

Review of and Comments on League Positions Relative to Water, Agriculture, and the Environment

The plan by the State Water Resources Control Board to regulate flows in the Sacramento-San Joaquin Delta and the Bay-Delta Estuary—the Bay Delta Water Quality Control Plan—asks us to consider seemingly irreconcilable demands upon California’s water by urban areas, agriculture and the environment. Phase 1 of the Plan calls for increasing flows on the lower San Joaquin River tributaries (the Tuolumne, the Merced, and the Stanislaus rivers) for the benefit of threatened fish species, but users on the tributaries argue that this cannot be done without devastating economic and social impacts. Phase 2 of the Plan is expected to introduce even stricter flow standards on tributaries to the Sacramento River.

The Bay Delta Plan (BDP) has triggered the fish versus farms arguments familiar to Californians and has drawn the attention of the federal government, which operates a dam on one of the affected tributaries. The Plan has also become a rallying point for activism by agricultural users and communities in the southern Central Valley who have been affected by various cutback in water deliveries from the Delta but are not directly affected by the requirement to leave more water in San Joaquin River tributaries.

The following map shows the area under discussion. Phase 1 of the Plan relates to the three tributaries immediately south of Stockton and also to salinity standards in the south Delta.



Source: State Water Resources Control Board

League positions applicable to the Bay Delta Plan

Water for the environment

The LWVC position supports

- Environmental protections in areas of both water origin and water use
- Reserving stream flows for protection of fish and wildlife habitat

The LWVUS position supports

- policies to achieve water quality essential for maintaining species populations and diversity, including measures to protect lakes, estuaries, wetlands and in-stream flows

Water quality

The LWVC position supports

- Requiring federal and state entities to abide by high water quality standards
- Giving state and regional boards responsibility for setting water quality standards that may be higher than minimum federal standards

LWVUS position supports

- stringent controls to protect the quality of current and potential drinking-water supplies, including protection of watersheds for surface supplies and of recharge areas for groundwater.

Projects involving water transfers

The LWVC position supports

- Providing for assessment of economic, social, and environmental costs and benefits of water projects
- Setting limits on the amount of water to be exported through or around the Delta
- Requiring strong, binding environmental safeguards as part of any cross Delta transfer system

Regarding Inter-basin Water Transfers, LWVUS calls for

- ample and effective opportunities for informed public participation in the formulation and analysis of proposed projects
- evaluation of economic, social and environmental impacts in the basin of origin, the receiving area and any area through which the diversion must pass, so that decision makers and the public have adequate information on which to base a decision
- participation and review by all affected governments

Water for agriculture

The LWVC position says

- The identification of agricultural land should be based on criteria which include a sustainable water supply, the best combination of physical and chemical characteristics and soil factors, and the threat of urbanization
- Water conservation must be a condition placed on the delivery and use of water for agriculture
- Inter-basin transfer of water should be available only after conservation measures have been implemented

The LWVUS position

- calls for farm practices that are environmentally sound
- encourages sustainable agriculture as being essential to the future of agriculture
- calls for denying crop subsidies for marginal or environmentally sensitive land (LWVUS has called for reducing agricultural water subsidies that are uneconomical and environmentally destructive.)

Distribution and use

The LWVC position calls for

- Discouraging water contracting and marketing policies that build up demand and establish rigid patterns of distribution and use
- Developing and maintaining a statewide inventory of ground and surface water supplies and a centralized database to evaluate current and potential needs, demands, and uses
- Increasing water conservation and promoting wastewater reclamation to minimize reliance on water exported through and around the Delta

The LWVUS position calls for

- water resource programs and policies that reflect the interrelationships of water quality, water quantity, groundwater and surface water, and that address the potential depletion or pollution of water supplies

Significantly, neither the LWVC nor the LWVUS positions rank beneficial uses; we cannot use them to argue that limited water supplies should go first to cities, or to farms, or to the environment.

Comments on positions directly related to the Bay Delta Plan

Based on these positions, the LWVC would support protection of in-stream flows for environmental purposes as called for in the Bay Delta Plan, with the proviso that protections would be provided in areas of origin as well as in areas of water use. Water quality would be protected according to the highest standards, whether state or federal. Considering just environmental flows and water quality, League positions would support most of the Bay Delta Plan. However, the League would probably not support the relaxation of salinity standards in the South Delta under the Plan.

