



HASHEM W. NARAGHI
Attorney at Law
PO Box 445
Escalon, CA 95320
(209) 480-4222

March 15, 2017

via email to:

The Honorable Felicia Marcus, Chair
and Members of the State Water Resources Control Board
c/o Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Subject: "Comment Letter - 2016 Bay Delta Plan Amendment & SED"

Dear Chair Marcus and Members of the Board:

I am writing on behalf of Hashem Naraghi, Cindy Naraghi, Inland Bay Properties, LLC, H&N Properties, LLC, Wendell Naraghi, Peggy Naraghi, Naraghi Farms, LLC, Big W Packing, Inc., Norik Naraghi and Naraghi Farms, a central valley fourth generation farming family to provide written comments to the draft revised Substitute Environmental Document (SED). I want to note for the record that we attended all of your hearings in the central valley and watched the Sacramento hearings online and we incorporate by this reference all of the testimony and comments submitted to the State Water Resources Board ("Board") during the comment period.

To say that we are concerned with this proposal is an understatement. We are very reasonable people and do our part for the environment and our fellow Californians but

what the SED is proposing is bad for farmers, the valley and the environment. To be very honest, the fact that this is even under consideration shows that our system is broken. We sincerely hope that the voices of the residents of the region were heard and that the Board entertains voluntary agreements that incorporate non flow measures so that we can avoid the lawsuits and save our water and the fish in the process.

We were very disappointed in the SED as instead of complying with the mandated balancing of interest, the SED is riddled with numerous errors, nonsensical or inaccurate models and inaccurate information in a failed effort to justify the proposal. It was so flawed that Mark Holderman from your own California Department of Water Resources pointed out, among other things, that “The Water Board’s SED contains out-of-date scientific information.” This was a stunning assessment and critique since it came from the agency responsible for assessing, measuring and operating California’s water system.

Our own review of the testimony and the SED finds that the SED is flawed and deficient for the following reasons:

1. The SED does not quantify groundwater quality and groundwater storage losses or land subsidence impacts as required by Section 13000 of the Water Code.
2. The SED fails to properly evaluate the loss of habitat that will result from the fallowing of land. The SED also assumes that farmers will change from “low value” crops to high value crops yet it fails to properly consider the environmental effects from the resulting change. For instance what would the effect on air quality alone be from changing over 70,000 acres of tree crops to row crops so that you can fallow during dry years? The SED assumes that farmers will do the opposite but almond trees cannot be fallowed, Cattleman do not just automatically become farmers and dairies cannot transition without shutting down. This is much too simplistic of an outlook for the Valley and it is built on faulty and simplistic assumptions. There are

numerous evaluations that need to be done to assess the true environmental impact from such a proposal.

3. The SED did not evaluate the impact of increased flows and the resulting decrease in availability of surface water on the South San Joaquin Water Supply Project. Under a 40 percent scenario, the Project would be a \$63 Million stranded asset and at the same time you would leave the residents with permanent drought restrictions and increased bills as they will still have debt service on the bonds that were used for the project. (Hearing Transcript Dec.16, 2016, P.152-153).
4. The SED is flawed as it calls for increased flows for the Stanislaus during June when the FISHBIO OID rotary screw trap has shown that there are only 1 to 2 percent of out migrating fish at that time (Hearing Transcript Dec.16, 2016 P.165 Lines 2-15).
5. The SED contains out of date and incomplete scientific information as detailed by Mark Holderman from the California Department of Water Resources.
6. The SED assigns responsibility for environmental harms without evidence.
7. The SED uses Unimpaired Flow Standards ill-suited for real-time operations.
8. The SED makes inappropriate use of a “Flow-Only” approach. As Dr. Henry, California Science Director for Trout Unlimited testified, “Fish habitat is composed of many components, it’s not just water obviously, it’s vegetation, it’s substrate...So flow is a very important variable, but it’s really only as important as it is working with all of those other things.”So the one thing that would be a terrible outcome of this process given the Board’s focus on water is if we developed flow proposals that actually didn’t get us what we needed for the fish and used a lot of water in the process.” (Hearing Transcript Nov. 29, 2016, P.119-120). Unfortunately, with the Board’s flow only approach, that is exactly what is being proposed.

