



The City of Burlingame

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July 19, 2021

Therese McMillan, Executive Director
MTC Public Information
Attn: Draft EIR Comments
375 Beale Street, Suite 800
San Francisco, CA 94105
Sent via Email to: eircomments@bayareametro.gov

RE: City of Burlingame Comment Letter – Plan Bay Area 2050 Draft Environmental Impact Report

Dear Ms. McMillan,

The City of Burlingame (“City”) submits the following comments regarding the programmatic Draft Environmental Impact Report (“Draft EIR”) for Plan Bay Area 2050 (“proposed Plan”) issued by the Association of Bay Area Governments (“ABAG”) and the Metropolitan Transportation Commission (“MTC”) and made available on June 4, 2021. The City of Burlingame purchases all of its water supplies from the San Francisco Public Utilities Commission (“SFPUC”) and is a member agency of the Bay Area Water Supply and Conservation Agency (“BAWSCA”). BAWSCA represents the water interests of 26 member agencies in Alameda, Santa Clara, and San Mateo Counties that purchase water from the SFPUC. The San Francisco Regional Water System (“RWS”) supplies account for roughly two-thirds of the water required by the BAWSCA member agencies.

Based on the significant findings highlighted in this letter, the City of Burlingame requests that ABAG and the MTC make the required changes and recirculate the Draft EIR.

Eighty-five percent of the San Francisco Regional Water System’s water supplies come from the Tuolumne River, including supplies from Hetch Hetchy Reservoir and a water bank at Don Pedro Reservoir. The Hetch Hetchy Reservoir water feeds into an aqueduct system delivering water across 167 miles by gravity to Bay Area reservoirs and, ultimately, to Bay Area customers. Approximately two-thirds of the SFPUC’s total water deliveries are made to BAWSCA agencies - meaning BAWSCA agencies are the primary recipient of water from the RWS.

1. The Draft EIR Is Inadequate Because It Fails to Account for And Analyze the State Water Resources Control Board’s (SWRCB) San Francisco Bay/Sacramento-San Joaquin Delta Estuary Water Quality Control Plan (Bay-Delta Plan)

Discussion and analysis of the impacts of the Bay-Delta Plan in the Draft EIR are insufficient. The Bay-Delta Plan was adopted by the SWRCB in December of 2018.¹ As written, the Bay-Delta Plan will significantly reduce water supply reliability to the RWS and for BAWSCA Member Agencies, particularly during times of drought. The Draft EIR fails to assess the water supply shortfalls and significant environmental impacts from the proposed Plan that would result if the SFPUC were compelled to drastically reduce water deliveries throughout the RWS service territory in response to the adopted Bay-Delta Plan. This critical omission constitutes an abuse of discretion because the Draft EIR fails to offer any justification for why these impacts are not significant under CEQA, and, in fact fails to present any analysis whatsoever regarding such impacts. (Pub. Res. Code, §§ 21168.5, 21100(b)(1).) There is a total disconnect between the proposed Plan's anticipated growth in population, jobs, and housing and the RWS's ability to accommodate the planned growth given the significant water supply reductions resulting from the Bay-Delta Plan. A more comprehensive description is necessary as well as an analysis of the impacts from implementation of the Bay-Delta Plan.

1.1. Section 3.10.2 And 3.14.2 Are Incomplete Because They Do Not Include the Bay-Delta Plan in the Regulatory Setting

Sections 3.10.2 and 3.14.2 of the Draft EIR provide the Regulatory Setting for the Hydrology and Water Quality (3.10) and Public Utilities and Facilities (3.14) impacts analysis. Neither section includes a description or an analysis of the impacts from implementation of the Bay-Delta Plan. The City requests that ABAG and the MTC revisit these sections to include a description of the Bay-Delta Plan in the respective Regulatory Setting sections. The description of the Bay-Delta Plan should include objectives, flow requirements, regulatory authority, and the timeline for implementation. The City offers the following language for consideration.