With regard to water transfers, the League would ask that economic, social, and environmental costs in areas of origin and areas of use would be considered, and public participation would be encouraged in all affected areas. The Water Board took comments on the proposed standards over a period of several years and heard testimony from users on the affected tributaries about the likely economic and social impacts of the plan. The Water Board has dismissed those impacts as “significant but unavoidable.” Nevertheless, the Water Board is encouraging collaborative agreements between stakeholders to manage flows and habitat in a flexible way.

The Bay Delta Water Quality Control Plan is a Substitute Environmental Document (SED) prepared in lieu of an EIR; it is an SED rather than an EIR because the project involves a regulatory program of a state agency. Like an EIR, an SED must include a discussion of project alternatives and mitigation measures. The Bay Delta Plan is being developed by the Water Board in two phases, and recently released documents apply only to Phase 1, San Joaquin River Flows and Southern Delta Salinity. Phase 2 will deal with Sacramento/Delta Flows and Cold Water, Delta Outflows, and Interior Delta Flows. If this document were an EIR rather than an SED, it might be viewed as the kind of “piecemeal” environmental review that is forbidden under CEQA.

Moreover, Phase 1 is identified as applying to San Joaquin River flows, but in developing this Plan, the Water Board decided in 2009 to exclude the river’s main unimpaired flow above the confluence with the Merced River up to the Friant Dam. The rationale offered is that much of this stretch of river is already subject to the ongoing San Joaquin River Restoration Program. An opposing view is that Central Valley Project contractors who have water service contracts for the bulk of the San Joaquin River water out of Friant, along with State Water Project exporters, should be part of the Bay Delta Plan for a comprehensive evaluation of economic, social and environmental impacts in all affected areas.

The LWVC position calls for conservation measures to be a condition of delivery and use of water for agriculture. Because most users on the Lower San Joaquin tributaries have riparian or senior water rights (i.e., they access water locally rather than having it delivered from outside their watershed), they have not been accustomed to conserving it for beneficial uses beyond their own, although they are required by law to put water to reasonable beneficial uses. Requiring agricultural users on the tributaries to conserve or make water available for beneficial uses in other regions moves the discussion into the difficult realm of water rights and highlights the fact that we do not currently have a mechanism in California for assigning water rights to the environment.

In opposing crop subsidies for marginal or environmentally sensitive land, the national League position suggests that supporting agriculture by delivering water to land that could not be productive without those deliveries may warrant different restrictions, including different conservation measures, than those imposed on growers within a watershed.

The LWVC supported the State Water Project when it was built, and one original objective of the SWP was to provide surface water to substitute for groundwater use in the southern

Central Valley. (See below under “Agricultural expansion” for a discussion of the failure of this strategy with respect to CVP contractors. Likewise, the SWP failed to address groundwater overdraft in the agricultural areas it serves.) The LWVC Water position calls for setting limits on the amount of water to be exported through or around the Delta. Exports rely on flows. It is not clear that the Water Board has ensured limits on exports with respect to flows regulated by the Bay Delta Plan. To the extent that management of flows on Lower San Joaquin River tributaries benefits not just fisheries and habitat but also agricultural lands outside the Bay Delta watershed, in effect subsidizing agriculture on lands that could not be farmed without transferred water, League positions might be interpreted to oppose that management policy.



Figure 3-1
Moving and Storing California's Water

Large State, federal, and local dams and canal systems play an important role in storing and conveying water throughout California to meet a variety of urban and agricultural water demands.

Source: Adapted from DWR 2009

Source: Delta Plan 2013

Additional considerations

The LWVC water position, although developed in its present form almost 40 years ago, has proved extremely broad and applicable to water matters the LWVC has wanted to consider. However, several important pieces of information were not available to members who reached this consensus position, and although we are not recommending an update to the position, we do advise keeping this additional information in mind.

Water availability

In 2009, the State Water Resources Control Board summarized what they knew about water rights they managed in the Delta watershed. At that time, the sum of water rights exceeded the average annual flow of the Delta watershed by 8.4 times. For a variety of reasons, the face value of water rights is greater than actual diversions. Also, the same molecule of water can be used more than once. Nevertheless, evidence from a variety of sources supports the assertion that California has promised to deliver more water from the Delta watershed than nature provides. One result is “paper water”: water rights issued for a watershed that exceed the water that is actually available; or water service contract allocations within a project that prove to be consistently unreliable.

