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NATURAL RESOURCES DEFENSE COUNCIL

May 23, 2011

Charlie Hoppin, Chair
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

RE: Comments on Revised Notice of Preparation Regarding the SWRCB's Review of San Joaquin River Flow Objectives for the Protection of Fish and Wildlife and Program of Implementation

Dear Chairman Hoppin and Members of the Board:

On behalf of the Natural Resources Defense Council, which has more than 250,000 members and activists in California, I am writing to provide comments regarding the revised notice of preparation ("NOP") pertaining to the State Water Resources Control Board's ("Board") review of the San Joaquin River Flow Objectives for the Protection of Fish and Wildlife and the associated Program of Implementation. There is overwhelming scientific evidence that existing flows are inadequate to protect fish and wildlife, and NRDC looks forward to working with the Board and other interested parties to substantially increase flows into the Delta from the San Joaquin River basin.

While we generally support the revised notice of preparation, including the expansion of the geographic scope of the proceeding, NRDC strongly recommends that the water quality objective for fish and wildlife be substantially revised to include numeric criteria regarding tributary inflows and flows at Vernalis. Based on the experience of the existing salmon doubling narrative in the Bay Delta Water Quality Control Plan, we believe that the proposed draft narrative objective is wholly inadequate and must be revised to include quantitative flow objectives. On the pages that follow, we provide more detailed comments in response to the revised notice of preparation.

I. <u>The Objectives for Protection of Fish and Wildlife Should Include Quantified Flow Objectives in the Tributaries and at Vernalis, in addition to Narrative Criteria</u>

NRDC strongly recommends that the Board adopt a final NOP that includes quantified flow objectives that substantially increase flows and provide more natural flow variability in the San Joaquin River at Vernalis and in the three tributaries. The flow objective should include a narrow range of unimpaired flow conditions at these four locations, as well as minimum and maximum flow conditions.[1] In light of the existing narrative objective for salmon doubling, we are concerned that the narrative approach identified in the NOP is inadequate, and we strongly

[1] A similar approach was suggested in the draft program of implementation. *See* NOP, Attachment 2 at p. 3.

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recommend that quantified unimpaired flow objectives should be included in the final NOP, and ultimately in the revised water quality control plan.

As an alternative to selecting a single quantified flow objective at Vernalis (stated as a percentage of unimpaired flow), we encourage the Board to include a relatively narrow range (perhaps plus or minus 5 percent) around that starting point to allow for a program of adaptive management. Given the multi-year salmonid life cycle and current abundance levels, it likely will take several years to achieve the salmon doubling biological objective. As a result, a narrow range will allow for implementation of the flow objective within the context of an adaptive management program, but more substantial changes to the flow objectives should be considered in future reviews of the water quality control plan. In addition, minimum and maximum flow objectives should ensure an increase in flows from current conditions (including an increase in the frequency of higher flow conditions), and the maximum flow should be set above 20,000 cfs at Vernalis but below flood stage. *See* NOP Attachment 2 at pp. 3, 4.

Finally, while we agree that the adaptive management program should consider measures to address other stressors, we encourage the Board to eliminate the phrase, "together with other reasonably controllable measures in the San Joaquin River Watershed," from the draft objective. *See* NOP, Attachment 2 at p. 1. This phrase is unacceptably vague, and this proceeding is focused on flows in the San Joaquin River. *See* NOP at pp. 3-4; NOP, Attachment 2 at p. 3. The best available science demonstrates that flow conditions are the most important driver of ecosystem health and salmon abundance in the San Joaquin River basin. Although other measures likely will be appropriate to complement flows and support achieving the salmon doubling objective, such other measures, like restrictions on CVP/SWP operations in the Delta to protect migrating juvenile and adult salmonids, should be considered in a future proceeding or as part of the adaptive management program. However, these other measures should not be part of the objectives in this proceeding.

II. The Geographic Scope of the Proceeding Under the Revised Notice of Preparation Appropriately Includes the San Joaquin River Tributaries

NRDC strongly supports the expansion of the geographic scope of this proceeding to include the Stanislaus, Tuolumne, and Merced Rivers. Flow conditions in the tributaries are critical to the protection of fish and wildlife, and this approach should ensure that the flow objectives in each of the tributaries are sufficient to provide proportional contributions to meet a new flow objective at Vernalis. NRDC supports the approach in the draft NOP of identifying flow objectives for the San Joaquin River at Vernalis, and at the mouth of each of these tributaries (NOP, Attachment 2 at p. 1); we recommend, however, that these objectives be quantified (*see supra*).

III. The Program of Implementation Should Include Biological Objectives and Monitoring for Other Fish Species

The proposed objectives in the NOP focus on fall run Chinook salmon. However, other species, including splittail, steelhead, and spring run Chinook salmon,[2] should benefit from increased

[2] Over the past decade, DFG, NMFS and other biologists have observed spring run Chinook salmon in the Stanislaus and Tuolumne Rivers, apparently recolonizing historic habitat areas. *See, e.g.*, Cramer Fish Sciences, "Upstream Fish Passage at a Resistance Board Weir Using Infrared and Digital Technology in the Lower Stanislaus River,

flows in the San Joaquin River. Numeric doubling objectives already exist for fall run Chinook salmon in each of the tributaries (AFRP Final Restoration Plan, Appendix B-1), which is an appropriate abundance objective for this species, particularly in light of the existing narrative objective in the water quality control plan and other provisions of state and federal law. We recommend that quantified objectives for productivity and other attributes for fall run Chinook, as well as quantified objectives for abundance and other attributes of steelhead and other species, should be developed. The adaptive management program should explicitly link flow conditions (and other measures) to achieving these biological objectives, using an approach like the Logic Chain advocated by the Bay Institute and American Rivers in the BDCP process.

