

March 29, 2013



VIA EMAIL - COMMENTLETTERS@WATERBOARDS.CA.GOV

Ms. Jeanine Townsend, Clerk to the Board and
State Water Resources Control Board Members
P.O. Box 100
Sacramento, CA 95814-0100

Re: **Comment Letter from the City of Tracy– Bay-Delta Plan SED**
(Client-Matter No. 07547.00004)

Dear State Water Board Members and Ms. Townsend:

The City of Tracy provides the following general comments as well as specific comments on the draft Substitute Environmental Document (“SED”) on the proposed update to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan) in relation to the proposed flow and salinity objectives.

General Comments

Tracy applauds the State Water Resources Control Board (“State Water Board”) for recognizing that the current southern Delta salinity standards are not workable, and appreciates the efforts of the State Water Board to move forward to address this pressing water issue of particular importance to the City.

In addition to its concern about the Southern Delta salinity standards, Tracy is also concerned about the unimpaired flow requirements on the San Joaquin River tributaries. Tracy receives approximately 70% of its potable water supply from the Stanislaus River via the South San Joaquin Irrigation District (“SSJID”). SSJID has informed Tracy that the State Water Board’s proposed unimpaired flows will result in water shortages during dry years. This may result in Tracy utilizing native groundwater instead of surface water with a resulting increase in wastewater effluent salinity.

While working to encourage the State Water Board to adopt more reasonable and attainable standards, Tracy has also demonstrated its solid and unwavering commitment to reducing salinity in its wastewater effluent and to protecting local receiving waters. Recently, the City has spent more than \$200 million in its efforts to reduce salinity and improve its effluent quality. These projects include:

• Purchasing Stanislaus River Water	\$50,000,000
• Purchasing Delta-Mendota Canal water	\$10,000,000
• Implement new surface water treatment	\$50,000,000
• Install wastewater plant upgrades	\$85,000,000
• Water storage in Semitropic Water Storage District	\$6,000,000
• Aquifer Storage and Recovery Program	<u>\$2,000,000</u>
	\$203,000,000

Historically, the City was primarily reliant upon native groundwater with a salinity (Total Dissolved Solids (“TDS”) concentration) of 800 milligrams per liter (mg/L). However, now surface water with a salinity of approximately 60 to 80 mg/L comprises 97% of the water supplied to the community. This switch to using lower salinity surface water and implementing an aquifer storage and recovery (“ASR”) project has resulted in a major decline in the salinity of Tracy’s effluent. Between 2004 and 2012, the TDS levels in Tracy’s effluent have declined from 1100 mg/L to below 700 mg/L (or approximately 1.2 deciSiemens/meter (“dS/m”) measured as Electrical Conductivity (“EC”)).

Although these reductions are substantial, the City has not slowed in its efforts to be in front of the curve on salinity reduction and has recently embarked on exploring the construction of a thermal desalination facility that is hoped and anticipated to reduce the salinity of the City’s wastewater another 80 mg/L. (*See attached* Figure 1. Tracy Desalination and Green Energy Project at the Wastewater Treatment Plant.) The annual operating cost of this new technology desalination facility is estimated to be \$1.5 million per year, so this will add another considerable ongoing expense for the City. It is hoped that the costs of actual on-the-ground projects can be added to the SED to provide a more solid ground for the cost estimates included therein.

In addition, the City hopes that the State Water Board will remember that the flow objectives being proposed may affect the salinity levels of Tracy’s wastewater discharge. If surface water flows and deliveries are reduced, then Tracy may have to return to using higher salinity groundwater in greater quantities (which can cause other impacts such as greater energy use for pumping and potential groundwater degradation). Therefore, the City urges the State Water Board to recognize that its actions on the flow side may adversely the City’s ability to meet strict salinity limits on the treated effluent side of the equation.

City of Tracy’s Comments on the SED

Representatives of the City met with State Water Board staff on March 14, 2013 and discussed the City’s comments generally. The City sincerely appreciates the efforts that staff has made to date and provides the following comments for possible modifications to the SED before it is finalized.