Throughout California, rigid patterns of distribution and use have developed around unrealistic expectations about water availability formed when environmental protections were weaker than they are today; further, availability may be affected by changing climate patterns and evolving understanding of the interconnections of surface and groundwater. This is true for all the major Northern California diverters:

- the San Francisco Public Utilities Commission, relying on Hetch Hetchy on the Tuolumne River;
- the East Bay Municipal Utility District (EBMUD), relying on the Mokelumne River;
- the U.S. Bureau of Reclamation and the Central Valley Project, relying on Shasta Dam and the Sacramento River and on the San Joaquin River to maintain the San Luis and San Benito systems and the Friant-Kern system;
- the State Water Project, relying on the Feather River and the Sacramento River for delivery to state water contractors, both urban and agricultural, both north and south of the Tehachapi Mountains as well as in the Bay Area and on the Central Coast.

Users on the tributaries themselves, some of whom have water rights superior to those of the large water projects, have traditionally lacked the political power to compete successfully for the available water. This is as true for small family farmers on the east side of the San Joaquin Valley as it is for northern first peoples whose tribal lands have already been flooded to store water for uses and users elsewhere.

Agricultural expansion

Important developments in federal water policy have also occurred since the last update of the LWVC Water position in 1980. The federal government became involved in California water through the U.S. Bureau of Reclamation's Central Valley Project in the 1930s. The law at that time mandated that project water could be used only on 160 acres, and the user of the water was supposed to reside on the land. This law was ignored for years. Norris Hundley, in his 2001 history of California Water, *The Great Thirst*, explains that by the 1980s, "There were still many small farms in California (two-thirds of them were a hundred acres or less), but 80 percent of the farmland was in holdings of over a thousand acres and 10 percent of the farms accounted for 75 percent of the production and income" (page 462). In 1982, the Reagan Administration and corporate-farm interests nationally pressured Congress to increase the acreage limitations to 960 acres and to eliminate the residency requirement (pages 461-462).

Hundley traces changes in federal water policy through the 1980s that allowed ever larger areas in the Central Valley, including arid lands in the southwestern and southern Valley, to receive federally subsidized water while ignoring environmental impacts, including the National Environmental Policy Act (NEPA) (page 465) and the Clean Water Act. Much of this came at the expense of smaller farmers and of cities.

We can trace League response to these developments in part by looking at the LWVC Agriculture position, adopted in 1983. The position supports preservation of agricultural land and conservation of soil and water. According to the "Amplification of Consensus" for that study:

There was no consensus on the opening of new lands for agriculture, although all who responded placed conditions on the opening of that land, with no agreement on what those conditions should be. Some thought that water should be available to new lands only when its delivery was consistent with the state water plan and a state plan for agricultural lands. Others said that water should only be available to "prime" farmlands, while other said no water should be available to open new lands for agriculture.

The national League was unambiguous when commenting on reclamation policy in 1990. The LWVUS Resource Management section of the *2016-2018 Impact on Issues* has this to say:

In 1990, the League provided testimony on Federal Reclamation Policy in support of legislation to eliminate abuses and close loopholes in the Reclamation Reform Act of 1982. Specifically, the League supported action to ensure compliance with the acreage limitations of the act and to reduce water subsidies that are uneconomical and environmentally destructive.

Historically, new water brought in from elsewhere did not cure water overuse. As Hundley notes, "[L]and subsidence became one of the principal reasons for the Central Valley Project

on the theory that an abundant new supply of water would decrease the over pumping of aquifers and their collapse [. . .].” However, “[T]he CVP supply that began arriving in 1951 only accelerated the mining of groundwater as farmers rushed new land into cultivation with that water while continuing to irrigate older acreage with pumps” (page 427).

The primary economic driver in the agricultural lands served by exports from the Delta is fruit and nut trees – crops that cannot be fallowed in dry years. These crops are sustained not only by water transfers from other regions but also, in drought years, by groundwater that is now severely overdrafted. These crops represent a rigid pattern of use of the kind the LWVC water position discourages.

The Delta Watershed and Areas Receiving Delta Water



Figure 1-2

Source: Delta Plan 2013

Climate change

Decisions about water storage and transfer infrastructure in California, and commitments to deliver water, were made during a century that we now know does not provide a reliable standard for future conditions. Drought is more “normal” in California than planners realized, and there is persuasive evidence that we are also moving toward hotter average temperatures as well as heavier flooding and dramatic changes in when and where water from precipitation enters the system. This situation has been described as precipitation “whiplash.” (<http://weatherwest.com/archives/6252>) It will force changes in how water is allocated for all beneficial uses, including changes in what farmers grow and where they grow it.

Some areas are better situated than others to sustain agricultural production in the face of water limitations and warmer average temperatures. In particular, agricultural operations on the east side of the San Joaquin and Sacramento valleys, which historically relied on tributaries the Water Board is now trying to regulate, may be more resilient in the future than some of the very large farming operations that have become established relying on water transferred over large distances.