IV. There is Little to No Dispute that Flows in the San Joaquin River are the "Decisive Factor in Determining Salmonid Survival"

The draft technical report for this proceeding, as well as the Board's 2010 Final Report on Development of Flow Criteria for the Sacramento-San Joaquin Delta ecosystem, summarized the substantial scientific evidence demonstrating that current flows in the San Joaquin River and tributaries are inadequate to protect salmon and other fish and wildlife in the Basin, and that increased flows that mimic the magnitude and duration of unimpaired flows should improve the abundance of salmon, steelhead, and other fish and wildlife populations in the San Joaquin River Basin.

In briefs and declarations filed in federal court litigation, the California Department of Water Resources and its expert witness, Westlands Water District, and other export water user plaintiffs have acknowledged that **"the overwhelming evidence in the record establishes that San Joaquin River flows, and not project exports, are the decisive factor in determining salmonid survival."**[3] These briefs and expert declarations rely heavily on much of the same scientific information that the Board has relied on. We agree with DWR and these water exporters that San Joaquin River inflows are a critically important factor in determining the abundance and survival of salmon and steelhead in the San Joaquin Basin, and for this reason NRDC has strongly supported the SWRCB's efforts in this proceeding to substantially increase San Joaquin inflows.

We also concur with the State Water Resources Control Board, California Department of Fish and Game, National Marine Fisheries Service, U.S. Fish and Wildlife Service, Environmental Protection Agency, and many independent scientific reviews, which have found that the best available science demonstrates a need to impose additional protections, beyond increased San

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California, 2007, available online at http://weir.fishsciences.net/_content/Anderson_StanislausRiverWeir_AnnualReport_2007.pdf; San Joaquin River Restoration Program, Draft Stock Selection Strategy: Spring-Run Chinook Salmon, at 3-24 to 3-28, available online at http://swr.nmfs.noaa.gov/sjrrestorationprogram/SJRRP_Stock_Selection_Document_Draft_May_2010-1.pdf; California Department of Fish and Game, Sacramento River Spring-run Chinook Salmon, 2001 Annual Report, at 21, available online at http://www.fws.gov/stockton/afrp/SWRCB/2.%20California%20Department%20of%20Fish%20and%20Game%202001.pdf; McBain and Trush, 2004 Lower Tuolumne River Annual Report, at 20, available online at http://tuolumnerivertac.com/Documents/20050324-5064%288116361%29.pdf.

[3] *See, e.g., The Consolidated Salmonid Cases*, Case No. 1:09-cv-01053-OWW-DLB, Doc. # 446-1 (DWR Memorandum), at 11, 14-16; Doc. # 551 (Westlands Water District *et al* Memorandum) at 7; Declaration of Brad Cavallo, Doc. #452, at ¶¶ 3, 10-18; Declaration of Brad Cavallo, Doc. # 583, ¶¶ 37, 41-42.

Joaquin River inflow, to protect the Public Trust and achieve the salmon doubling requirements of State and Federal law, including export restrictions during juvenile (winter/spring) and adult (fall) salmonid migration periods, habitat restoration activities, and potentially reinstallation and operation of a barrier at the Head of Old River.[4] While these other necessary actions are not part of this San Joaquin River flow proceeding, we hope and expect that these other actions will be addressed in the update to the Bay-Delta Water Quality Control Plan, as the Board has indicated.

V. Conclusion

The substantial scientific evidence demonstrates that flow conditions in the San Joaquin River at Vernalis, and in the tributaries, are inadequate to protect designated beneficial uses, including salmon and other fish and wildlife. NRDC strongly encourages the Board to adopt a revised NOP that establishes a geographic scope for the proceeding that includes the Stanislaus, Tuolumne, and Merced Rivers, quantified flow objectives (which may be expressed as a narrow range of unimpaired flows) at Vernalis and in the three tributaries, and a strong program of implementation that links flow conditions to achieving biological objectives for salmon and other fish and wildlife.

Thank you for consideration of our views. Please contact us at your convenience if you would like to discuss this matter further, or if you would like copies of the documents filed by DWR and the export plaintiffs in federal court.

Sincerely,

Doug Obegi
Staff Attorney

[4] These plaintiffs, and other CVP and SWP contractors, may obtain water supply benefits from increased San Joaquin River inflows to the Delta. The Bay Delta Conservation Plan process has concluded that increased San Joaquin River flows at Vernalis can increase water exports, with the SWP and CVP capturing a substantial portion of increased flows, depending upon the time of year and amount of increase. *See* BDCP, Evaluation of BDCP Operations Sensitivity to a Range of San Joaquin River Flows, August 12, 2010. Of course, export of such flows that assumes that these flows are not protected from export, for instance under section 1707 of the Water Code. The economic analysis in this proceeding should consider the potential benefits of increased water exports to CVP and SWP contractors, as well as the benefits of increase increased Delta outflow (which is contemplated as a future proceeding under the Bay Delta Strategic Plan).