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ATTORNEYS

December 1, 2023

VIA E-MAIL

California Water Commission
Attention: Paul Cambra
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Re: Potential State Strategies for Protecting Communities and Fish and Wildlife in the Event of Drought

Dear Commission Members:

This letter is submitted on behalf of West Stanislaus Irrigation District (**WSID**), Patterson Irrigation District (**PID**), and Banta-Carbona Irrigation District (**BCID**) and includes comments on the California Water Commission's (**Commission**) draft white paper (**Draft Paper**) containing potential strategies to protect communities, fish and wildlife in the event of long-term drought.

WSID

WSID includes 21,676 acres of irrigated farmland in Stanislaus and San Joaquin Counties as well as the unincorporated communities of Westley, Grayson and Vernalis. The primary crops grown in the district include almonds, walnuts, apricots, cherries, olives and tomatoes. Over 77% of the land in WSID is comprised of permanent crops. WSID holds a 1920 appropriative right to divert water from the San Joaquin River and the Tuolumne River, and delivers the water it diverts to landowners who use it for irrigation. Landowners in the district generally do not have groundwater wells and rely exclusively on the surface water available from WSID to irrigate their crops.

Roughly 90% of WSID's irrigated acres utilize pressurized irrigation systems including sub surface drip, surface drip, solid state sprinklers, and micro-sprays. WSID has aggressively pursued an automation and modernization plan since 1997 that is expected to continue in the future. Modernization efforts include replacing less efficient pumps and motors and utilized sharp crested weirs, mag meter and accusonic meters for accurate flow measurement, and state-of- the-art pumping plant control systems and a Power Monitoring SCADA system at its five pumping plants on the Main Canal. WSID also participated in the California Energy Commission's (CEC) pump testing and pump retrofit/repair program. Through a funding program provided by the United States Bureau of Reclamation, WSID worked with the Irrigation Training and Research Center at California Polytechnic State University to develop a canal automation system including flowmeters and volumetric options for measuring flow rate. As they were implemented, these efforts increased the efficiency of the district's system and reduced the return flow of waters high in salts to the San Joaquin River, and have conserved water.

WSID has a surface drainage system to collect tailwater. All of the surface drainage eventually finds its way to the San Joaquin River. The water that flows in the natural channels goes directly to the river and the other facilities discharge onto riparian land adjacent to the river, which enhances the riparian habitat.

PID

PID includes approximately 12,600 acres of irrigated farmland in San Joaquin County. The primary crops grown in PID include almonds, walnuts, apricots, tomatoes, beans, and grains. Over 61% of the acreage in PID is comprised of permanent crops. PID holds a pre-1914 appropriative right to divert water from the San Joaquin River which it delivers to landowners who use it for irrigation. PID owns some wells that can produce modest amounts of groundwater, and there are a total of 56 active wells in the district; however, groundwater sources cannot provide more than a fraction of the district demand.

PID has aggressively pursued automation and modernization improvements since 1997 that is expected to continue into the future. Modernization efforts include replacing less efficient pumps and motors, automation and remote control/monitoring of major delivery facilities, and installation of flow meters at farm turnouts and delivery points for accurate flow rate and volumetric measurement.

PID has implemented two tailwater and operational spill recovery/regulatory reservoirs, as well as main-canal modernization to limit operational spills. As a result of these projects, the District has reduced by approximately 90-percent the amount of tailwater and/or operational spill that historically left the District through outfall points and redistributes much of this as irrigation supply in the District. In addition to the tailwater recapture, PID implemented a new project in 2016 that incorporates a recapture facility along one of the tributary drains from the south of the District that drains into the Marshall Drain. The recapture facility then pumps the water into the District's southside reservoir. In turn, a recirculation pumping plant takes the water and redistributes water from the reservoir to the entire southside of the District creating a new flexible operational scheme. The Project can recapture approximately 5,000 acre-feet annually from drainage water that flows past the District on its southside.

BCID

BCID provides agricultural irrigation water supplies to farmers growing over a dozen different crops on approximately 17,500 acres in San Joaquin County. Over 50% of the acreage in BCID is devoted to permanent crops. BCID holds pre-1914 and post-1914 appropriative water rights to divert water from the San Joaquin River, downstream of Vernalis. Landowners in BCID generally do not have groundwater wells and rely exclusively on the surface water available from BCID to irrigate their crops.

BCID has aggressively pursued automation and modernization improvements since 1997 that is expected to continue into the future. Modernization efforts include replacing less efficient pumps and motors, automation and remote control/monitoring of major delivery facilities, and installation

of flow meters at farm turnouts and delivery points for accurate flow rate and volumetric measurement.

