceptualized fashion. At a minimum, they should be analyzed in a qualitative or semi-quantitative fashion in order to sufficiently disclose potential impacts.

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		<p>mere acknowledgement) in the impact assessment process. Furthermore, the response indicates that “[t]he State Water Board will also take actions as necessary to ensure that the implementation of the flow objectives does not impact supplies of water for minimum health and safety needs, particularly during drought periods.” This commitment seems incongruous with the current failure of the SED to provide a level of analysis that would inform the public, DACs and the planning community regarding potential impacts.</p> <p>We also note that Master Response 2.7 includes misinformation and several errors. The list of DACs served by water service providers is incomplete. The Master Response notes that there has not been a trend in increased numbers of water quality violations in a dry year, which is misleading because concentrations of contaminants in wells may actually have increased during this time without causing a violation. The Modesto and Turlock subbasins are incorrectly referred to as being “designated” to be in overdraft, but no references or data to support how this determination was made is provided. Finally, the Master Response attempts to place blame on the agricultural community for potential water quality problems that could arise, by stating, without any supporting data, that “[t]he plan amendments do not result in these disproportionate effects; rather, it is the local agricultural response to reduced water supplies that ultimately affect groundwater supplies and quality for DACs. And, as described in the following section, it has been the State Water Board that has provided, and will continue to provide, technical and financial assistance to at-risk communities that have been affected by agricultural expansion.” This attempt at self-exoneration does not constitute a reasoned response to the comments under CEQA. There are various mechanisms by which a DAC may experience adverse impacts to its groundwater supply. For example, the City of Modesto, which is the largest DAC in the region, has been relying on conjunctive use of surface and groundwater for its water supply since 1995, and expanded its program in the early 2000’s. The recovery of groundwater levels since that time indicates that the conjunctive use of surface water provided by Modesto Irrigation District with groundwater pumped by the City has resulted in sustainable management of the groundwater resource. Under the proposed Plan amendments, water availability for conjunctive use may be curtailed, while at the same time groundwater pumping may be restricted under SGMA. As stated above, these effects could have been readily evaluated in the SED, but no meaningful impact analysis was conducted. The interaction of these factors illustrates the potential complexity of the issue, and the need for the SED to provide adequate information based on full use of the available data and modeling tools to inform the public and the planning community. The placement of blame is not informative or helpful in this process, and inappropriate for a CEQA analysis by a respected State agency.</p>		