In December 2018, the State Water Resources Control Board (“SWRCB”) adopted amendments to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan Amendment) to establish water quality objectives to maintain the health of the Bay-Delta ecosystem. The SWRCB is required by law to regularly review this plan. The adopted Bay-Delta Plan Amendment was developed with the stated goal of increasing salmonid populations in three San Joaquin River tributaries (the Stanislaus, Merced, and Tuolumne Rivers) and the Bay-Delta. The Bay-Delta Plan Amendment requires the release of 30-50% of the “unimpaired flow” on the three tributaries from February through June in every year type.

The Bay-Delta Plan states the February through June flow objectives will be fully implemented by the year 2022. (Bay-Delta Plan at p. 24.)

1.2. The Water Supply Analysis in Section 3.14 Is Inadequate Because It Fails to Consider the Impacts of the Bay-Delta Plan

Section 3.14: Public Utilities and Facilities fails to consider how implementation of the Bay-Delta Plan will impact water supplies. As stated above, the Bay-Delta Plan has been adopted and requires unimpaired flows between 30% and 50% (starting at 40%) on the Tuolumne River, the primary water supply source for the SFPUC and BAWSCA member agencies and commits the SWRCB to fully implement the flow objectives by

¹ https://www.waterboards.ca.gov/plans_policies/docs/2018wqcp.pdf

2022. Therefore, ABAG and the MTC must analyze the impacts of the Bay-Delta Plan on water supply reliability and the ability of water agencies to meet future water demands from increased population, housing, and jobs.

As described in Section 2 of the proposed Plan, “Project Description,” the regional growth forecast for the Bay Area projects that by 2050 the region will support an additional 2.7 million residents and 1.4 million jobs, resulting in 1.4 million new households. The Draft EIR identifies areas where: 1) there is an existing forecasted shortage in long-term supplies that would need to be met by imported water or additional water conservation, reuse, and recycling; or 2) where the proposed Plan projects population or jobs beyond what is assumed in current Urban Water Management Plans (UWMPs) and could result in a potential shortage. (Draft EIR at p. 3.14-36.)² However, this does not include the impacts and water shortages from the Bay-Delta Plan. The Draft EIR fails entirely to account for how the water shortages anticipated from the Bay-Delta Plan will accommodate the proposed Plan's anticipated increased population and housing, or the resulting impacts from insufficient water supplies. As part of the CEQA Guidelines provisions governing the environmental setting, the Guidelines require an EIR to discuss any inconsistencies between the proposed project and applicable general plans, specific plans, and regional plans, including applicable water quality control plans like the Bay-Delta Plan. (CEQA Guidelines, §15125(d).)

In *Vineyard Area Citizens for Responsible Growth v City of Rancho Cordova* (2007) 40 Cal.4th 412, the Supreme Court identified specific requirements for an adequate analysis of water supply issues in an EIR. The Court explained that future water supplies identified and analyzed in an EIR must be reasonably likely to prove available. Speculative sources and unrealistic allocations do not provide an adequate basis for decision making. When a full analysis of future water supplies for a project leaves some uncertainty regarding the availability of future supplies, the EIR must discuss possible replacement or alternative supply sources, and the environmental effects of resorting to those alternative supply sources. Informational purposes are not satisfied by an EIR that simply ignores or assumes a solution to the problem of supplying water. The future water supplies identified and analyzed must bear a likelihood of actually proving available; speculative sources and unrealistic allocations are insufficient bases for decision making under CEQA. Finally, where, despite a full discussion, it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies. (*Id.* at 432.)

Further, an EIR must identify and describe the project's significant environmental effects, including direct, indirect, and long-term effects. (Pub. Res. Code, §21100(b)(1); CEQA Guidelines, §15126.2(a).) An EIR may include some degree of forecasting in evaluating a project's environmental impacts. (CEQA Guidelines, §15144; *San Francisco Ecology Ctr. v City & County of San Francisco* (1975) 48 Cal. App.3d 584, 595.) Lead agencies must use their best efforts to find out and disclose all that they reasonably can, although they are not required to foresee the unforeseeable. (CEQA Guidelines, §15144.) The Draft EIR should be revised to account for the impacts from implementation of the Bay-Delta Plan.