Preferred Alternative Selection

The SED sets forth 3 potential alternatives as proposed salinity objectives (SED at 1-9, 3-25):

- **Alternative 1** represents the status quo or “no project” alternative. This option retains the existing 2006 Bay-Delta Plan requirements for a maximum 30-day running average of mean daily EC of 0.7 millimhos per centimeter (mmhos/cm; equivalent to 0.7 dS/m) April 1 – August 31, and 1.0 dS/m September 1 – March 31 for all water year types, which are currently applicable to Vernalis on the San Joaquin River, and at three specific interior south Delta compliance locations:
 1. San Joaquin River at Brandt Bridge site,
 2. Old River near Middle River, and
 3. Old River at Tracy Road Bridge(See SED at 3-7; 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Dec. 13, 2006) at Table 2.)
- **Alternative 2** would establish a numeric salinity objective of 1.0 dS/m as a maximum 30-day running average of mean daily EC for all months in certain larger areas of the interior south Delta. However, instead of applying at 4 specific compliance points, the objectives would apply on the San Joaquin River at Vernalis,¹ and also in certain specified river reaches in the interior southern Delta, including in:
 1. The San Joaquin River (SJR) between Vernalis and Brandt Bridge
 2. Middle River from Old River to Victoria Canal, and
 3. Old River/Grant Line Canal from the Head of Old River to West Canal.(See SED at 3-7.)
- **Alternative 3** is virtually identical in time and location to Alternative 2, except this alternative establishes a maximum 30-day running average of mean daily EC of 1.4 dS/m instead of 1.0 dS/m.
(See SED at 3-8.)

From these three alternatives, the State Water Board staff has suggested that Alternative 2 is the “Preferred Alternative” even though this alternative would have “significant and unavoidable” impacts for wastewater treatment service providers, including the City of Tracy (SED at 13-3, 17-7 and 17-9). The SED identifies six wastewater treatment plants (WWTPs) as *Service*

¹ Although some parts of the SED discuss maintaining 0.7 dS/m for parts of the year at Vernalis by conditioning USBR water right on meeting its current salinity D-1641 compliance requirement at Vernalis (SED at 1-9), this is not reflected in the new Table 2 objectives. Modification to remove the 0.7 dS/m objective at Vernalis from April-August may also affect the Salt/Boron TMDL requirements set with that target.

Providers that discharge treated effluent into the southern Delta and may be impacted by these new changes, including the City of Tracy, Deuel Vocational Institution, City of Manteca, City of Stockton, Mountain House Community Services District, and Discovery Bay Community Services District. (SED at 13-1.)

The City has several issues with the selection of Alternative 2 as the preferred option. First, it is not clear that the State Water Board has adequately considered alternatives to the three proposed salinity objectives.² For example, the State Water Board summarily dismisses an annual average objective because it “could allow for unacceptably high concentrations during the growing season.” (SED at 3-31.) However, there were no other alternatives to a 30-day running average adequately considered, such as having an annual average of 1.0 with a companion maximum monthly³ or seasonal average objective of between 1.1 and 1.4 to prevent “unacceptably high concentrations” (SED at 3-31) in any particular month or during the growing season. This failure to undertake a comprehensive alternatives analysis requires that substantial revisions be made to the SED before finalization.

Second, there was little to no analysis or discussion as to why a “maximum 30-day running average of mean daily EC” is being maintained when the scientific study conducted by Dr. Hoffman, the peer review by Dr. Grismer, and the February 2012 *Technical Report on the Scientific Basis for Alternative San Joaquin River Flow and Southern Delta Salinity Objectives* (“2012 Technical Report”) at 4-11 (emphasis added), all recognized that the agricultural beneficial use and other beneficial uses are “affected more by longer term salinity averages.”⁴ Alternatives such as annual averages, seasonal averages coinciding with the seasons reflecting different EC objectives (e.g. Apr-Aug and Sept-Mar), or multi-month averages should also be considered in the SED. An alternative of values expressed on a calendar month basis, instead of a running 30-day average,⁵ should also be considered since salt is not acutely toxic, and the values being suggested are well below drinking water maximum values or aquatic life criteria.

Third, the SED did not consider alternative salinity levels between 1.0 and 1.4 dS/m. As stated in the introduction above, Tracy’s effluent discharges currently average approximately 1.2 dS/m, so an objective closer to that level would create less impact on the City in terms of needing

² In addition, the State Water Board has not considered or discussed the impacts, if any, of modifying the objectives from merely applying at 4 discrete compliance points to applying within larger reaches of the river.

³ Maximum monthly average of mean daily EC values are used in the Export Areas in October-September. See 2006 Bay-Delta Plan, at page 13, Table 2 (Water Quality Objectives for Agricultural Beneficial Uses).

