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May 4, 2016

Felicia Marcus, Chair
Members of the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Re: SWRCB's Proposed Bay-Delta Plan Update and Substitute Environmental Document

Dear Chair Marcus and Members of the Board:

We write to you on behalf of our clients, the Stanislaus and Merced County Offices of Education, which are responsible for the administration and oversight of the school systems within their respective counties. This includes ensuring the education, health and safety of over 157,000 students.

It is our understanding that the State Water Resources Control Board ("SWRCB") is considering amendments to the 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary ("Revised Plan") which call for significant increases in unimpaired flows from the Merced, Stanislaus, and Tuolumne Rivers. We also understand that the SWRCB is preparing a Substitute Environmental Document ("SED") to consider the environmental impacts of the Revised Plan, and that in an earlier draft SED, the SWRCB concluded that increasing unimpaired flows would create "significant and unavoidable" impacts to the economy, agriculture, and groundwater basins in Stanislaus and Merced Counties.

As you are aware, most of our clients' students rely on groundwater as their source of drinking water. Our clients' school facilities operate on well water or city-fed well systems, and often serve as safe places for students and community members to gather. Access to drinking water and water for sanitation is a basic requirement for fulfilling our clients' mandate of providing quality education. Already some of our clients' schools have received warning notices from the SWRCB's drinking water quality division regarding the safety and adequacy of their water supply. Adoption of the SWRCB's SED and Revised Plan would make this a reality for every school within our clients' respective jurisdictions.

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Nevertheless, neither the SWRCB nor its staff have provided any notice to our clients regarding the Revised Plan and SED, and have made no attempt to meet to discuss the adverse impacts to our clients that will result from the Revised Plan. Given all of the above, it is clear that our clients are stakeholders under CEQA and the Water Code, and that the SWRCB, either directly or through staff, is required to consult with our clients. (Wat. Code, §§ 13144 & 85023; Cal. Code Regs., tit. 14 [“CEQA Guidelines”], § 15083; Cal. Code Regs., tit. 23, §659, *et seq.*)¹ Its failure to do so renders the Revised Plan and SED invalid and subject to legal challenge. (*Ibid.*) We implore the SWRCB or its staff to meet and consult with our clients’ staff and truly consider the impacts of the plan upon our clients’ schools and students.

Furthermore, the SED’s analysis of impacts on schools and students is clearly inadequate. While recognizing “significant, but unavoidable” environmental impacts within our clients’ area, the SED fails to describe the specific direct and indirect impacts of the Revised Plan on our clients’ schools and students, and fails to discuss mitigating these impacts. (CEQA Guidelines, § 15126.2.) This includes the financial implications for our clients from school districts forced to provide bottled water and portable toilets, and to relocate, as wells run dry due to implementation of the Revised Plan.

If it adopts the SED without sufficiently discussing and mitigating environmental impacts, the SWRCB will have failed to proceed in a manner required by law. (*TRIP v. City Council* (1988) 200 Cal.App.3d 671, 679.) “A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.” (*Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 26; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712.)

An adequate SED “must be ‘prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences.’ [Citation] It ‘must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’” (*Kings County Farm Bureau v. City of Hanford, supra*, 221 Cal.App.3d at 712; see also Cal. Code Regs., tit. 23, § 3777; *City of Arcadia v. State Water Resources Control Board* (2006) 135 Cal.App.4th 1392, 1422.) Omitting relevant information itself “is prejudicial if the failure to include relevant information precludes informed decision making and informed public participation.” (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713,722.)

Finally, the Revised Plan and SED violate both the Watershed Protection Act and the Sacramento-San Joaquin Delta Reform Act of 2009. (Wat. Code, §§ 11460 & 85054.) The

¹ We acknowledge the citations presented herein involve challenges to EIRs rather than to a SED. Nevertheless, substantial overlapping legal requirements applicable to each type of document make these important citations directly applicable here.

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Watershed Protection Act ensures that water users within a watershed of origin will not be deprived “of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein.” (Wat. Code § 11460.) The Revised Plan and SED specifically call for significant increases in unimpaired flows and reduction in diversions, and will result in overdrafted groundwater basins.

The Sacramento-San Joaquin Delta Reform Act of 2009 requires incorporation of the State’s co-equal goals—providing a more reliable water supply for California and protecting, restoring and enhancing the Delta ecosystem—in any plan for the Delta. (Wat. Code, § 85054.) The Revised Plan and SED compromises these co-equal goals by favoring the protection of the Delta ecosystem over a reliable water supply for Stanislaus and Merced Counties.

We reiterate our request that the SWRCB follow the law and consult with our clients. We further request that as the SWRCB works to finalize the Revised Plan and SED, it keeps in mind the concerns of our clients expressed in this letter.

Very truly yours,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO



David D. Boyer



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