With the Bay-Delta Plan implementation, it is projected that the SFPUC will be able to meet the projected water demands in normal years but would experience supply shortages and require rationing in single dry years or multiple dry years. During single dry years, there would be an anticipated 30 to 40% shortage of RWS

² As discussed below, the Draft EIR does not use the most recent and updated UWMPs.

supplies. When allocated among retail and BAWSCA agencies and compared to RWS demand, this would result in a 14% to 25% shortfall for SFPUC retail customers and a 36% to 46% shortfall to BAWSCA member agencies. In a multiple dry year event, there would be anticipated shortages in RWS supplies for all projected years, ranging from 30% to 49% shortages. When allocated among retail and BAWSCA agencies and compared to RWS demand, this would result in an anticipated shortfall up to 35% for SFPUC retail customers and up to 54% for BAWSCA member agencies. These impacts are characterized and quantified in Section 8 of the SFPUC’s 2020 UWMP.³

The City requests that ABAG and the MTC revisit Section 3.14 and include a complete analysis of the Bay-Delta Plan impacts on water supply reliability.

1.3. Impacts from Reasonably Foreseeable Methods of Complying with the Bay-Delta Plan and Addressing the Resulting Water Supply Shortages Are Not Identified or Analyzed

Consideration of the impacts from implementation of the Bay-Delta Plan should include an analysis of reasonably foreseeable methods water agencies will use to comply with the Bay-Delta Plan, address the resulting water shortages, and the associated environmental impacts. As shown in the SFPUC and BAWSCA member agencies’ 2020 UWMPs, implementation of the Bay-Delta Plan will result in RWS system-wide cutbacks between 30% and 49% in single and multiple dry years. This results in RWS cutbacks to BAWSCA member agencies between 36% and 54%. As previously stated, BAWSCA member agencies purchase roughly two-thirds of their water from the RWS. Several BAWSCA member agencies rely solely on the RWS for their water supply source.

Cutbacks to this degree will require BAWSCA member agencies to take extraordinary actions to provide water to their existing and future customers to meet basic health and safety needs. An EIR must address the impacts of “reasonably foreseeable” future activities related to the proposed Plan. (*Laurel Heights Improvement Ass’n v Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 398-399; *see also* CEQA Guidelines, §15126 [EIR’s impact analysis must consider all phases of project.]) The Draft EIR must identify and analyze these methods for complying with the Bay-Delta Plan, addressing water shortages, and the resulting environmental impacts from these actions, which include, but are not limited to:

- Increased reliance on groundwater and other surface water supplies;
- Inability to conserve additional water as a result of past conservation efforts and demand hardening;
- Decreased water available for urban landscaping resulting in the death of mature trees, reduced carbon conversion and increased heat in urban areas; and
- Severe rationing and moratoria on new development, resulting in displaced growth and urban sprawl.

Considering a central tenet of Plan Bay Area 2050 is to encourage growth along transportation lines in an equitable and sustainable manner, it would seem prudent to analyze these reasonably foreseeable impacts resulting from the adopted Bay-Delta Plan. The Draft EIR fails to analyze the environmental impacts that would result from increased reliance on local groundwater and surface water supplies. Adverse effects from

³ SFPUC 2020 UWMP: https://www.sfpuc.org/sites/default/files/programs/local-water/SFPUC_2020_UWMP2020_%20FINAL.pdf

increased groundwater pumping may include, but are not limited to, declining water quality, overdraft, subsidence, and sea water intrusion. Agencies that rely solely on the RWS, such as the City of Burlingame, would seek to acquire new water supplies, which would have resulting environmental impacts, increase water rates, and possibly price out low-income residents.