⁴ A longer averaging period is crucial for the City in order to accommodate the planned 3-week long shutdowns that the City will need to undertake if its currently planned thermal desalination facility is built, in order to accommodate annual maintenance.

⁵ Running average objectives can also present problems if translated into running average effluent limitations that may cause daily violations and mandatory minimum penalties (MMPs) for each day, instead of for a single monthly average violation. (Wat. Code, §13885(i).)

extraordinary treatment, yet would still fall within the range of values considered reasonably protective of agriculture. (SED 3-25.)

Finally, the State Water Board has not adequately explained why Alternative 2 was selected when the SED explicitly acknowledges that this alternative would result in “significant and unavoidable impacts” to wastewater service providers that would be unable to reliably meet new NPDES permit effluent limitations based on the objectives adopted in Alternative 2. (SED at 17-5, 17-7, and 17-26; *see also* CEQA Guidelines at Section 15126.6(c)(regarding elimination of alternatives that are unable to avoid significant environmental impacts).) Conversely, Alternative 3 (and presumably other alternatives between 1.0 and 1.4) would not be anticipated to result in significant and unavoidable impacts. (*Id.* at 17-5.) Thus, it is unclear why Alternative 2 was selected as the preferred alternative.

The City of Tracy is not necessarily advocating for the selection of Alternative 3 as the preferred alternative, since the City also uses Delta waters for its drinking water supply. Instead, the City is merely pointing out that Alternative 2 should not be the State Water Board’s preferred alternative without incorporation of adequate mitigation for the “significant and unavoidable impacts” to wastewater service providers, such as Tracy.⁶ This mitigation could be accomplished in several ways, as follows:

1. **Different or Additional Averaging Periods.** Adopt longer term (e.g., annual) average objectives as discussed above, with backstop higher maximum monthly or seasonal average concentrations if needed to protect against shorter term spikes.
2. **Mixing Zones.** Adopt a specific mixing zone policy to make the lower objective of 1.0 dS/m inapplicable around wastewater treatment plant outfalls. According to EPA’s Technical Support Document for Water Quality-based Toxics Control (“TSD”) (USEPA, 1991), “a mixing zone is an area where an effluent discharge undergoes initial dilution and is extended to cover the secondary mixing in the ambient waterbody. A mixing zone is an allocated impact zone where water quality criteria can be exceeded as long as acutely toxic conditions are prevented.” In other words, water quality criteria must be met at the edge of a mixing zone.

In the case of the salinity levels proposed, none of these represent levels that would approach acutely toxic levels, so mixing zones could easily be incorporated into the Plan. (*See accord 40 C.F.R. §131.13*, which allows States

⁶ “The purpose of an EIR[SED] is to inform the agency and the public, in detail, about the effect the project is likely to have on the environment and the ways available to minimize that impact.” *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal. 4th 165, 184, 185. “The core of an EIR[SED] is the mitigation and alternatives sections.” *Watsonville Pilots Ass’n v. City of Watsonville* (2010) 183 Cal. App. 4th 1059, 1089 (citation omitted).

to include in their state standards, policies generally affecting their application and implementation, such as mixing zones.)

3. **Site Specific Objectives.** Like mixing zones, these objectives would specifically allow higher discharge concentrations in the waters immediately surrounding wastewater treatment plant outfalls so long as the objectives are 1.4 dS/m or less. Thus, additional reaches could be identified that allow higher objectives.
4. **Permit Implementation Language.** The SED recognizes that the “Central Valley Water Board would likely apply the water quality objectives adopted for southern Delta as effluent limits to point-source discharge permits for wastewater treatment plants (WWTPs).⁷ (SED at 17-5.) If this were to happen with Alternative 1 or 2 and effluent limits were imposed that were equivalent to the objectives, then the City would be in non-compliance and would have to construct or operate new wastewater treatment facilities or infrastructure in order to come into compliance. (*Id.*) To avoid the substantial economic and environmental impacts related to the construction and operation of additional treatment, which is wholly unnecessary given the City’s *de minimis* contribution to salinity levels in the southern Delta,⁸ permit implementation language must be adopted. (Wat. Code, §13242.) This implementation language can take several forms:
 - a. Clarify that, for the purpose of NPDES permitting, the objectives only apply at the 4 **compliance points**, not throughout the reach as proposed.
 - b. Specify the **location for calculation of Reasonable Potential** for wastewater treatment plant effluent limitations (e.g., at compliance points, at point of use/diversion, or outside mixing zone).⁹
 - c. Adopt **compliance schedules** or delayed effective dates for the salinity objectives that would make NPDES discharges comply with the objectives

⁷ The staff at the recent March 20, 2013 workshop expressed the hope for flexibility by the Regional Water Board in permitting. Since that flexibility cannot be guaranteed without specific direction, the implementation program must specify how effluent limits for WWTPs will be determined to be necessary and will be calculated and applied.

