



March 17, 2017

Honorable Felicia Marcus, Chair
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Dear Chair Marcus:

Sustainable Conservation appreciates the opportunity to comment on the revised Substitute Environmental Document in Support of Proposed Changes to the Water Quality Control Plan for the Bay-Delta: San Joaquin River Flows and Southern Delta Water Quality (SED). Our organization has been working collaboratively with environmental, agricultural, government and other partners for almost 25 years to find common ground solutions to challenging problems facing California's water, land and air. We commend the State Water Board on its efforts to address the critical species declines and ecosystem changes that have occurred in the San Joaquin River/Delta system. We also recognize the need to analyze and propose measures to address potential impacts to the economy, society, and the groundwater resources of the San Joaquin Valley. We believe that the only way this balance can be achieved is through an integrated, outcome-driven approach, one that allows for adaptive management in response to changing conditions.

Our comments focus on two main areas –flows and restoration, and groundwater. We stress the need for the SED to recognize and address the potential impacts of the new flow requirements on the efforts of the region's Groundwater Sustainability Agencies (GSAs) to comply with the requirements of the Sustainable Groundwater Management Act (SGMA). The Water Board, the Department of Water Resources (DWR), and the GSAs must work together to develop a coordinated strategy including wet year diversions for groundwater recharge, non-flow alternatives for fishery improvement, and water conservation and efficiency measures in order to avoid long-term damage to the people of the San Joaquin Valley – particularly the agricultural and disadvantaged communities that are dependent upon water for their livelihoods, income, health, and well-being.

Flows and Restoration

Enhanced Flows with Flow Management Flexibility in Wet Periods. Sustainable Conservation supports higher instream flows in combination with high quality restoration projects that will help improve fish survival and ecosystem health. Improved flows in all years will provide a range of crucial habitat, hydrogeomorphic and Delta salinity level benefits. In wet years, however, we believe that high stream flows are sufficient to allow greater flexibility for groundwater recharge – both within and beyond the floodplain. During times of high runoff, we propose the Water Board determine an optimal channel-forming flow (in cfs). Flows in excess of



that should be available for diversion for groundwater recharge and off-channel floodplain inundation as would have occurred naturally prior to construction of levees. Substituting this minimum channel-forming flow requirement for the proposed percentage of unimpaired flow would provide this wet-year flexibility and help integrate the goals of SGMA with those of the Plan.

Habitat Restoration. As the SED states, aquatic and riparian habitat for fish and wildlife in the Delta and the San Joaquin River system has been impaired to such an extent that increased flows alone, no matter what the percentage increase may be, will not be enough to achieve the state's ecosystem and fish population recovery goals. We strongly believe that a combination of increased flows in the San Joaquin system accompanied by badly needed habitat improvements is essential in order to achieve fish and wildlife recovery. In particular, a concerted strategy to set levees back from the river edge, and remove them where feasible, through multiple-benefit restoration projects in the San Joaquin River and its tributaries, should be a focus of the SED's recommended non-flow restoration actions.

We also believe that these habitat improvements, if put in place, can substitute for a percentage of diversion reductions that would otherwise be imposed under the Plan, when there is a reasonable assurance that the ecological value is equal to/has been attained through the non-flow action. We recognize that an accurate method for determining the equivalency of restoration and increased flows must be developed.

We understand that the Water Board believes that its authority only extends to flows themselves, and not to requiring habitat restoration. We urge the Water Board not to be overly cautious or conservative on this matter. Restoration must play a central role in the strategy presented by the SED.

Voluntary Settlements. We have been strongly supportive of the Water Board's advocacy of voluntary settlements to help achieve the state's goals. Sustainable Conservation has a long history of working to promote habitat restoration on private and public lands. Whatever the outcome of the voluntary settlement negotiations, we recommend, based on our experience, that the Water Board implement the following specific actions in order to encourage development of cooperative agreements that include several types of high priority non-flow actions:

1. Create a roadmap to help potential project proponents understand how to select/prioritize projects, acquire partners, and to plan, develop, and implement restoration projects.
2. Identify potential funding sources and collaborators for projects.
3. Additional programmatic or "simplified" permits should be developed now to cover a variety of restoration actions. This would significantly reduce permitting costs, save time, and get more on-the-ground restoration done sooner. The Water Board could build off its existing restoration permit and adapt it for larger projects. We also encourage you to work with the Resources Agency so programmatic authorizations are developed by other agencies, in order to see the work through the entire environmental review process in an efficient and cost-effective manner.