The testimony of Mrs. Zolezzi was especially enlightening where she stated that “The Stanislaus River currently has enough habitat to support about 2,500 female salmon. The Stanislaus River now has more than 11,000 adult returning salmon. So it’s essential to ask why we would increase flow on the Stanislaus River to create more fish, when we don’t have sufficient habitat capacity for the fish that we have now?” (Hearing Transcript Dec. 16, 2016, P.188 Lines 14-20). Furthermore she stated “...the research that we have demonstrates up to 98 percent of salmon and steelhead are lost to predation before they even leave the tributaries.” (Ibid P.189 Lines 14-16). So clearly the SED is fatally flawed for its flow only approach.

What is most troubling is that while the Board has acknowledged that there is a need for non-flow measures that are an important part of the solution, the Board has stated that it cannot consider them because it has limited authority. This is absurd. You are talking about ending life in the Valley as we know it but say that you are forced to do this because you have limited authority? Why isn’t a joint hearing held (or similar vehicle) so that all of the tools in the toolkit can be used? We are better than this as a State and we cannot choose to throw more water at a problem just because of bureaucratic red tape. This is the definition of waste.

9. While the SED harkens back to the days of “unimpaired flows” by increasing the flows during critical months, it is based upon a faulty assumption. If the Board is really attempting to reenact the state of the rivers prior to “impairment”, they would be cutting back flows not increasing them. I have lived within a mile of the Stanislaus virtually my entire life and you can still find old timers that remember that the Stanislaus would run DRY in drought years. You are trying to recreate something that never existed. The Board should study how the salmon survived during the pre impairment days when the Stanislaus would run dry. This is further bolstered by the testimony of Dr. Rachel Johnson of the NOAA Fisheries at the Southwest Fisheries

Science Center when she stated "...the Central Valley has one of the most highly variable natural precipitation regimes in the country. And so we're not shy of mega-droughts, mega-floods and these fish have evolved to deal with that environmental uncertainty." (Hearing Transcript Nov. 29, 2016, P.165 Lines 19-23).

10. The SED contains erroneous information on water quality within the South Delta.
11. The SED identifies incorrectly the State Water Project pumping operations as causing degradation of water quality in the Delta that actually result from net flows, not water levels or net flux.
12. The SED makes unverified assumptions about its effects on groundwater sustainability.
13. The SED relies on dated groundwater data prior to 2010 and does not include impacts of data collected during the 2012-2017 drought.
14. The manner in which the hearings were handled resulted in a deprivation of due process rights under the US and California Constitutions. The SED consists of thousands of pages and it is unreasonable to think that the citizens of the central valley which are some of the poorest and least educated can evaluate the SED within the time given (even the extended time frame). In addition, ALL meetings were held during the day despite the fact that the Central Valley is a region comprised of working people that cannot attend meetings during the day. More than that, despite the huge hispanic population in our region, the SED was not distributed in Spanish (or if it was, no one could find it). Worse yet, an interpreter was not available at the hearings.
15. Furthermore, on numerous occasions, testimony concerning the proposal's connection with the twin tunnels was immediately cut off. "MS. DODUC: Wait, wait, wait.

CHAIR MARCUS: One second, if you're going to talk about WaterFix, you can't.
“ (Hearing Transcript Dec.16, 2016, P.68 Lines 18-20).

There were numerous instances where the crowd was admonished that they could not testify regarding the twin tunnels connection. This was both a due process violation and a blatant attempt to piecemeal the project under CEQA.

As stated in the California Supreme Court's 1986 Laurel Heights decision: “an EIR must include an analysis of future expansion or other actions if (1) it is a reasonably foreseeable consequence of the initial project, and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.” Since this project continually ignores all evidence to the contrary in its quest to use the flow only approach to “save salmon” it sure looks like it is just an excuse to get additional fresh water into the delta to hold off salt water intrusion for the twin tunnels. Silencing testimony about the connection will not change the facts that tie the two together.