⁸ See 2012 Technical Report and 2007 DWR Modeling Study of Southern Delta NPDES dischargers, including Tracy.

⁹ This interpretation would be consistent with the Superior Court’s order in the *Tracy v. SWRCB* case, which held “the [Regional] Board prejudicially abused its discretion in finding the 2006 Bay-Delta Plan authorizes the Board to perform the ‘reasonable potential’ analysis at the end of Tracy’s discharge pipe, rather than at the Old River/Tracy Road Bridge compliance location.” (*See City of Tracy v. SWRCB*, Sacramento Superior Court Case No. 34-2009-80000392 (Final Statement of Decision at 2, May 10, 2011). Further, the Court “modified its Decision to require the Board to perform the reasonable potential analysis at the Old River/Tracy Road Bridge compliance location, as required by the 2006 Bay-Delta Plan.” (*Id.* at 40.)

on the same time schedule as the Department of Water Resources and Bureau of Reclamation. (*See e.g.*, Revised Water Right Decision 1641, State Board Resolution No. 2004-0062, 2012 Technical Report, Appendix A at A-7). The State Water Board has ample authority to adopt reasonable time schedules for compliance with new objectives. (*See* Water Code §13242(b) and §13263(c); CWA, 33 U.S.C. §1313(e)(3)(F); 23 C.C.R. 2231(a).¹⁰)

- d. Incorporate by reference any **variance** adopted for salinity standards by the Central Valley Regional Water Board and make it expressly applicable to the Bay-Delta Plan salinity objectives, or adopt a variance into the Bay-Delta Plan for any treatment plant that would have to install additional treatment in order to meet the adopted objective. (*See accord* SWRCB Order No. 2005-0005 at 14 (“Construction and operation of reverse osmosis facilities to treat discharges from the City’s [treatment plant], prior to implementation of other measures to reduce the salt load in the southern Delta, would not be a reasonable approach.”); *see also* 40 C.F.R. §131.13 (authorizing States to adopt variances).)
- e. Include other or additional implementation language (e.g., **drought policy** such as Los Angeles Water Board’s Resolution No. 90-004) to mitigate the impacts of Alternative 1 or Alternative 2, if one of these is chosen.

Without these considerations, the State Water Board’s alternatives analysis is inadequate and must be redone with additional alternatives and mitigation measures that might eliminate or reduce the “significant and unavoidable impacts” of Alternatives 1 and 2.

Missing or Mischaracterized Information

First, although the State Water Board has acknowledged a potential tie between Delta flow patterns and salinity in the interior Southern Delta, there remains no direct cause and effect linkages in the SED. Although the SED discusses changes in the amount of surface water

¹⁰ The *Star-Kist Caribe* decision, NPDES Appeal No. 88-5, 1990 WL 32490, stated that “...the Clean Water Act provides ample, direct authority for the States to adopt schedules of compliance...” citing CWA §303(e)(3)(A) and (F). *See* 33 U.S.C. §1313(e)(3)(A) and (F) and recognizing two different types of compliance schedules, one for implementation of a water quality standard, and one for inclusion in permits. (*See In the Matter of Star-Kist Caribe*, EPA Environmental Appeals Board, NPDES Appeal No. 88-5 at 12 (Apr. 1990)(emphasis added) (“With respect to schedules of compliance specifically, the Act keeps them in the hands of the States, not EPA, as part of a continuing planning process...”) “...Congress intended the States, not EPA, to become the proper authorities to define appropriate deadlines for complying with their own state law requirements. Just how stringent such limitations are, or whether limited forms of relief such as variances, mixing zones, and compliance schedules should be granted are purely matters of state law, which EPA has no authority to override.” (*Id.* at 16.)

diversions (SED at G-13), potential reductions in water deliveries (SED at G-27), and effects on agricultural production caused by flow modifications (SED at 18-6), there does not appear to be an analysis of flow regime modifications and the effects on salinity levels in the interior Southern Delta. As stated above, these linkages can directly affect the City because decreased allocations of surface water due to flow restrictions may force the City to utilize saltier groundwater instead. Thus, without this linkage information, the objectives and implementation plan for Southern Delta salinity will be missing an important aspect of the effect of the flow regime in the Delta on salinity standards attainment in the interior Southern Delta. If increases or modifications in flow assist or result in the attainment of the beneficial uses and proposed salinity objectives at Vernalis and other places in the Southern Delta, then the implementation program for and burdens on other salinity sources could be greatly reduced or eliminated. Thus, the SED needs to specifically determine how the proposed flow objectives affect the salinity levels in the Delta.

