



November 9, 2017

By Email: [Bay-Delta@waterboards.ca.gov](mailto:Bay-Delta@waterboards.ca.gov)

Felicia Marcus, Chair  
Members of the Board  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812

Re: Phase II Bay-Delta Plan Input

Dear Board Members:

Nevada Irrigation District, Paradise Irrigation District and South Feather Water & Power Agency are responding to your staff's request for responses to eleven categories of questions concerning development of the program for implementation for the Phase II update of the Bay-Delta Plan. Those questions presume that you, as the State Water Board members, will adopt the proposed new objectives in the final Scientific Basis Report and therefore the questions only concern how to implement these new objectives. The proposed new objectives suffer from serious defects and it is premature to attempt to develop a program for implementation. Instead, we encourage you to reassess your duty to ensure reasonable protection of *all* beneficial uses of water (not just instream fishery) and to conduct any necessary studies or environmental assessment to ensure that *all* beneficial uses are reasonably protected. Your staff's approach is so flawed that it risks years and potentially decades of uncertainty and dispute over its implementation and ultimately will delay any of the hoped-for fishery improvements. It is critical that you adopt a new approach for the Plan update.

**1. Ensuring Reasonable Protection of All Beneficial Uses Requires a Holistic Analysis to Understand the Tradeoffs, Unintended Consequences and Effects of Modified Water Quality Objectives. The Scientific Basis Report Fails Entirely In this Regard.**

State policy expressed in the Porter-Cologne Water Quality Control Act establishes your duty to regulate water quality "to attain the highest water quality which is reasonable, considering 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." (Water Code § 13000.) You are required to "ensure the reasonable protection of beneficial uses and the prevention of nuisance" through consideration of various factors, including "past, present, and probable future beneficial uses of water", "environmental characteristics", "water quality conditions" and "economic considerations".

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(Water Code § 13241.)

Determining what is reasonable cannot be done in a vacuum; reasonableness depends on an examination of all water uses and all demands for water. When uses are in conflict, careful balancing is required to ensure that the conflicting beneficial uses are all afforded reasonable protection. Your staff's Scientific Basis Report fails to engage in this comprehensive assessment and balancing of all water uses as envisioned in and required by Porter-Cologne. It focuses exclusively on the "needs" of aquatic resources in the Delta and its tributaries, relegating all other beneficial uses to utilize whatever volume of water remains. The Report states that "the use of a percent of unimpaired flow approach assigns a percent of the available water to fish and wildlife, and leaves the remainder for other uses." (Final Scientific Basis Report, p. 5-7.) Providing for the reasonable protection of all beneficial uses cannot be done by focusing on the needs of one subset of beneficial uses. Nor can you ensure the reasonable protection of all other beneficial uses by *per se* relegating those uses to a junior priority position that can only utilize water that remains *after* invocation of the unimpaired flow factor. A holistic assessment of the needs of all beneficial uses is essential to understanding the tradeoffs, unintended consequences and effects of any modified water quality objectives. This holistic assessment must be done to ensure that all beneficial uses are afforded reasonable protection.

In 2010, as required by the Sacramento-San Joaquin Delta Reform Act of 2009, the State Water Board adopted a flow report, the purpose of which was to inform (not predetermine) planning decisions for the Delta Plan and Bay Delta Conservation Plan/WaterFix. The report was expressly conditioned on the flow criteria necessary to protect public trust resources and nothing more. It did not consider or assess the needs and reasonable protection of other beneficial uses. You expressly conditioned the 2010 flow report as follows:

We know however, that there are many other important beneficial uses that these waters support such as municipal and agricultural water supply and recreational uses. The State Water Board is required by law to establish flow and other objectives that ensure the reasonable protection of beneficial uses. In order for any flow objective to be reasonable, the State Water Board must consider and balance all competing uses of water in its decision-making. More broadly, the State Water Board will factor in relevant water quality, water rights, and habitat needs as it considers potential changes to its Bay-Delta objectives. Any attempts to portray the recommendations contained in this report as an indicator of future State Water Board decision-making ignores this critical multi-dimensional balancing requirement and misrepresents current efforts to analyze the water supply, economic, and hydropower effects of a broad range of alternatives. This report represents only one of many factors that will need to be balanced by the State Water Board as it updates the Bay-Delta Water Quality Control Plan.

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(2010 Flow Report, p. 1, “Note to Readers”.) Your staff has failed to heed your own admonishment. The Scientific Basis Report advocates for an unimpaired flow requirement of between 35% and 75%, the same upper range expressed in the 2010 Flow Report. However, the Scientific Basis Report advocates for this same unimpaired flow approach without engaging in *any* of the necessary “multi-dimensional balancing”. Adding to this insult, your staff is now seeking input on how to implement the proposals in the Scientific Basis Report again without any of the necessary information, tradeoffs, or impacts to all other beneficial uses.

**2. Unimpaired Flows Would Impose Unique Hardships and Impacts on Foothill and Mountain Communities, such as those Served by Nevada Irrigation District, Paradise Irrigation District and South Feather Water & Power Agency**

An unimpaired flow approach would cause significant negative impacts throughout the state and to nearly every other beneficial use of water. NID, PID and SFWPA join in and incorporate as their own the statement made by water users throughout the state (dated November 9, 2017) calling for abandonment of the unimpaired flows approach and the comments made by Northern California Water Association and others (dated November 9, 2017). In addition, we wish to write you about the unique hardships and impacts that an unimpaired flow approach would impose on foothill and mountain communities.

