

May 08, 2019

The Honorable Toni G. Atkins  
Senate President pro Tempore  
California State Senate  
State Capitol, Room 205  
Sacramento, CA 95814

**RE: SB 1 (Atkins, Stern and Portantino) – Letter of Concern  
CA Environmental, Public Health and Workers Defense Act of 2019**

Dear President pro Tempore Atkins:

We, the undersigned, have concerns with how SB 1 is constructed to respond to any weakening of federal environmental and worker safety standards by the federal government and how it would impact water management in California. While we support efforts to protect California's environment and ensure worker safety, SB 1 takes a sweeping approach that eliminates due process, creates the potential for protracted litigation, and could undermine current state efforts to use innovative new science-based decision-making to manage water to both provide reliable water supplies for California and protect, restore, and enhance the ecosystems of the Bay-Delta and its tributaries. Therefore, we urge your consideration of our specific concerns.

As drafted, SB 1 would remove certain due process rights for all parties and reduce transparency to stakeholders. A state agency could adopt the federal baseline standards with only one 30-day opportunity for public notice and comment. SB 1 also creates a new private right of action under state law, allowing any entity to file litigation to enforce federal baseline standards. This would allow litigants to bypass existing requirements to exhaust administrative remedies first, resulting in increases in costly litigation and potentially interfering with current state agency efforts to improve water management based on new science.

Under Article 3 of the bill, baseline federal standards would include not only the Endangered Species Act, but also its implementing regulations and specific incidental take permits, incidental take statements, and biological opinions that were individually tailored to particular circumstances. This broad definition of baseline federal standards would significantly limit the state's ability to apply new science and information to inform water management decisions and actions. For example, SB 1 could negatively impact State Water Project (SWP) operations. In the case of the SWP, federal permits were last issued in 2008 and 2009, and relied on conceptual models and some science available at the time. Since then, tens of millions of dollars have been invested to better understand and test those conceptual models, resulting in substantial improvements in the science related to various factors affecting the Delta ecosystem. SB 1 would entrench decades-old federal biological standards in future state permits regardless of the effectiveness of those federal standards or the new information and science now available to help inform efforts to advance the state's co-equal goals for the Bay-Delta. It would freeze science in time and ignore the iterative understanding of the Bay-Delta ecosystem gained through the substantial investments of multiple parties over more than ten years.

While SB 1 proposes to maintain the status quo of regulatory protections for the environment, natural resources, and public health, it fails to recognize that in the case of the Bay-Delta watershed, the regulatory status quo is based on decades-old science. In fact, both the federal ESA and state ESA compliance efforts are currently under re-consultation to update take permits to incorporate best available science. These efforts would be disrupted by SB 1.

Finally, the policy in SB 1 runs counter to efforts by the Newsom Administration and a coalition of federal, state and local agencies, and conservation groups designed to develop voluntary agreements to improve the Bay-Delta watershed and provide reliable water based on science-based, collaborative, and hypotheses-driven decision making. SB 1 would create confusion and conflict between federal and state agencies and water agencies over state regulations that would be required to replace baseline federal standards that may be changed or eliminated. It would create a situation under which the CVP and SWP would arguably be operating under two different sets of permitting regimes, which would create unnecessary conflict in water management decision making and risk causing operational disruption in the Delta. The net result is that it would make implementation of future voluntary agreements impossible. Lawsuits would certainly ensue, and efforts to manage California's water for the co-equal goals would be further disrupted and entangled in lengthy litigation.

Given these concerns, we would welcome an opportunity to meet with your staff to discuss amendments, including 1) removing provisions that waive due process for any new emergency regulations or standards, 2) replacing the private right of action with Attorney General enforcement, and 3) removing the provisions in the Endangered Species Act sections that would prevent the incorporation of best available science into relevant permits, disrupt State Water Project operations, and discourage voluntary, collaborative agreements to better manage water supplies. We thank you for your consideration of our concerns and look forward to meeting with you to discuss our effort to ensure there are flexible, science-based protections in place that allow changes to the state's water system that will serve the environment and California communities for years to come.

Sincerely,



David J. Guy  
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Northern California Water Association



Jeffrey Kightlinger  
General Manager  
Metropolitan Water District of Southern  
California



Jennifer Pierre  
General Manager  
State Water Contractors



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Desert Water Agency



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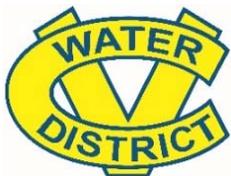
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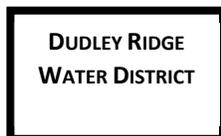
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Jim Houston  
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California Farm Bureau Federation

CC: The Honorable Henry Stern, California State Senate  
The Honorable Anthony Portantino, California State Senate  
Honorable Members, Senate Appropriations Committee  
Mr. Paul Jacobs, Consultant, Senate Appropriations Committee  
Ms. Emily Reeb, Consultant, Senate Republican Caucus