Second, Tracy questions the accuracy of the statements that “[e]levated salinity in the southern Delta is caused by various factors, including . . . municipal discharges” and that salinity is affected “to a lesser extent by local municipal wastewater treatment plant discharges.” (SED at 1-7.) These findings are *not consistent* with the findings of the 2012 Technical Report and DWR Modeling Study of NPDES dischargers that was done for the City of Tracy’s permit. (2012 Technical Report at 4-7 and 4-10.) As that modeling showed, “the City of Tracy discharge under reasonable worst-case conditions has limited impacts on the salinity problem in the southern Delta as compared to other sources of salinity. . . .” (*Id.* at 4-10.) Thus, based on these conclusions, municipal dischargers should not be highlighted as a salinity contributor in the SED because in the absence of all other factors, municipal discharges would not cause elevated salinity at levels of concern to agriculture. Since flows from the southern Delta wastewater treatment plants are highly regulated and the salinity levels in those discharges are known and have in many cases, such as with the City of Tracy, been decreasing due to altered source water supplies and other activities, it is unclear why *any* focus should be directed at these minimal sources. However, if a list of factors affecting salinity is maintained, the list should be set forth in order of importance and actual impact to salinity (i.e., listed as significant and insignificant contributors).

Third, the City appreciates the discussion of the State Board’s legal obligations under the *City of Tracy v. SWRCB*, Sacramento Superior Court Case No. 34-2009-80000392 (Final Statement of Decision, May 10, 2011) on page 1-10 of the SED and elsewhere. However, the factual discussion of the modifications of the Delta Plan in Section 1.4.2 fails to discuss the 2006 reinterpretation of the Delta Plan that led to the City of Tracy’s litigation, namely that the salinity objectives were suddenly interpreted to apply everywhere, not just at the compliance points. This fact should be included in Section 1.4.2. for clarity. Section 1.4.3 should also be modified to state that the Court also held that the Bay-Delta Plan’s implementation plan for the salinity objectives was inadequate in relation to municipal dischargers and must be readopted to include the nature of the actions necessary for municipal dischargers to achieve the objectives, a

reasonable time schedule for such actions, and a description of the monitoring or surveillance required to determine compliance. In addition, this Section 1.4.3. should state that the Court enjoined the Water Boards from applying these legally infirm objectives to Tracy and other municipal discharges pending reconsideration of the objectives and adoption of an adequate implementation program for municipal dischargers in compliance with the Court's ruling. All of this highly relevant information is lacking from the SED and must be incorporated.

Also, related to the injunction on application of the objectives to municipal discharges, the conclusion on page 18-4 of the SED that "wastewater treatment districts [] do not currently meet salinity objectives" should be removed since the salinity objectives of 0.7 and 1.0 currently in the Delta Plan are not applicable and need not be met by the treatment plants. Instead, this sentence should state that the "local wastewater treatment plants may have difficulty attaining water quality based effluent limitations based on the objectives contained in Alternatives 1 and 2 being proposed."

Finally, the cost estimates for implementation of desalination processes are inaccurate. The SED estimates a 10 million gallon per day plant would pay between \$5 and \$22 million to construct a reverse osmosis system at a wastewater treatment plant. As set forth in more detail in the Central Valley Clean Water Association's comments on the SED, which are incorporated herein by reference, these estimated costs are too low and inadequately estimate the full costs of constructing, operating, and maintaining reverse osmosis treatment, including brine disposal. Thus, the costs set forth on page 18-4 and 18-28 of the SED (and where summarized elsewhere) are inaccurate and must be revised.