If available water supplies are insufficient to meet demand, BAWSCA member agencies would consider implementing a development moratorium (e.g., "no new hook up") which would cause economic impacts and impacts from displaced growth and urban sprawl. An EIR must discuss growth-inducing impacts from a project. (Pub. Res. Code, § 21065.3; CEQA Guidelines, §15126(d).) The imposition of a moratorium on development in the City of Burlingame service area would exacerbate the existing housing issues and further push housing growth out of the high-density areas of the Bay Area to the eastern and southern most portions of the Bay Area and to the western San Joaquin Valley. This would directly conflict with the purposes of the proposed Plan. Most of the region's farmlands and natural areas that are threatened by sprawl are in communities at the edges of the region, such as southern Santa Clara County, eastern Contra Costa County, and Solano County. Urban Sprawl has two primary impacts: 1) it increases per capita land consumption, and 2) it disperses development, which increases the distances between common destinations, increasing the costs of providing public infrastructure and services, and the transportation costs required to access services and activities.

The Draft EIR does not identify or analyze these reasonably foreseeable methods of compliance and actions by water agencies, or the potentially significant impacts resulting from these actions. Areas in which anticipated impacts are likely to result include:

- Reduction in the water supplies and the resulting significant impact on the Bay Area's economy, environment and impacts on public health;⁴ and
- Inadequate water supplies and resultant moratoria on housing development resulting in displaced growth and urban sprawl that sharply conflict with predicted Bay Area population growth and accompanying need for greater housing and transportation.

The ultimate question under CEQA is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable impacts of supplying water to the project. (*Vineyard Area Citizens for Responsible Growth, Inc.*, 40 Cal.4th at p. 434.) Giving the failure of the Draft EIR to evaluate the water supply impacts from the Bay-Delta Plan, the water supply analysis is inadequate and fails entirely to consider the extent of water supply shortages, and how those shortages would be exacerbated by the proposed Plan's anticipated population and housing increases. The City requests that ABAG and the MTC revisit Sections 3.10: Hydrology and Water Quality and 3.14: Public Utilities and Facilities to properly analyze the impacts from reasonably foreseeable methods water agencies will use to comply with the Bay-Delta Plan.

⁴ The California Legislature has made clear that public health and safety are of "great importance" in CEQA's statutory scheme. (Pub. Resources Code, §§ 21000(b), (c), (d), (g); 21001(b), (d); *California Bldg. Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 386.) For example, Public Resources Code section 21083(b)(3) requires a finding of a "significant effect on the environment" whenever "[t]he environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly." California policy dictates that all humans have a right to water adequate for human consumption, cooking, and sanitary purposes. (Wat. Code, § 106.3.)

2. The Draft EIR Is Inadequate Because It Fails to Analyze the Impact of the Federal Energy Regulatory Commission Licensing and Certification Process for New Don Pedro Reservoir

As previously stated, the Bay-Delta Plan is not self-implementing. Flow requirements must be allocated through regulatory and/or adjudicatory proceedings, such as a comprehensive water rights adjudication or, in the case of the Tuolumne River, may be implemented through the water quality certification process set forth in section 401 of the Clean Water Act as part of the Federal Energy Regulatory Commission's (FERC) licensing proceedings for the Don Pedro and La Grange hydroelectric projects. The Final Environmental Impact Statement for the Don Pedro project was released by FERC on July 7, 2020 (FERC/EIS-0293F, July 2020).⁵ A "water bank" in Don Pedro Reservoir provides additional storage that is integrated into the RWS operations. The re-licensing of the Don Pedro reservoir by FERC may require additional water released from the Don Pedro Reservoir for the preservation of aquatic species in the lower Tuolumne River, potentially affecting the yield of the RWS.

On January 15, 2021, the SWRCB released the Clean Water Act section 401 Water Quality Certification for the Turlock Irrigation District and Modesto Irrigation District Don Pedro Hydroelectric Project and La Grange Hydroelectric Project, FERC Project Nos. 2299 and 14581 (WQC).⁶ The WQC's requirements differ significantly from the recommended flows and conditions that FERC has analyzed in the Staff Alternative of its Final Environmental Impact Statement for the licenses. The WQC includes the 40% unimpaired flow objective from the Bay-Delta Plan, as well as additional conditions that, if incorporated into FERC licenses for the Don Pedro Project, would more severely impact SFPUC's water supplies. Data presented in the City and County of San Francisco's petition for reconsideration of the WQC before the SWRCB dated February 16, 2021, indicates that if the WQC were to be enacted, required rationing during single-year and extended periods of drought would range between 75 and 90 percent under present and future demand levels. To date, FERC has not taken action to incorporate the WQC into the licenses or to finalize the licenses for issuance. However, the Draft EIR must consider the impacts on water supply from these foreseeable actions. (*Laurel Heights Improvement Ass'n*, 47 Cal.3d at 398-399.)