In short, the Districts generally agree with much of what is included in the Draft Paper. By this letter, the Districts wish to point out, however, some different perspectives for the Commission's consideration, and make the Commission aware that some of the assumptions and recommendation in the Draft Paper evidence a bias against agriculture.

Managing Drought

In the Managing Drought box on Page 3, one of the demand management methods is agricultural water conservation (such as fallowing crops). The statement is made that "Demand management strategies are considered fast and inexpensive ways to 'free up' water during drought." The Commission must understand that fallowing crops is neither fast nor inexpensive. For urban water conservation the example is foregoing watering landscaping; it does not recommend that we ask shops owners to close their businesses during a drought. Why, therefore, do we think it is appropriate to ask farmers not to operate their business during a drought without compensation?

Themes

The Commission indicates at Page 4 that when it conducted research several themes came up nearly universally. The following statements are included in those themes:

- *Drought crisis can and should be used to take bold action to improve water management.*

This statement is somewhat concerning. Common sense will tell you, and research confirms, that crisis situations are not the best time to make policy decisions. Therefore, taking "bold action" during a crisis invites bad policy decision and errors. Just one example is the 2015 actions of the State Water Resources Control Board: (1) the California Appellate court found that the State Water Board's 2015 water right curtailment violated the due process of water right holders and exceeded the State Water Board's authority (*See California Water Curtailment Cases* (2022) 83 Cal.App.5th 165), and (2) when staff pursued enforcement against water users who they alleged failed to curtail water use after direction by State Water Board staff, the Hearing Officers threw out staff's enforcement action as being unsupported by the methodology that staff had developed. Such actions only emphasize that taking "bold action" during a crisis is not always the best action.

Agricultural Water Use

We often hear the phrase that California agriculture uses 80% of California's water. We acknowledge that the statement at Page 6 of the Draft Paper is a bit more clear, stating "[o]f the total water supply directly used by people, 80 percent is used to grow food and fiber." However, such language reinforces the frequently used 80% reference. It is more accurate to state that farms use approximately 40% of the state's water: "Statewide, average water use is roughly 50% environmental, 40% agricultural, and 10% urban" (*See* PPIC Water Policy Center's "Water Use in California" April 2023 (https://www.ppic.org/publication/water-use-in-california/)).

STRATEGY 1
Scale Up Groundwater Recharge

- Page 7 begins a discussion of Strategy 1 – Scale Up Groundwater Recharge. We could not agree with this strategy more. However, it also states that California already has taken great strides to scale up groundwater recharge. The paper describes the efforts of the State Water Board to streamline permitting and lower fees, and summarizes what it calls "Recent Groundwater Recharge Accomplishments." We have heard these accomplishments repeated many time, but believe that the public should focus on the reality that while some improvements have been made in groundwater recharge permitted, the current impediments in place for conducting groundwater recharge are formidable, and have not been remedied by either the State Water Board's streamlined permitting process, temporary permits, or the recent recharge allowed by the Governor's Executive Orders.

  While numerous permits have been issued, no water has been recharged under many of them because permits terms and conditions are onerous. We need more work to clarify what water is available for recharge; while a lot of work was put into the State Water Board's streamlined permitting, it relies on a 90th percentile/20 percent predetermined threshold which explicitly assumes that flows above the 90th percentile daily flow, between December 1 and March 31, are protective of aquatic ecosystem functionality if the total amount of water diverted is *capped* at 20% of the daily flow which in most instances does not result in a viable groundwater recharge program. In addition, while unpermitted recharge of flood flows is positive, it is detrimental that the water cannot be credited or recaptured. We strongly support the Potential State Actions listed on pages 8 and 9. Focus is needed on item 3: Continue to support efficient permitting to maximize groundwater recharge while protecting the natural environment and communities.

- At page 10 the statement that recharged groundwater "must stay in the ground during drought" is troubling. In order for groundwater recharge to be a tool used for drought, it must be available for conjunctive use during droughts. We agree that a portion of any recharged water must remain in the basin, but that determination should be made by the local Groundwater Sustainability Agency in conformance with the local Groundwater Sustainability Plan.

