



Municipal Services Agency

Terry Schutten, County Executive

Department of Water Resources

Paul J. Hahn, Administrator

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County of Sacramento

September 29, 2008

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

Re: Bay-Delta Fact Finding Issues

Dear Ms. Townsend:

This letter provides the initial written input of the County of Sacramento and the Sacramento County Water Agency (collectively, Sacramento) to the State Water Resources Control Board (SWRCB) pursuant to the SWRCB's "Request for Written Input on Factual Issues Regarding the Bay-Delta," dated August 29, 2008 (Request). While providing this input, Sacramento has serious reservations regarding the process as currently proposed. The SWRCB's Request raises a number of very serious due process concerns. The Request fails to provide any specificity on how the "evidence" will be used and fails to outline the procedures for conducting the evidentiary hearing contemplated by the Request. Instead, the Request notes that one element of the SWRCB's Strategic Workplan for the Bay-Delta is a "comprehensive review of the Bay-Delta Plan, water rights, and other requirements to protect fish and wildlife beneficial uses and the public trust." The Request suggests that the contemplated evidentiary proceeding will necessarily implicate water rights.

Moreover, to the extent the future evidentiary hearing will implicate water rights, the Request fails to inform any water right holder of any intended actions, which jeopardizes the legitimacy of this fact-finding process. Indeed, the Request suggests that the evidentiary hearing will consider the "impacts of water pollution and diversions on the Bay-Delta's ecology." Yet the Request, which will serve as the basis for future evidentiary hearings, fails to adequately inform the reader of specific future action that may impact existing rights. The Request fails to outline the necessary procedural protections that would otherwise apply in a quasi-adjudicatory proceeding, starting with the procedures outlined in your regulations governing such proceedings. (See 23 C.C.R. §§ 648-648.8; see generally 23 C.C.R. §§ 647-649.6 (setting forth the Board's procedures).)

Thus, in considering the water right / water diversion aspect of these future proceedings, the SWRCB must consider water right priorities and Area of Origin protections. The SWRCB has indicated that the evidentiary hearing process will include the impacts of water diversions and net outflow objectives on the Delta ecosystem. Consideration of water right priorities and area of origin protections is critical when considering the existing and

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Jeanine Townsend, Clerk to the Board
Re: Bay-Delta Fact Finding Issues
September 29, 2008
Page 2

potential future impacts of water diversions and outflow objectives. There has been significant discussion within the context of the Delta Vision process regarding water right priorities, and the SWRCB must consider the relative priorities of rights to the extent the SWRCB will take any actions regarding responsibility for matters related to Delta ecology. The Area of Origin protections are equally important, as they provide a statutory preference to the counties and watersheds of origin. (See Water Code §§10500-10507 and 11100-11985.)

The SWRCB should also consider the practical implications that have resulted from the enlargement of the period that Term 91 is in place. The SWRCB should consider whether Term 91 is appropriately applied and determine what factors have led to the increase in the length of time Term 91 is in effect.

Additionally, to the extent any future evidentiary proceeding will consider restoration activities to mitigate for ecological impacts, the SWRCB must consider the potential impact of restoration on terrestrial species and the potential impacts to local Delta communities.

Regarding water quality issues, the Request is currently limited to factual issues concerning the Bay-Delta's ecology and impacts to that ecology. Sacramento is concerned that this limitation is short-sighted and must be expanded to also include input regarding potential economic impacts to the Bay-Delta region. In particular, to the extent that information collected as part of the evidentiary process may be used to derive new or revised water quality objectives for the Water Quality Control Plan for the Bay-Delta (Bay-Delta Plan), the SWRCB is required to consider economic impacts associated with meeting the objectives. (See Wat. Code, § 13241.)

For example, if the information gathered indicates that other contaminants such as pesticides have an ecological impact on the Bay-Delta, and the SWRCB thus finds it necessary to adopt water quality objectives for certain pesticides, the SWRCB must consider potential economic impacts to Sacramento for controlling the presence of pesticides in urban runoff as well as economic impacts to Sacramento County's agricultural industry for complying with new objectives for pesticides. Information relative to the cost of complying with pesticide objectives may be obtained from existing Total Maximum Daily Loads for pesticides, the California Association of Stormwater Quality Agencies, the California Department of Food and Agriculture, the California Department of Pesticide Regulation, the University of California Cooperative Extension, and other similar resources. In addition, economic considerations need to include potential costs to the County for increased enforcement of pesticide restrictions and regulations by the County's Agricultural Commissioners' office.

The Request states that the SWRCB will use the information gathered pursuant to this notice to guide its decisions regarding basin planning, environmental review and other Water Board processes. The SWRCB cannot make reasoned and informed decisions regarding future activities without also considering the economic implications. Thus, the SWRCB needs to request and seek out economic information as part of this evidentiary process because it is a necessary part of the SWRCB's future considerations.

Jeanine Townsend, Clerk to the Board
Re: Bay-Delta Fact Finding Issues
September 29, 3008
Page 3

Further, Sacramento is concerned that the evidentiary process as described in the Request may inappropriately rely on data collected in the County's storm drain system to characterize ecological impacts from stormwater, which is not necessarily reflective of downstream water quality conditions and the Bay-Delta ecology. In its evaluation of the Bay-Delta ecology, the SWRCB must use caution to distinguish between stormwater data and downstream receiving water data. To determine compliance with water quality criteria applicable to Delta waterways and impacts to the Bay-Delta ecology, the SWRCB should rely on monitoring data taken directly from the Bay-Delta instead of evaluating urban stormwater data that is collected at various outfalls and in urban corridor tributaries. The SWRCB should also consider the temporal nature of the data collected as compared to the water quality criteria in question. For example, individual stormwater samples are "snapshots-in-time" while applicable objectives may be based on a long-term, chronic exposure. In short, Sacramento encourages the SWRCB to rely primarily on relevant monitoring data taken directly from the Bay-Delta for assessing biological impacts.

Again, the County has serious reservations about the SWRCB's Request and believes that there are significant due process concerns due, in part, to the lack of adequate notice of the scope of the proposed evidentiary proceeding. Sacramento reserves the right to supplement or otherwise modify the information provided herein as the SWRCB's process develops.

Yours truly,



Keith DeVore, Director
Department of Water Resources
County of Sacramento, and
Sacramento County Water Agency

KD:JB/sa

cc: Robert Ryan
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