



CVCWA

Central Valley Clean Water Association

Representing Over Fifty Wastewater Agencies

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April 25, 2012

Sent via electronic mail

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
commentletters@waterboards.ca.gov

SUBJECT: Comment Letter – Bay-Delta Plan Supplemental NOP – Comprehensive Review

Dear Ms. Townsend:

The Central Valley Clear Water Association (CVCWA) appreciates the opportunity to submit comments on the Supplemental Notice of Preparation (NOP) and Notice of Scoping Meeting for Environmental Documentation for the Update and Implementation of the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan). CVCWA is a non-profit organization representing more than 50 publicly owned treatment works (POTWs) throughout the Central Valley Region, including POTWs that discharge to the Bay-Delta. CVCWA represents its members on a number of regulatory matters affecting surface water discharge, land application, and water reuse. We approach these matters with a perspective to balance environmental and economic interests consistent with state and federal law.

We understand from the NOP that the State Water Resources Control Board (State Water Board) is not soliciting comments with respect to the San Joaquin River Flows or South Delta objectives for agriculture in conjunction with this notice. Accordingly, we will reserve our comments on those elements of the Bay-Delta Plan until the Substitute Environmental Document (SED) is released for review. Our comments on other issues pertaining to the State Water Board's comprehensive review of the Bay-Delta Plan are provided herein.

First, with respect to the NOP and comprehensive Bay-Delta Plan review, CVCWA encourages the State Water Board to return to the 2009 staff report for the 2009 Periodic Review of the Bay-Delta Plan. (Staff Report, Periodic Review of the 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, Adopted by Resolution 2009-0065 (August 4, 2009) (2009 Staff Report).) Specifically, in the 2009 Staff Report, the State Water Board determined that several issues were not appropriate for further review in conjunction with the Bay-Delta Plan. (2009 Staff Report, pp. 33-48.) The issues not appropriate for further review included, among other things, ammonia objectives and toxicity objectives. For both of these, the 2009 Staff Report concluded that primary responsibility for addressing these issues, including possible basin plan amendments, should remain with the Regional Water Quality Control Boards (Regional Water Boards). (2009 Staff Report, pp. 38, 42.) CVCWA agrees. Thus, to the extent that the State Water Board may be encouraged to expand the Bay-Delta Plan to include water quality objectives for ammonia, specific toxic pollutants and other constituents of concern (e.g., drinking water constituents), CVCWA encourages the State Water Board to maintain its current policy position and defer such considerations to the Regional Water Boards.

Second, should the State Water Board determine that the Bay-Delta Plan must be revised due to changes that may occur as the result of current planning efforts, such as the Bay-Delta Conservation Plan, any such changes must be based on substantial evidence that consists of sound, peer-reviewed scientific studies.

Third, the State Water Board must properly consider the impact of any such changes to POTWs, and the actual impact that POTWs may have on the water quality issue of concern. Specifically, Water Code section 13000 requires the State Water Board to regulate activities “to attain the highest water quality which is reasonable, considering all demands made and to be made” (Wat. Code, § 13000.) This legal standard is of general applicability and applies to all of the State Water Board’s water quality regulatory activities, including the development and adoption of water quality control plans (i.e., basin plans). When adopting water quality objectives, Water Code section 13241, as applied to the State Water Board by Water Code section 13170, requires the State Water Board to consider a number of statutory factors. The factors for consideration include: beneficial uses, water quality conditions that could be reasonably achieved, economic considerations, the need to develop housing, and the need to develop and use recycled water. (Wat. Code, § 13241.) Such consideration includes evaluating the economic costs of compliance and not just the economic benefits.¹ When evaluating economic impacts to POTWs, the State Water Board needs to also compare the economic impact to POTWs as compared to the proportional impact caused by POTWs. Moreover, any change(s) to water quality objectives or their application may also require the program implementation to be revised. Such a change would need to include an appropriate level of specificity to allow

¹ See *City of Tracy v. State Water Resources Control Board*, Final Statement of Decision, Sacramento Superior Court Case No. 34-2009-80000392 (May 10, 2011) (*Tracy Decision*), p. 31.

those subject to new or newly interpreted water quality objectives to adequately evaluate the impacts that the change(s) to the Bay-Delta Plan may have on them. (*Tracy Decision*, pp. 36-37.) Otherwise, such actions will fail to comply with the Water Code.

Fourth, any proposed changes to the Bay-Delta Plan that potentially result in the need for POTWs to implement an increased level of treatment must be properly considered during the State Water Board's environmental review process. Such environmental impacts may include, but are not limited to, the following: increases in greenhouse gas emissions; construction impacts; creation of new waste streams that may need disposal (e.g., brine); and, increased traffic impacts. It is difficult to articulate with any level of specificity the environmental impacts may need to be addressed until the State Water Board fully identifies its proposed changes to the Bay-Delta Plan. Accordingly, CVCWA reserves its right to provide additional, more comprehensive comments on any and all changes to the Bay-Delta Plan resulting from this notice at the appropriate time.

Thank you for the opportunity to comment. I may be reached at (530) 268-1338 if you have any questions or wish to discuss our comments.

Sincerely,



Debbie Webster,
Executive Officer

c: Pamela Creedon – Central Valley RWQCB (by email)