STRATEGY 2
Conduct Watershed-level Planning to Reduce Drought Impacts to Ecosystems

- At page 11, the Draft Paper encourages CDFW and the State Water Board to identify the volume and timing of flows needed to maintain healthy conditions for plants and animals that live in and along waterways. In concept we agree with this goal – the realistic water needs of watercourses need to be identified so all water users are on an equal playing field. However, in the past we have seen a tremendous lack of balance in such water planning efforts. For example:

  1. Ventura River. California's Water Action Plan ("**WAP**"), Action 4, identifies the Ventura River Watershed as one of five priority stream systems in which the State has in interest in

protecting the steelhead fishery in good condition. In 2021 CDFW prepared Instream Flow recommendations for the Lower Ventura River based upon its Instream Flow Regime Criteria on a Watershed Scale: Ventura River dated March 2020 (Watershed Criteria Report No. 2020-01). In most months in most of the year types, the flows recommended exceeded the natural unimpaired flow available in the river.

2. Phase 1 Bay-Delta Plan. In its Phase I Bay-Delta Plan the State Water Board recommends a plan that requires 40% unimpaired flow be released from each of three tributaries to the San Joaquin River even though modeling shows that such releases would deplete the reservoirs, and that other non-flow actions could achieve the same end goals.

Implementing instream flow recommendations requires balancing allocations of water among competing users. The role of CDFW is solely to protect the fishery; the State Water Board cannot always be counted on to adequately and effectively balancing allocations among competing users. The Commission must be vigilant in insuring that any recommendations for instream flows acknowledge and stress the requirements of the California constitution for reasonable use, and the Pubic Trust requiring the balancing of flow and consumptive water need as required by California law.

- Also at page 11, Item 1 states:

> Water Quality Control Plans, administered by the State and Regional Water Boards, contain water quality standards designed to protect the beneficial uses of California's waters. In setting these standards, the Water Boards are required by law to consider competing water uses to determine reasonable protection for fish and wildlife.

As illustrated above in this letter, though the State Water Board is required by law to consider competing water uses, it has not historically done so satisfactorily, and has imposed upon itself the requirement that it can use only flow to meet fish and wildlife needs, and not require non-flow actions; as such some other entity must be involved to ensure that the balancing of flow and consumptive water need as required by California law.

- Finally, Item 2 on Page 11 states:

> Where there is not enough water to support all the water needs in a watershed, the Water Board can limit water use through a process called curtailment. Curtailments are implemented through regulations and are based on water rights priority.

As also illustrated above, the State Water Board has not been successful in equitably and legally implementing curtailments.

- Potential State Actions identified at page 13 include:

> . . . identifying and securing assets for the environment that can be flexibly deployed, assigning a trustee to manage those assets, and integrating them into environmental water

plans that allow for flexible management of water resources to benefit ecosystems broadly. Protecting water for fish and wildlife could be done through regulation, negotiated general agreements as part of regulations (e.g., water quality control plans or Habitat Conservation Plans), or water purchase agreements.

Also at page 13 of the Draft Paper the concept of an "Environmental Water Plan" is discussed. While the concept has promise, the reality that collecting assets to be used for the environment in dry years has serious redirected impacts on other water users, which must be addressed in advance.

- The fifth potential state action identified on page 13 recommends that the state "[c]ontinue to modernize the water rights data system and improve the Water Board's capacity to administer water rights during drought conditions." In numerous places throughout the Draft Paper the Commission recommends that water rights administration be modernized.

  While we agree that there is there a need for improvements to address gaps in the statutory water rights structure, a major overhaul of the water rights system is unnecessary and threatens to create widespread instability and disruption to our economy, environment, the water management landscape, and our way of life. The introduction of broad and sweeping water rights legislation poses great concerns for water supply reliability and creates open-ended and ongoing risks for communities, farms, tribes, and others who are reliant–and that have developed their urban, agricultural, and environmental models based upon–a consistent and predictable water rights statutory and regulatory structure.

- Potential State Action No. 3 at page 16 is to "[s]upport integrated land and water planning to facilitate improved water demand management, and water conservation and efficiency" through the following:

  a. Expand the Department of Conservation's Multi-Benefit Land Repurposing Program and CDFA's State Water Efficiency and Enhancement Program to advance long-term water efficiency and demand management projects that help California alleviate the impacts of water scarcity, particularly during drought.

  b. During times of drought, support temporary land fallowing to improve groundwater levels near drinking water wells, following the example set by DWR's LandFlex program.

  Once again, policies must be carefully adopted to consider redirected impacts. Numerous recent reports have stressed that more research is needed before we can fully understand that adverse impacts of land fallowing on local economies, disadvantaged communities, and food security. No research is needed to know that the impact of land fallowing without compensation would have a devastating impact on local agriculture, and any temporary land fallowing during times of drought should be voluntary.

The Districts thank you for your consideration of the points above.

Sincerely,

Jeanne M. Zolezzi, Counsel for Districts

Attorney-at-Law