16. The one size fits all approach is flawed. The SED proposes to take the same amount from the Merced, Tuolumne and Stanislaus Rivers since they are tributaries to the San Joaquin. Why would you propose to take the exact same percentage from three entirely different rivers? Each individual river and reservoir has unique and specific operational criteria that must be met. For example, Don Pedro Reservoir is full yet New Melones has plenty of capacity, more than 1 Million acre feet. New Melones was so low after five years of drought and government mandated releases for fish that it is only today approaching its historic average for the date (February 7, 2017). So why would you take the same percentage from each when one is Full and at overflow status and the other is no where near full? Furthermore as set forth by the Stockton East representative Mrs. Zolezzi, the Stanislaus has already achieved the doubling goal and requiring additional flows would place a disproportionate burden on the

Stanislaus. (Hearing Transcript Dec. 16, 2016, P.192 Lines 1-4). So it doesn't make sense to just use a one size fits all percentage when each of the rivers is so unique.

17. The SED failed to consider the effects of the Sustainable Groundwater Management Act (SGMA) on groundwater pumping ability in the impacted aquifers. As Mr. Anderson stated “We are aware that in the future pumping may be limited by the SGMA, the Sustainable Groundwater Management Act. And it’s difficult to speculate exactly what those effects will be.” (Hearing Transcript Nov. 29, 2016, P. 70 (Lines 4-8)). The SED acknowledges that the central valley would have to make up the loss of surface water by increased pumping of groundwater which directly contradicts the goals of the Sustainable Groundwater Management Act. It is therefore a flawed analysis and inaccurate report on the effects of increased flows as it assumes a remedy (increased pumping of groundwater) that will not be available (or to the extent assumed). This is another unbelievable omission from a SED that contains thousands of pages.
18. The SED does not integrate surface water models with readily available groundwater models to assess the true impact of the increased flows proposal.
19. The SED assumes that loss of surface water will be made up by groundwater pumping even though there are many areas where this is not an option. Specifically the Sierra Nevada Foothills.
20. Despite your mandate to do so, the SED does not consider any balancing of public trust resource protection with public interest needs for water. You have placed the purported needs of the Salmon over all else (humans and all other wildlife). Under the California Water Action Plan, the State set forth their co-equal goals of providing a more reliable water supply for California and to protect, restore and enhance the Delta ecosystem. The SED places one component of the Delta ecosystem- Salmon above all

else including the California Water Supply and other aspects of the environment. The fact that your proposal calls for an increase in flows for fish in the driest years shows that you are favoring fish over humans. The proposal assumes that this is possible as human use will just be made up by groundwater pumping even though we all know that this will be limited by SGMA. This is disingenuous and the true impacts of fish over humans should be analyzed. We believe that there is more than ample evidence in the record to prove that the impacts to the central valley far outweigh the few speculative benefits to fish.

21. Food security is a national security issue and the SED needs to examine the effect of the proposal on the states ability to continue to provide food for the people of California and the Nation. This is especially true of organic food which has very high certification standards in California. The state keeps growing and yet it has not added any new water storage and instead it keeps taking additional water for environmental purposes. Where are Californians going to get their food and at what costs and what drop in quality and more important safety. This proposal targets the top 3 food producing counties in the State and fails to evaluate the impact on California and the Nation. Specifically the SED needs to evaluate the impact on food safety, food pricing, the environmental and labor regulations. If the evaluation assumes that the food will just be imported then it will also need to evaluate the environmental effects (including global warming impacts), national security issues, labor implications (child labor etc.) and environmental justice issues.
22. The SED should evaluate whether the mass oyster die off resulting from low salinity in San Francisco Bay is caused by the mandated flows for fish.

Thank you again for the opportunity to present out comments and we once again request that the Board revise the SED based upon the comments presented and adopt a more reasonable plan similar to that proposed by the Merced Irrigation District's Safe River Plan.

Sincerely,

A handwritten signature in black ink that reads "Hashem W. Naraghi". The signature is written in a cursive style with a distinct flourish at the end.

HASHEM W. NARAGHI,
ATTORNEY AT LAW