



July 27, 2018

VIA EMAIL

Jeanine Townsend, Clerk to the Board  
 State Water Resources Control Board  
 1001 I Street  
 Sacramento, California 95814  
 Email: LSJR-SD-Comments@waterboards.ca.gov

**RE: BAWSCA Comment Letter – Revisions to Proposed Bay-Delta Plan Amendments**

Dear Ms. Townsend:

The Bay Area Water Supply and Conservation Agency ("BAWSCA") submits the following comments regarding the *Proposed Final Revised Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary* ("Bay-Delta Plan") issued by the State Water Resources Control Board ("State Board") on July 6, 2018.

**I. APPENDIX K DOES NOT CONSIDER REASONABLY FORESEEABLE METHODS OF COMPLIANCE**

CEQA requires the State Board to make a good faith effort in identifying reasonably foreseeable methods for complying with the Bay-Delta Plan. As the Substitute Environmental Document ("SED") and its Appendix K demonstrate, the State Board has not made such a good faith effort. BAWSCA requests that the State Board revisit the SED and its Appendix K so that it may appropriately identify and analyze the reasonably foreseeable methods of complying with the Bay-Delta Plan by the 26 BAWSCA member agencies in Alameda, Santa Clara and San Mateo Counties. This identification and analysis requires the State Board to consider at least the following:

- Increased reliance on groundwater and other surface water supplies;
- Inability to conserve additional water as a result of past conservation efforts and demand hardening; and
- Severe rationing and moratoria on new development.

As the SED and its Appendix K do not identify and analyze these reasonably foreseeable methods of compliance, it follows that the State Board has not analyzed any potentially significant impacts resulting from these actions. Areas in which anticipated impacts are likely to result include:

- Reduction in the water supplies and the resulting significant impact on the Bay Area's economy and impacts on public health; and

- Inadequate water supplies and resultant moratoria on housing development that sharply conflict with predicted Bay Area population growth and accompanying need for greater housing.

Appendix K does not take into account BAWSCA member agencies' anticipated methods for complying with the Bay-Delta Plan. It instead dismisses the BAWSCA member agencies' reasonably foreseeable actions to comply with the Bay-Delta Plan as somehow "speculative." Appendix K commits the State Board to requiring unimpaired flows of between 30% and 50% on the Tuolumne River. As BAWSCA's March 17, 2017 Comment Letter makes clear, BAWSCA member agencies' reasonably foreseeable actions are directly related to the State Board's mandated unimpaired flow commitment. Opining that these actions are somehow "speculative" is not only baseless, but also is a tacit admission that the State Board still has not considered how the Appendix K flow commitments will affect the BAWSCA member agencies. This circumvents the informed decision making that CEQA requires.

Accordingly, Appendix K does not satisfy the State Board's requirements under CEQA and the Water Code. It defers identifying, analyzing, and mitigating potentially significant effects until after the State Board certifies the Bay-Delta Plan. By avoiding the important environmental considerations that were presented to the State Board, Appendix K effectively precludes BAWSCA from meaningfully reviewing and commenting upon the Bay-Delta Plan. The SED and its Appendix K are therefore so fundamentally inadequate and conclusory in nature that BAWSCA and its member agencies cannot engage in meaningful public review and comment of the Bay-Delta Plan.

## **II. APPENDIX K DOES NOT CONSIDER FEASIBLE MITIGATION MEASURES**

The State Board cannot adopt Appendix K without considering alternatives and feasible mitigation measures. These alternatives and mitigation measures will minimize any significant adverse effect the Bay-Delta Plan may have on the environment and BAWSCA member agencies. Cal. Pub. Res. Code § 21080.5(d)(3)(A). Appendix K fails to incorporate a good faith consideration of reasonable alternatives and mitigation measures concerning the Bay-Delta Plan. Instead, it effectively ignores them. In particular, it ignores the San Francisco Public Utilities Commission's ("SFPUC") proposed viable alternative, which balances a healthy environment with a reliable water supply.

For example, the State Board maintains its baseless assumption that the Bay-Delta Plan's significant water supply impacts to the Regional Water System could be completely mitigated by the SFPUC procuring other supplemental water supplies and/or water transfers. As BAWSCA's March 17, 2017 Comment Letter makes clear, these efforts are infeasible. Appendix K brushes these significant issues aside because they seem "speculative." This conclusion is unfounded.

CEQA requires the State Board to consider feasible mitigation measures that address anticipated environmental and related economic impacts. Appendix K involves no such consideration and instead defers the State Board's responsibility to perform environmental review of the Bay-Delta Plan until after it adopts Appendix K. This deferral violates CEQA because it separates the project approval function from the State Board's environmental review responsibility. The Bay-Delta Plan commits the State Board to requiring unimpaired flows that will have significant environmental and economic impacts on the BAWSCA member agencies. The State Board must assess these impacts and develop related alternatives and feasible mitigation measures before adopting Appendix K.

### III. THE STATE BOARD PROVIDED THE PUBLIC WITH INADEQUATE TIME TO COMMENT UPON THE REVISED BAY-DELTA PLAN

Recirculation is required to allow meaningful public comment that is directed at the rationale for the State Board's decisions with respect to the proposed Final SED and its Appendix K. The State Board provided the public a mere 21-days to review and comment upon the revised Bay-Delta Plan. BAWSCA and others have raised serious criticisms regarding the Bay-Delta Plan. Appendix K defers meaningful analysis of these criticisms until after the State Board adopts the Bay-Delta Plan. This lack of analysis renders the SED "so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." Cal. Code Regs. tit. 23, § 15088.5(a)(4). Both CEQA and the Water Code require the State Board to recirculate the Bay-Delta Plan to allow for meaningful public participation concerning Appendix K. Absent recirculation, BAWSCA and other members of the public will be irreparably deprived of providing meaningful input on the Bay-Delta Plan.

### IV. CONCLUSION

Thank you for considering the comments and requests provided herein. BAWSCA remains committed to the Bay-Delta Plan's objectives, and will continue working with other stakeholders to protect water quality in the Bay-Delta. BAWSCA also continues to believe that a negotiated settlement is the best solution for this critically important issue.

Sincerely,

A handwritten signature in black ink that reads "Nicole Sandkulla". The signature is written in a cursive, flowing style.

Nicole Sandkulla  
CEO/General Manager

**From:** Sean G. Herman <SHerman@hansonbridgett.com>  
**Sent:** Friday, July 27, 2018 11:52 AM  
**To:** LSJR-SD-Comments@waterboards.ca.gov; WQCP1Comments  
**Cc:** Allison C. Schutte; Nathan A. Metcalf; Nicole Sandkulla  
**Subject:** Comment Letter - Revisions to Proposed Bay-Delta Plan Amendments  
**Attachments:** 2018-07-27 BAWSCA SED Comment Letter.pdf

**Categories:** Red Category

Dear Ms. Townsend,

Attached please find a comment letter submitted on behalf of the Bay Area Water Supply & Conservation Agency regarding the proposed Bay-Delta Plan and the supporting Appendix K to the proposed Final Substitute Environmental Document. At your earliest convenience, please confirm receipt of these comments. Please let us know should you have any issue accessing the attached letter.

Thank you for your consideration.

Sincerely,

Sean

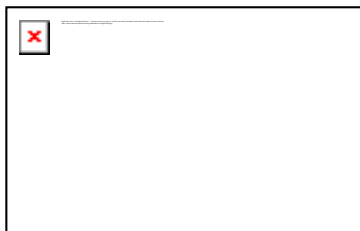
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**Sean G. Herman**

**Attorney**

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