The American Farmland Trust (AFT) in partnership with the Conservation Biology Institute released a report in July 2018 titled "San Joaquin Land and Water Strategy: Exploring the Intersection of Agricultural Land and Water Resources in California's San Joaquin Valley." The report says that "Much of the agricultural acreage with the most advantageous combination of land and water resources is located in San Joaquin and Stanislaus counties, on the west side of the valley as far south as Los Banos, and around the city of Fresno." https://www.farmlandinfo.org/sites/default/files/AFT_SJV%20KeyMessages%20F.pdf

The Sustainable Groundwater Management Act (SGMA)

Many groundwater basins in California are required to develop plans for sustainable use of their groundwater under the 2014 Sustainable Groundwater Management Act (SGMA), representing the first serious effort to understand and manage the state’s groundwater. The Water Board, which has developed the BDP, will also be responsible for managing any groundwater basins having management plans that are determined by the Department of Water Resources to be inadequate. An important strategy for reducing use of groundwater is to use surface water instead. Reductions in surface water flows under the BDP will make it difficult or impossible for irrigators and other users on the tributaries to use surface water to reduce their use of groundwater and meet sustainability requirements under SGMA.

WaterFix

The stated objective of the WaterFix plan to build twin tunnels under the Sacramento-San Joaquin Delta is to improve the quality of water delivered to the South Delta for export

while protecting fish and habitat in the Delta and the Estuary. The official position on the BDP is that WaterFix is not directly related to the plan.

The Water Board is proposing unimpaired flow requirements for the Sacramento River and its tributaries that are even higher than those proposed for the Lower San Joaquin tributaries. The stated objective is protection of fisheries, habitat, and water quality. Skeptics view this whole process as a way to increase reliability of high quality Sacramento River water in the Delta for all uses—including exports, whether through tunnels or not—while relying on increased flows from the Lower San Joaquin to maintain water quality in the Delta itself. When interests in the tributary areas call the Bay Delta Plan a water grab, this is what they mean. When interests elsewhere refer to a “water grab,” they generally mean any attempt to restrict export flows in response to drought conditions or the needs of the environment.

The LWVC opposes WaterFix. See our comment letters under “Bay-Delta Issues” on the main California Water Resources webpage.

Human Right to Water

The LWVC supported Human Right to Water Legislation passed by the California legislature in 2012, but it has always been clear that asserting a right to water does not ensure that people will have access to the safe and affordable drinking water they need. Legislation introduced in 2017 and carried through into 2018 attempted to establish a Safe and Affordable Drinking Water Fund. The LWVC has supported this fund in principle as it has evolved through the legislative and budget processes. It is especially important to local Leagues in the southern Central Valley, where environmental justice communities are seriously impacted by lack of access to safe drinking water.

A major cause of lack of safe drinking water in social justice communities is nitrate contamination. The main cause of that contamination is nitrate from agricultural activities, especially livestock operations and dairies, leaching into surface and groundwater. Nitrates also enter the surface and groundwater systems through fertilizers used by growers.

Also, in some areas, farmers have drawn down groundwater for irrigation to the point where wells in small communities have failed, and people in those communities don’t have the financial resources to install or maintain deeper wells.

We thus have a situation in which agricultural operations that are the main economic driver of the region and a major source of jobs are also the main cause of drinking water problems.

Food security

Agriculture in California represents less than two percent of the state’s GDP, but that statistic clearly does not reflect the importance of the agricultural sector to California’s

welfare and prosperity. California and the nation have not had public discussions about how to put a dollar value on food security, and we don't know how to make growing food for hungry people work effectively on a large scale with agricultural markets. According to the California Association of Food Banks, 5.4 million Californians—one in eight of our fellow citizens—doesn't know where their next meal will come from. The rate of food insecurity is worse for children: 2.1 million, or one in four, may go to bed hungry each night.

Larger numbers of people would find food unaffordable if its costs covered all the externalities of agriculture—impacts on fisheries and the environment, on workers and their families, and on rural communities. Instead, our policies make farmers responsible for those externalities through regulations, and these regulations are more burdensome to small and mid-sized farmers than they are to industrial-scale agriculture operations.

Final thoughts

This review covers a small number of the issues around California water, and it offers no conclusions. We encourage feedback on any of the matters discussed here and on any other matters relating to the difficult challenges of managing California's water.

Most material here is not footnoted. For references, contact Jane Wagner-Tyack, janetyack@mac.com