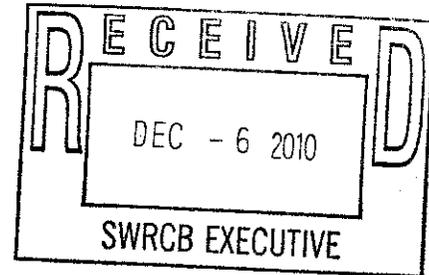


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December 6, 2010

VIA ELECTRONIC MAIL AND U.S. MAIL

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
Cal/EPA Headquarters  
1001 "I" Street, 1<sup>st</sup> Floor  
Sacramento, California 95814



Re Comments on Draft Technical Report on the Scientific Basis for Alternative San Joaquin River Flow and Southern Delta Salinity Objectives

Dear Ms. Townsend

On behalf of Stockton East Water District (Stockton East) we submit the following comments on the State Water Resources Control Board (State Water Board) Draft Technical Report on the Scientific Basis for Alternative San Joaquin River Flow and Southern Salinity Objectives (Draft Technical Report)

The Draft Technical Report states that the purpose of the upcoming workshops are to determine whether 1) this information and these tools are sufficient to inform the Board's decision-making to establish San Joaquin River flows, southern Delta salinity objectives and a program from implementation to achieve the objectives, and 2) the Board should consider additional information or tools to evaluate and establish San Joaquin River flow and southern Delta salinity objectives, and a program of implementation to achieve these objectives

With respect to the first question, Stockton East asserts that the information and alternatives set for in this Draft Technical Report **do not** provide the scientific basis for amending the San Joaquin River flow objectives or for setting forth a program of implementation. Since the 2006 Periodic Update to the Bay-Delta Water Quality Control Plan, when the State Water Board found that they had insufficient information to change the San Joaquin River flow objectives, we are not aware of any scientific study prepared that provides the scientific support for revising the San Joaquin River flow objectives. Littered throughout the Draft Technical Report are statements such as "while aquatic resources in the SJR basin have been adversely impacted by numerous factors, flow remains a key factor and is the focus of the State Water Board's current review...Scientific information indicates that reductions in flow and changes in the

natural flow regime of the SJR basin resulting from water development over the past several decades are impairing fish and wildlife beneficial uses" [Draft Technical Report, page 34] there are NO citations to studies that support these bald statements.

While the State Water Board prepared the "Development of Flow Criteria Report for the Sacramento-San Joaquin Delta Ecosystem (Outflow Report)" that document effectively relied on several reports that were the product of environmental advocates that sounded the much familiar mantra of "more flow equals more fish." No specific information was submitted pertaining to the tributary needs or how those needs correspond to what is needed on the San Joaquin River. The focus of the Outflow Report was Delta outflow. More importantly, the Outflow Report admittedly states throughout the document that it has no precedential value and cannot be used in any regulatory setting. Most importantly, however, this Outflow Report has not been the subject of a vigorous scientific peer review which is essential.

The Draft Technical Report also relies on several flawed models, such as the Department of Fish and Game (DFG) San Joaquin River Fall-run Chinook Salmon Population Model. This model was completely discredited when the Scientific Peer Review panel essentially told DFG to throw the model out and start anew. The Draft Technical Report has a myopic view that additional flows are necessary for the protection of fish and wildlife beneficial use. The Draft Technical Report fails to consider many significant factors that have contributed to the decline in the fishery other than flows, such as predation, introduction of non-native species, pollution, highly modified conditions in the Delta, temperature and dissolved oxygen. Before the State Water Board can develop appropriate alternatives for evaluation, these issues must be fully investigated, evaluated and included in this Draft Technical Report.

The State Water Board has absolutely no legal, factual or practicable authority to exclude water from the Upper San Joaquin River as contributing to meet any new San Joaquin River flow or Salinity objective. The Upper San Joaquin is an out of basin user of water that must contribute just like the other tributaries to the San Joaquin River. It is not only fundamentally unfair to exclude Upper San Joaquin River flows in this process, it is illegal.

The Draft Technical Report improperly dismisses the significant effect that NPDES discharges and in Delta water diversions and return flows have on salinity in the Southern Delta. Both the 2006 Bay-Delta Water Quality Control Plan and the State Water Board's Decision 1641 implementing the 1995 Water Quality Control Plan properly noted elevated levels of salinity are caused by various factors including tidal action, diversion of water by the export pumps, municipal discharges, subsurface accretions from groundwater, local water users, channel capacity and discharges from land-derived salts primarily from agricultural drainage. The Draft Technical Report must evaluate other alternatives such as "other controllable factors," not simply flow to achieve the objectives. It is unclear from the Draft Technical Report what range of potential salinity objectives will be evaluated besides the existing objectives. The

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Hoffman Report indicated that a water quality objective of anywhere from 0.9 to 1.4 EC may be protective of agricultural beneficial uses in the Southern Delta. As such, there must be a range of potential salinity objectives for Vernalis and southern salinity objectives not simply the existing objectives.

Finally, we have reviewed the submittals by the San Joaquin River Group Authority relating to the Legal, Policy and Process Issues, Southern Delta Salinity and the FISHBIO memorandum on the Fish and Wildlife Flow Effects on Salmon Survival and join in support of the issues identified in the submittals.

Very truly yours,



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Attorney-at-Law

KEH:lac

cc Kevin Kauffman