2.1. Section 3.14.2 Is Incomplete Because It Does Not Include the FERC Licensing and Water Quality Certification for Don Pedro Dam in the Regulatory Setting Section

Section 3.14.2 provides the Regulatory Setting for the Public Utilities and Facilities of the Draft EIR. It does not include the FERC licensing and WQC process, which, as stated above, may have significant impacts to water supply reliability for the SFPUC and BAWSCA member agencies. The City requests that ABAG and the MTC revisit Section 3.14 to include a description of the FERC licensing process in the Regulatory Setting section, including the released WQC.

3. Impact PUF-1 Is Inadequately Analyzed and Mitigation Measure PUF-1(A) Is Insufficient

Impact PUF-1 considers how implementation of Plan Bay Area 2050 may "require or result in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities the construction or relocation of which could cause significant

⁵ <https://elibrary.ferc.gov/eLibrary/idmws/common/OpenNat.asp?fileID=15576184>

⁶ https://www.waterboards.ca.gov/docs/dplg_fwqc_complete_20210105.pdf

environmental effects.” However, because impacts of the Bay-Delta Plan, FERC licensing and the WQC, and the resulting significant water supply gap in single and multiple dry years are not considered, the analysis of Impact PUF-1 is insufficient.

The SFPUC and BAWSCA member agencies have stepped up efforts to identify and secure alternative water supplies to reduce water supply shortfalls and rationing during droughts. However, these water supply projects are large, expensive, and take several years to design and develop. In early 2020, the SFPUC began implementation of the Alternative Water Supply Planning Program (“AWSP”) to investigate and plan for new water supplies to address future long-term water supply reliability challenges and vulnerabilities on the RWS. As stated in the SFPUC’s 2020 UWMP, projects identified through the AWSP will take 10 to 30 years to implement.⁷ With implementation of the Bay-Delta Plan scheduled for 2022, there simply is not enough time to construct new or expanded water facilities to meet increased demand from population growth in single and multiple dry years.

An EIR must identify and describe any feasible measures that can be implemented to reduce or avoid each potentially significant environmental effect of the project. (CEQA Guidelines, §15126.4(a)(1).) Mitigation Measure PUF-1(a) (and PUF-2 discussed below) is insufficient to address increased water demand from the Project, especially with implementation of the Bay-Delta Plan, and merely defers identifying, analyzing, and mitigating potentially significant effects of new developments until those projects go through CEQA review. Mitigation measures should describe the specific actions that will be taken to reduce or avoid an impact. It is ordinarily inappropriate to defer formulation of a mitigation measure to the future. (CEQA Guidelines, §15126.4(a)(1)(B).)

The likelihood of new water supply projects being implemented in a timely manner and providing enough water to make up the shortfalls due to the Bay-Delta Plan, FERC licensing, and the WQC should be analyzed and additional mitigation should be proposed if necessary to address associated impacts. Further, any water supply project would have environmental impacts that must be considered. If a mitigation measure identified in an EIR would itself cause significant environmental impacts distinct from the significant effects caused by the project, those impacts must be discussed in the EIR, but in less detail than the project’s significant impacts. (CEQA Guidelines, §15126.4(a)(1)(D).)