*Lack of Groundwater or other Readily Available Alternative Water Supplies*

The Scientific Basis Report presumes that the loss of surface water through application of an unimpaired flows approach can be made up through alternative supplies, including groundwater pumping. The SacWAM model developed by the State Water Board purports to be able to calculate annual stream gain/loss to groundwater and, in turn, assess the sustainability of the applicable groundwater basin in supplying surface water taken through imposition of the unimpaired flows approach. NID, PID, SFWPA and other foothill and mountain communities do not have available groundwater supplies, ability to import water from out-of-basin (e.g., from the SWP or CVP), or other readily available alternative water supplies. They serve communities in the watersheds and areas of origin and rely exclusively on local precipitation and runoff to into storage reservoirs because that is the only source of water available to them. The exact percent of proposed unimpaired flows is still unknown and there are many uncertainties about your staff’s proposal and how it would be implemented. Nonetheless, an unimpaired flows approach applied to these agencies and similar communities would require them to forego some amount of water available for diversion to storage,

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thus exposing these areas to potentially catastrophic and unnecessary man-made water shortages and further exposing them to droughts (in terms of lower year end carryover storage).

*Enhanced Risk of Catastrophic Wildfires*

The communities served by NID, PID and SFWPA face annual threats of wildfire. During this last fire season all three communities suffered multiple fires, evacuations, and loss of homes, businesses and properties. The state has classified their service areas having a “very high” risk of wildfire. Customers within these areas have existing difficulties acquiring and maintaining fire insurance for their homes and properties. These existing realities will be made even more difficult through establishment of an unimpaired flows approach. It would make an unknown volume of additional water supply unavailable for use locally, including for fire suppression efforts and would make it more difficult to maintain greenspace and to sustain other fire prevention efforts.

*Impacts to Hydroelectric Generation and the Energy Grid*

NID and SFWPA own and operate power projects regulated by the Federal Energy Regulatory Commission. Together, NID’s and SFWPA’s power projects provide enough clean, renewable energy to supply the annual energy demands for over 200,000 homes. Their storage facilities are located in higher elevations where water is diverted to storage in the wetter winter months and diverted from storage to serve consumptive needs of customers in the dryer summer months. Their power projects are designed to generate hydroelectricity utilizing the water diverted from storage in the summer months, which coincides with the high energy demand periods in California. The unimpaired flows approach would upset this typical operating scenario. Although not entirely clear in the Scientific Basis Report, it appears unimpaired flows would prevent capture and storage of water during the typical winter precipitation season. This would mean there would be less water available to divert from storage and to divert through the agencies’ hydroelectric plants during the summer and fall months when energy demands are at their highest. This could result in significant financial impacts to NID and SFWPA. Also, when cumulatively considered with all other hydroelectric projects that may be subject to an unimpaired flow standard, it could significantly impact California’s energy grid.

*Impacts to Recreational Facilities and Opportunities*

NID, PID and SFWPA all maintain and operate various campgrounds, day use facilities, parks and reservoirs that allow for a variety of terrestrial- and water-based recreational opportunities. These facilities are located in a mountain setting at or on the shoreline of their reservoirs. Again, while the actual unimpaired flows approach remains largely undefined, inability to store water in the wet season for usage in the more-traditional late-spring and summer recreation season could have

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significant impacts on the ability of the public to enjoy recreational facilities and opportunities.

**3. An Unimpaired Flows Approach Does Not Comport with the Law, Negatively and Unreasonably Impacts Nearly Every Other Beneficial Use of Water, and Will Result in Decades of Protracted Dispute. Adopting a New Approach to the Delta Plan Update is Essential.**

Your leadership is needed to pause and reset the path we are on. A new approach is essential. While instream fishery needs are certainly important and worthy of reasonable protection, so too are all other beneficial uses, including municipal and industrial, agriculture, hydropower and recreation. Your process must ensure the reasonable protection of *all* beneficial uses. The Scientific Basis Report provides the same limited utility as the 2010 Flow Report because it focuses exclusively on one beneficial use (instream fishery) and does not assess the needs or ensure the reasonable protection of all other beneficial uses. The only difference between the two documents is that your 2010 Flow Report was at least upfront and honest in its description of the lack of any necessary “multi-dimensional balancing”.

All other beneficial uses deserve the same level of attention and study your staff has devoted to instream fishery needs. This robust assessment of other beneficial uses can and should be done in your substitute environment document or SED.

Ongoing efforts to restore habitat, such as EcoRestore and the proposed Delta Renewed, should be expedited and any proposed new projects should be encouraged and facilitated by the State Water Board and other relevant state agencies (particularly if permitting is required). The funding for new projects and restoration efforts in Proposition 1 should be expedited to the extent feasible.

NID and SFWPA are awaiting relicensing of their FERC hydroelectric projects. Many other project owners are either in the process of relicensing or are only awaiting issuance of your 401 Water Quality Certification before a new license can be issued. These new license terms, many of which include new or enhanced instream flows, ought to be implemented and given time to then assess whether the new terms served the intended purpose or provided the intended benefit.

Echoing the comments of many other water users and stakeholders throughout the state, more instream flow for the sake of instream flow has not and will not work in the future to stabilize or restore the fishery. We support a critical reassessment of decisions in the last 20 years that resulted in approximately 1.3 million acre-feet of water that has been dedicated to instream flows annually. It may be possible to use that same water in a manner that more directly and concretely benefits the fishery.

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Very truly yours,

SOUH FEATHER WATER & POWER AGENCY



RATH MOSELEY, General Manager

PARADISE IRRIGATION DISTRICT



KEVIN PHILLIPS, Interim General Manager

NEVADA IRRIGATION DISTRICT

  
for

REMLEH SCHERZINGER, General Manager

cc: Eileen Sobeck  
Eric Oppenheimer  
Michael Lauffer  
Michael George