









September 4, 2019

The Honorable Toni Atkins  
Senate President Pro Tempore  
State Capitol, Room 205  
Sacramento, CA 95814

Re: SB 1 (Atkins): Environmental, Public Health and Workers Defense Act  
**OPPOSE UNLESS AMENDED (as amended September 3, 2019)**

Dear President Pro Tempore Atkins,

We, the undersigned, regret to inform you of our continued opposition to SB 1, as amended on September 3, 2019. Without the following changes to your bill, we have no choice but to actively work against its passage on the Assembly floor:

- Remove Section 2076.7(c) from the proposed changes to the CA Endangered Species Act;
- Delete Section 2057 which adds a new section to the CA Fish and Game Code;
- In Section 13050 (d)(1) delete “pollutants, dredged or fill materials, or” and delete Section 13050 (d)(2); and
- Delete Section 13050 (e)(1) and remove Section 13050 (e)(2) .

Although your bill seeks to address the federal rollbacks in protections for endangered species, it continues to have significant consequences for the State Water Project (SWP) and other legal users of water. If SB 1 were to become law, outdated permit requirements to protect fish that are not based on best available science would govern project operations.

To put the potential impact into context, if SB 1 were law today and the California Fish and Game Commission listed Central Valley steelhead, in a water year like this one, the SWP would lose an opportunity to move and store 750,000 acre-feet of water to its customers, enough drinking water for nearly 7.5 million people for an entire year. This is because, as drafted, the new Incidental Take Statement allows the federal Central Valley Project (CVP) and the SWP to take less Central Valley steelhead but provides for more real-time management based on science developed in the last decade. SB 1, however, would lock in outdated science thus causing the SWP to meet not only the new requirements but to shoulder all of the outdated requirements as well.

In addition, SB 1 precludes adaptive management practices that lie at the heart of the voluntary agreement discussions related to the Bay Delta Water Quality Control Plan that the Brown and Newsom Administrations, water agencies and fishery agencies have been working on for years. Such a draconian approach could have far reaching impacts on water supplies and the planning that the Newsom Administration is pursuing to develop a water resilience portfolio.

Since 2008-09, the SWP has been operating to the same rules set by federal and state fish agencies. Scientific studies since then support the need to update the operating rules for the SWP. Under new operating rules, the SWP would continue to provide a reliable water supply and protect fish but in a way that is more responsive to climate change and changes in hydrology. SB 1 disregards these efforts to update the rules and sets the state back ten years. It is bad water management for the environment and the state.

In the Endangered Species Act section of SB 1, language remains that assumes the California Endangered Species Act applies to the federal CVP. This is an unsettled area of law, and it is highly likely that this language will lead to litigation. In the interim, the SWP would bear the full costs of meeting the 2008-09 biological opinion requirements. These water supply costs would limit the SWP and CVP’s flexibility to implement the voluntary agreements that the Newsom Administration hopes to advance to update the Bay Delta Water Quality Control Plan to provide flows and fund new habitat restoration projects for fish.

SB 1 also expands the definition of “waste” and “waters of the state” that are currently the subject of pending litigation. The definition in Section 13050 would add “dredge and fill material” to the definition of “waste” and declare it to be existing law. That issue, however, is being litigated, and should not be subject to a last-minute amendment to SB 1.

For these reasons, we respectfully ask that you consider further amendments to your bill as noted above. We are available to discuss the changes in more detail. Please contact Kathy Viatella from the Metropolitan Water District of Southern California at (916) 650-2614.

Sincerely,

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