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Without the guidance provided by these measures, local water agencies and landowners may find that pursuing voluntary non-flow measures appears to be too complicated or expensive. Providing clear guidance and real incentives will increase the likelihood of obtaining agreements, getting projects implemented, and achieving success for the overall program.

Groundwater

The SED and SGMA. We believe strongly that the SED must fully consider and address its potential impact on the implementation of the Sustainable Groundwater Management Act (SGMA). Otherwise, implementation of the new surface flow requirements may inadvertently complicate the work of the Groundwater Sustainability Agencies (GSAs) and increase the negative impacts of SGMA implementation on San Joaquin Valley agriculture and communities, including disadvantaged communities that rely almost exclusively on groundwater.

The SED proposes to make up a substantial part of the deficit in water supply for agriculture and municipal uses created by increased instream flows with increased groundwater pumping. This shift will make the affected surface water users more groundwater dependent and, as the SED states, most likely result in “undesirable results such as significant and unreasonable reduction of groundwater storage and degradation of water quality” over and above the pre-existing condition of the basin. The current SED language suggests that these new impacts will need to be addressed by the GSAs once they begin the work of SGMA implementation.

Since replenishing the groundwater supply will be challenging under the proposed flow regime (without a major commitment to diversions for recharge in wet years), the GSAs will most likely need to rely primarily on demand reduction -- restricting pumping along with promoting water-use efficiency and other voluntary conservation measures. While improved water use efficiency can result in improved crop quality and yield, pumping restrictions can cause economic hardship to farms and communities, especially those that become more dependent on groundwater as a result of the proposed new flow regime.

We understand that the Water Board does not intend to make the implementation of SGMA more complicated or burdensome for the regions affected by the proposed new flow regime. Therefore we recommend that the Water Board not leave addressing the impacts of its instream flow policies to the GSAs implementing SGMA, but instead recognize and address these potential impacts in the SED and work collaboratively with the Department of Water Resources, and the appropriate GSAs as they are formed and begin their work, to develop an integrated strategy that achieves the goals of both the Bay-Delta Plan and SGMA. We also believe the Plan should discuss options for financial and technical assistance for the agricultural community and residential and municipal water users who face hardships resulting from the implementation of the Bay-Delta Plan and SGMA. Finally, we recommend that the Water Board include specific financial and technical assistance options to reduce potential impacts to disadvantaged communities. The recently enacted federal Water Resources Development Act and California’s Proposition 1 should be considered as possible sources of funds for the pursuit of identified options.



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Groundwater Substitution. The SED does not address the environmental/hydrological impacts of groundwater substitution on groundwater-surface water connection and shallow groundwater dependent ecosystems. Groundwater substitution can negatively affect baseline flow in connected river systems and require greater unimpaired flows in dry and normal years to maintain aquatic conditions. Groundwater substitution can also reduce the establishment and effectiveness of off-channel, non-flow restoration projects that rely on shallow groundwater for vegetation success. We recommend that the diversion of high-flow year surface water be maximized for groundwater replenishment and off-channel flood plain/wetland habitat maintenance, and that the SED be amended to address impacts on connectivity and shallow systems.

The SED and the Central Valley Flood Management Plan. In addition to SGMA, the SED should be better integrated with the Central Valley Flood Management Plan, particularly the Flood Plan's recommendations for managing current and future high flow events in wet years (which may be exacerbated by climate change). Wet year diversions onto reconnected and restored floodplains, for instance, would be especially effective in achieving groundwater recharge, flood flow attenuation, and juvenile fisheries habitat improvement.

Conclusion

The SED could have a profound positive impact on fish populations and habitat in the San Joaquin River and Delta ecosystems; it could also greatly impact the people and communities in the affected region, and the implementation of SGMA and the Central Valley Flood Management Plan. It is essential that the Water Board make every effort to take an integrated approach to achieving its goals and aligning them with those of SGMA and the Central Valley Flood Management Plan.

The integrated, outcome-driven approach that the Water Board needs to adopt should include not only increased flows, but clear, strong support for implementation of non-flow restoration actions, water conservation, agricultural water use efficiency, and use of available peak flows for groundwater recharge at a meaningful scale.

We realize that the Water Board faces a difficult yet crucial task: creating an integrated, outcome driven, adaptive management approach to flow and habitat improvements within the context of a vital agricultural economy, groundwater dependent communities, and multiple natural resource-related objectives the State must meet in the coming years. Thank you for the opportunity to provide comments and suggestions on this Draft SED.

Sincerely,

J. Stacey Sullivan
Policy Director