4. Impact PUF-2 Is Inadequately Analyzed and Mitigation Measure PUF-2(A) Is Insufficient

Impact PUF-2 considers whether there may be *“insufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry, and multiple dry years.”* Because impacts of the Bay-Delta Plan, FERC licensing, and the WQC were not considered, Impact PUF-2 was not sufficiently analyzed. Specifically, because the significant level of rationing that may be required in single and multiple dry years was not characterized or quantified, the proposed mitigation measures cannot be analyzed to determine whether they are adequate to mitigate potentially significant impacts. Further, BAWSCA and its member agencies have implemented conservation measures and expanded recycled water use as suggested in Mitigation Measure PUF-2(a) for many years, if not decades. BAWSCA member agencies intend to continue these projects, and water saving benefits have been quantified and included in their respective 2020 UWMPs.

⁷ See Section 7.4, page 7-6 of the SFPUC’s adopted 2020 UWMP (https://www.sfpuc.org/sites/default/files/programs/local-water/SFPUC_2020_UWMP2020_%20FINAL.pdf).

Those UWMPs demonstrate that Mitigation Measure PUF-2(a) is insufficient for closing the gap on water supply rationing that may result from implementation of the Bay-Delta Plan, FERC licensing, and the WQC.

Section 3.14.3, page 3.14-43 states, *“Future development projects would be required to comply with Water Code Section 10910 and Section 10912, as described above in the Regulatory Setting, under ‘Water Supply Assessment and Water Supply Verification.’ The enforcement of these regulations by local jurisdictions would ensure that a water supply assessment is prepared to demonstrate that sufficient water would be available to serve development projects before their approval.”*

This statement is conclusory. For many BAWSCA member agencies, these water supply assessments may demonstrate that there is insufficient water to serve new development projects (including new housing projects anticipated in the proposed Plan) from implementation of the Bay-Delta Plan, FERC licensing and the WQC. The sufficiency of an available supply of water to meet the anticipated population, job and housing growth in the proposed Plan should be fully analyzed in this Draft EIR, not when municipalities and water agencies are required to conduct a water supply assessment under Water Code Sections 10910 and 10912 for development projects aimed at accommodating that growth.

5. The Draft EIR Relies on Out-Of-Date Water Supply Reliability Forecasting 2020 Urban Water Management Plans

Under the Urban Water Management Planning Act, the SFPUC and the majority of BAWSCA agencies must prepare an UWMP for submittal to the Department of Water Resources (DWR) every five years. The UWMPs provide the long-term resource planning of each agency and ensure that adequate water supplies are available to meet existing and future needs.

The Draft EIR relies on outdated water supply information provided in urban water suppliers’ 2015 UWMPs. Significant changes have occurred since the 2015 UWMPs were adopted, including major legislation on conservation, efficiency, and the Bay-Delta Plan. Therefore, those plans are no longer current and do not accurately represent the water supply and demand forecasts for the SFPUC and BAWSCA member agencies. For example, Chapter 3.14.3, page 3.14-43 of the Draft EIR states, *“As shown in Table 3.14-2, the major water suppliers in the region are projected to be able to supply adequate water for their projected service populations through 2040 during normal years, apart from Solano County Water Agency...”* This is no longer an accurate characterization of projected water supply availability. As shown in Table 8-3 of the SFPUC’s 2020 UWMP, water supply shortages are anticipated in single and multiple dry years through 2045.

All water suppliers in the BAWSCA service area (i.e., the SFPUC, Alameda County Water District (“ACWD”),⁸ and the Santa Clara Valley Water District (“Valley Water”)⁹ have adopted their 2020 UWMPs or have made drafts publicly available. BAWSCA requests that ABAG and the MTC utilize data from the 2020 UWMPs to characterize water supply reliability in Section 3.14 of the Draft EIR.

⁸ ACWD 2020 UWMP: <https://www.acwd.org/DocumentCenter/View/3816/Final-2020-2025-UWMP>

⁹ Valley Water 2020 UWMP: <https://fta.valleywater.org/dl/pggls1SeCr>

Thank you for the opportunity to submit comments on the Draft EIR. Based on the significant findings highlighted in this letter, the City of Burlingame requests that ABAG and the MTC make the required changes and recirculate the Draft EIR.

Sincerely,

A handwritten signature in blue ink, appearing to read "Syed Murtuza", with a long horizontal line extending to the right.

Syed Murtuza
Director of Public Works