Other Issues

- The proposed implementation plan is not compliant with statutory requirements or the Court's Writ since the implementation program fails to identify: 1) the nature of the actions necessary for municipal dischargers to achieve the objectives, 2) a reasonable time schedule for such actions, and 3) a description of the monitoring or surveillance required to determine compliance. The Draft Southern Delta Agricultural Water Quality Objectives Program of Implementation within Appendix K of the SED ("Implementation Program") at pages 2-3 sets forth specific "State Water Board Regulatory Actions" that predominantly deal with actions to condition the water rights of the United States Bureau of Reclamation and the State Water Project. There is nothing related to municipal dischargers, except for the statement that "[t]o the extent necessary, the State Water Board may take other water right actions and water quality actions, in concert with actions by other entities, to implement the objectives." (See Implementation Program at page 3 of 5.) This is inadequate to meet the requirements of Water Code section 13242.
- The following page (4 of 5) lists "Central Valley Board Regulatory Actions," including using its NPDES and other permitting authorities and regulating salt discharges in

coordination with the ongoing CV-SALTS process (*ibid.*). This vague description does not specify what specific actions municipal dischargers will be expected to take, if any, to implement the salinity objectives. In fact, even the installation of reverse osmosis or the removal of Tracy's discharge entirely will not lead to consistent attainment of salinity objectives at or below 1.0 dS/m throughout the southern Delta, as explained in the Department of Water Resources' modeling efforts and as described elsewhere in the SED.


- The Monitoring and Reporting Requirements on page 5 of 5 set forth no discussion of the monitoring required for municipal dischargers to determine compliance with the new objectives.
- Footnote [5] to the Salinity Objectives themselves in Table 2 on page 1 of 5 of the Implementation Program vaguely states "Monitoring for attainment of the numeric salinity objectives may be modified as part of the Monitoring and Reporting Protocol described in the implementation plan. Prior to establishing the Monitoring and Reporting Protocol, attainment of these salinity objectives will be determined at the indicated locations." Besides not specifying how compliance will be monitored, these statements make it unclear whether the objectives apply at the compliance locations ("stations") or throughout the southern Delta, and fail to specify how and when those compliance locations might change. These vague statements must be made more specific in order for dischargers and others to know what the applicable standards are and how to meet them.
- Tracy appreciates that the State Water Board clarified, in other documents, that the implementation schedule for the current and new objectives would be "no later than December 2020 in coordination with implementation of San Joaquin River flow objectives." (*See* 2012 Technical Report, Appendix A at A-7.) However, Appendix K to the SED, which presents the draft Water Quality Control Plan modifications, fails to specify when the objectives apply or if there is a compliance schedule applicable to the objectives. This oversight must be clarified.
- Although the SED briefly comments on Energy and Climate Change impacts that might be caused by one or more of the Alternatives (SED at 17-8), that section does not discuss increased energy costs and carbon impacts from constructing and operating reverse osmosis facilities under Alternatives 1 and 2, or increased energy from groundwater pumping where municipal entities reliant on surface water flows switch to groundwater due to flow restrictions. In addition, this section does not discuss how Climate Change might affect the flow or salinity objectives. Rising sea level could cause more tidal inflows of higher salinity water into the southern Delta that may make the proposed 1.0 dS/m objective difficult to meet. This issue has not been analyzed and might be solved with adoption of a range of salinity objectives reflective of differing tidal or drought conditions.

- Finally, the Implementation Program discusses “an interim program to grant temporary exceptions from meeting water quality based effluent limits for salinity while CV-SALTS is in progress.” (Implementation Plan at page 4 of 5.) As of the date of these comments in March of 2013, the interim variance policy is still in the development phase and has still not been formally proposed or considered by the Central Valley Regional Board, so discussion of or reliance upon this not-yet-adopted policy should be tempered or conditioned. As discussed in more detail above, the Implementation Program should specifically outline how these newly modified objectives will be used to set municipal permit limits, what timeframes are required for compliance with those limits, and how compliance is anticipated to be achieved. These considerations are wholly lacking from the Implementation Program in contravention of the requirements of the Water Code and the Court’s Writ.

The City of Tracy hopes that the State Water Board can incorporate the City’s ideas and suggestions into the final Bay-Delta Plan modifications and SED so that an adequate consideration of alternatives can be made, and revised objectives and a reasonable plan of implementation can be adopted within this calendar year. Time is of the essence as it is difficult for the City to continue to plan large public works projects in such an uncertain regulatory environment.

Respectfully submitted,

DOWNEY BRAND LLP



Melissa A. Thorme
Special Counsel for the
City of Tracy

cc: Dan Sodergren, Tracy City Attorney
Steve Bayley, City of Tracy
Debbie Webster, CVCWA

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Figure 1. Tracy Desalination & Green Energy Project at the Wastewater Treatment Plant

