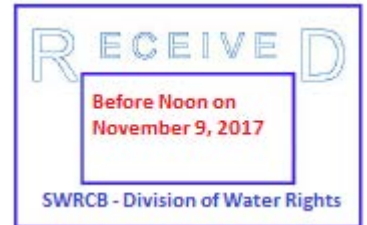


November 8, 2017

Via Email and U.S.P.S

Ms. Felicia Marcus
State Board Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000
Bay-Delta@waterboards.ca.gov



Subject: Comments on the Development of the Program for Implementation for the Phase II Bay-Delta Plan

Dear Ms. Marcus:

The East Bay Municipal Utility District (EBMUD) appreciates the opportunity to provide input on the development of potential changes to the Bay-Delta Plan. Your October 4, 2017 notice solicited input through a list of questions to the public to help inform the development of the implementation program for Phase II of the Bay-Delta Plan. Additionally, on October 4, 2017, the State Water Resources Control Board (SWRCB) also issued the Final Scientific Basis Report for the Sacramento River and Eastside Tributaries¹. EBMUD has not completed its review of the final report and may submit review comments at a later date.

The questions posed by the SWRCB are difficult and do not have just one simple answer for the entire water system in the state. However, EBMUD concurs with the need to address the continuing decline of water quality and fish species in the Delta. As noted in our December 16, 2016 letter commenting on the 2016 Draft Scientific Basis Report, EBMUD serves over 1.4 million people in the Bay Area, and our primary source of water is the Mokelumne River, an Eastside tributary to the Delta. The Mokelumne River contributes approximately 2.6 percent of unimpaired Delta inflow on an average annual basis. For nearly two decades, EBMUD has led stewardship activities to protect and enhance fishery and environmental resources of the Mokelumne River. The landmark 1998 Joint Settlement Agreement (JSA), which forged a partnership between the federal and state resource agencies, EBMUD and other stakeholders, has achieved significant successes in the management of the Mokelumne River anadromous fishery and riverine ecosystem. This partnership approach could be utilized as a model for the Voluntary Agreements (VA) for other river systems to assist in implementation of Phase II of the Bay-Delta Plan.

¹ EBMUD had previously submitted detailed comments on the October 2016 Working Draft Scientific Basis Report (EBMUD letter dated December 16, 2016)

To successfully implement the programs, with support from the stakeholders, EBMUD recommends the following actions be included:

- Develop primary biological objectives, such as the CVPIA fish-doubling goals, which allow for the objective measurement of success. The SWRCB should develop efforts based on explicit and clear biological objectives for each tributary/river system rather than focusing just on flows. Other more refined metrics to account for the unique characteristics of a tributary could include food production, fish-growth and population benefits which could be measured as metrics to gauge success of some of the biological objectives. Such metrics more accurately take into account the variety of factors contributing to fishery ecosystem enhancement, rather than the narrow focus on flows. In addition, in terms of implementation, they can be accurately and objectively measured and assessed.
- In terms of implementation of the updated WQCP, the SWRCB should provide consideration for tributaries that have shown success meeting objectives through implementation of instream programs with flow and non-flow measures. The SWRCB should acknowledge the successes achieved from such programs and provide these tributaries/agencies additional flexibility in achieving the objectives.
- Recognize the potential inherent conflict between providing additional flows based on a percentage of unimpaired flows and the ability to manage cold-water pool in the reservoirs. The JSA recognizes this conflict and allows EBMUD, in consultation with its resource agency partners, to use best efforts to manage cold-water pool in the reservoirs. The SWRCB should make allowances through adaptive management protocols to allow entities to utilize best management efforts to ensure cold-water pool management even if it means that a stated flow criterion may at times not be fully met.
- In terms of the timeline for implementation, provide consideration for agencies/ivers that are achieving or nearly achieving primary biological objectives. Implementation timelines could be shorter for agencies/ivers that are falling well short of objectives. However, it is not likely that non-flow measures will result in quick ecological responses, so the SWRCB should provide sufficient time for measures to have the intended beneficial impact. To do so, it will be important that a sufficiently developed and funded science program be established and maintained.
- Allow water right holders to continue to maintain rights to the 'return' flows after use on floodplain inundation. Depending on in-situ characteristics, a certain percentage of the water utilized for floodplain inundation returns back into the stream. Allowing agencies or other diverters to continue to maintain water rights to these return flows could provide both economic incentives and ecosystem benefits. As an example, arrangements could be

made such that in exchange for additional water, a landowner would construct a new setback levee which could result in increased habitat for fishery resources.

- Utilize Senate Bill 88 (SB88) requirements to develop a public database of water use. SB88 requires hourly and daily real-time measurement and reporting by legal water users, and requires full implementation of those measures by 2020. The 2012-16 drought exposed the significant data and information gaps in water accounting. The SWRCB should develop a full water accounting and use database derived from SB88 requirements to ensure that drought measures are implemented appropriately with complete and accurate water use data. The SWRCB should also make sure that flows are gauged at appropriate locations throughout the system, with clear definitions of area of responsibility for meeting compliance points by various water users in the system.
- Agencies participating in VA's and showing acceptable progress towards a final agreement should be given at least until July 2018 to achieve a tentative agreement with the Resources Agency and other stakeholders. This is probably achievable for systems with existing successful frameworks like the JSA, the Sacramento Water Forum and the Yuba Accord. It may take longer for other systems. The SWRCB could assign resources to participate in local/regional tributary planning meetings. A structured, stepwise implementation plan should be tracked by SWRCB staff to ensure commitment and success towards biological goals. The SWRCB could also require entities to provide yearly status updates on the VA and conduct regular assessment reviews to ensure continued success.

EBMUD looks forward to working with other stakeholders, agencies and the SWRCB to develop a comprehensive implementation program that is effective and measureable, and will enhance and protect natural resources while balancing other beneficial uses of water.

If you have any questions, please do not hesitate to contact me a (510) 287-1629.

Sincerely,



Richard G. Sykes
Director of Water and Natural Resources

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