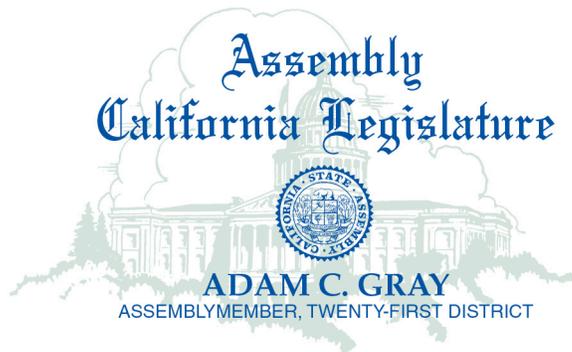


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JOINT LEGISLATIVE COMMITTEE ON
EMERGENCY MANAGEMENT

CHAIR: SELECT COMMITTEE ON HEALTH
ACCESS IN RURAL COMMUNITIES

12 December 2020

Eileen Sobeck, Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

RE: Don Pedro 401 Certification

Dear Director Sobeck:

The State Water Resources Control Board (“SWRCB”) is engaged in an inappropriate and unacceptable action designed to short-circuit the regulatory process and kill the spirit of negotiation. This action would have lasting health, economic and social impacts on the 460,000 people living in my Assembly District as well as the millions living in the San Joaquin Valley.

SWRCB staff quietly released a draft 401 Certification document affecting Tuolumne River flows well after business hours on Nov. 30. As most in our Valley were preparing for a sadder Christmas due to Covid-19, the board’s staff members were dreaming up conditions that will subject the people of Stanislaus and Merced counties to life-altering deprivations. If the demands contained in this document become law, we will see the dislocation of thousands of jobs held mostly by the region’s most disadvantaged residents. In dry years, our drinking water could be significantly reduced. And it’s likely that our farmers could face years when no water is available for irrigation – injuring a \$5 billion industry and diminishing the value of our land by a factor of 10.

By extension, this document will have similar impacts on farming in the adjacent Merced and Stanislaus watersheds and, eventually, the Sacramento River Valley.

Normally, any such far-reaching policy would require 60 or 90 days for public comment. The SWRCB originally gave us only ten days to respond. Only because SWRCB staff missed a federal deadline for putting their plan on the Federal Energy Regulatory Commission’s meeting agenda was the comment period extended through January 4.

This draft document will supersede the Substitute Environmental Draft, originally prepared in 2012 and revised in 2016, that detailed the SWRCB’s demands for dramatically increased environmental flows on the Tuolumne River. The resulting furor over the SWRCB’s draconian demands caused two governors – Jerry Brown and Gavin Newsom – to jointly ask that the disagreements be addressed through negotiated voluntary agreements.

In December 2018, Karla Nemeth, then-Director of the California Department of Water Resources, and Chuck Bonham, Director of the California Department of Fish and Wildlife, presented the SWRCB with a voluntary agreement that met or exceeded all of the state's goals. Only a few details remained to be ironed out.

But, the SWRCB refused to accept that agreement, voting instead to implement the flawed SED as proposed. Despite its action, the SWRCB urged continued negotiations toward the voluntary agreements.

Just 12 days ago, in the draft 401 document for Don Pedro Dam, SWRCB staff replaced those original goals with far more onerous conditions. This is an end-around, bad-faith tactic that makes any further negotiations futile.

The draft 401 document is a basket of disaster for several reasons. Consider:

- The draft document ignores our 2018 promise to provide an additional 300,000 acre feet of water – some one billion gallons – for environmental purposes. Instead, it insists on new flow requirements that would reduce agriculture water by roughly one acre foot per acre, or one-third the total. This will make our most high-value crops such as almonds, walnuts, cherries and peaches untenable.
- On top of increased flows, the draft document would require a large pool of water be left behind Don Pedro Dam under state control to help cool Delta flows. This would deprive farmers of even more of the water they need to nourish the nation.
- Under the draft document, there is every likelihood that in consecutive dry years zero water would be available for irrigation, causing economic catastrophe. Even in wetter years, there would be no certainty about water deliveries, making orchard crops too risky.
- With less river water available, farmers will be forced to pump more groundwater. This could lower water tables around urban areas and small communities, leading to hundreds of dry wells.
- Already tenuous in southern portions of the Central Valley, the human right to clean drinking water could be denied to thousands more people as ag pumping diminishes supply.
- Under the draft document, the state will take greater operational control of New Don Pedro Reservoir, which could lead to an interruption in the year-round supplies of drinking water sent to San Francisco. The costs of securing other sources of water will be staggering.
- The document demands holes in the riverbed, created decades ago by mining operations, be filled by the water districts. The districts had nothing to do with creating those holes and filling them will put tens of thousands of air-polluting trucks on county roads not made for the pounding.
- The state still refuses to accept voluminous, peer-reviewed studies conducted at our expense, each refuting decades-old data the water board relied on in making its 2018 decision. Much of that data pertains to rivers hundreds of miles from California.

The SWRCB is making these dramatically revised demands without any additional review of the impacts, because evaluating the economic and social impacts to hundreds of thousands of Californians would take far longer than ten or even thirty days. Perhaps that's why the SWRCB attempted to force this down our throats – the staff didn't want the rest of the state to see the damage and suffering they are willing to inflict on hundreds of thousands of their fellow citizens. These citizens are my constituents, my neighbors, my friends, and my family.

In 2015, I authored legislation to hold the SWRCB accountable for the devastating impacts of the water grab. As that legislation moved out of committee, then-Speaker Toni Atkins removed me from my seat on the Assembly Water, Parks, and Wildlife Committee. Now, Speaker Anthony Rendon has removed me from the chairmanship of the Governmental Organization Committee, an acknowledged result of my refusal to vote for budget trailer language authorizing the 401 certification objectives.

Like many others who will be irreparably harmed by the State Water Resources Control Board's actions, I do not intend to stand by while the state brings so much suffering to our doorsteps. Not during the holidays. Not ever.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Gray". The signature is fluid and cursive, with the first name "Adam" and the last name "Gray" clearly distinguishable.

Assemblymember Adam Gray
21st Assembly District