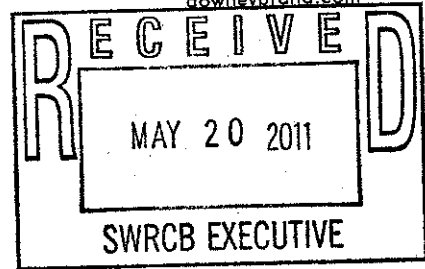


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May 20, 2011

VIA EMAIL – COMMENTLETTERS@WATERBOARDS.CA.GOV

State Water Resources Control Board members  
Jeanine Townsend, Clerk to the Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814

Re: **Comment Letter – by the City of Tracy –  
Southern Delta Ag and SJR Flow Revised NOP**  
Client-Matter No. 07547.00004

Dear Board Members and Ms. Townsend:

On behalf of the City of Tracy (“City”), we would like to sincerely thank the State Water Resources Control Board (“State Water Board”) for commissioning this important salinity objective review process to update the state of science on appropriate and reasonable water quality objectives for the lower San Joaquin River and the southern regions of the Sacramento/San Joaquin Delta (“Delta”). The City wholeheartedly supports reconsideration of the applicable salinity objectives based on more recent science and studies.

As the State Water Board contemplates revision of the salinity objectives for the lower San Joaquin River and southern Delta and the Water Code section 13241 factors in relation to the establishment of these new objectives, the City would like to point out that hundreds of millions of dollars may be needed around the Delta for many of the municipal and other dischargers to consistently meet an end-of-pipe effluent limits that equate to the water quality objectives, even if those objectives are raised from current levels. Similarly, the City raises the point that if all agricultural discharges currently regulated under the waiver need to meet these same objectives in their return flows, the costs to farmers will be huge. However, at the same time, the City, as a water purveyor, strives to supply the cleanest drinking water available since that water, after usage by the community, ends up as influent to its wastewater treatment plant and is ultimately discharged back into the Delta. For these reasons, the City supports the modified salinity objectives proposed, but requests that the State Water Board carefully consider and balance each of the factors in Water Code section 13241 when establishing revised Electrical Conductivity (“EC”) objectives for this region. In so doing, the State Water Board must consider, among other factors, the economic impact to dischargers, the reasonably achievable water quality conditions, and the potential environmental impacts of the objectives and activities to meet the objectives. (See accord Statement of Decision in *City of Tracy v. SWRCB*, Sacramento Superior Court Case No. 34-2009-80000392 (May 10, 2011).)

Further, the State Water Board must consider the facts that the long term average values for EC have been demonstrated by years of data to be maintained over time and that these objectives are not set to protect against short-term acute effects. As such, the objectives should be set to apply only at identified, permitted water diversion points that are used to extract water from the River or Delta for irrigation or municipal supply purposes, and only as long term (six-month or annual averages). Setting EC objectives to apply throughout the water body is unnecessary since these objectives are being set for off-stream use protection, not for instream uses, such as aquatic life protection or recreational uses. These modifications would provide dischargers (both point and non-point) with some level of dilution and mixing credit while still ensuring that the compliance points maintain the needed water quality to protect the AGR and MUN uses, where applicable. Alternatively, explicit mixing zones, dilution credit, or other variance provisions should be included in Delta Plan amendments incorporating the revised objectives as should compliance schedules allowing dischargers time to come into compliance, a provision that has been absent from previous versions, except for schedules related to the Bureau of Reclamation and the Department of Water Resources for their water diversion projects.

Since there is no evidence that municipal discharges have caused the average values in the local Delta waterways (outside a mixing zone) to exceed the currently applicable EC objectives, there is no need to over-regulate these sources of salinity as these discharges have not been demonstrated to be the major drivers of salinity in the Delta. With a thoughtful and reasonable implementation policy, which does not require end-of-pipe effluent limitations equivalent to the objectives themselves, all uses can be protected while also reasonably regulating discharges to the River and Delta. In this financially difficult time for municipalities, the City urges the State Water Board to incorporate necessary regulatory flexibility into any salinity objectives adopted for the south Delta.

Once reasonable EC objectives are determined and established, the State Water Board's main focus should then be on the implementation of these objectives as required by Water Code section 13242, which must specifically include municipal dischargers if the objectives are meant to apply to these discharges. The currently proposed implementation plan does not meet each of the requirements of Water Code section 13242 for each of the potentially regulated entities and must be revised accordingly. Particularly, in relation to municipal dischargers, the implementation plan must:

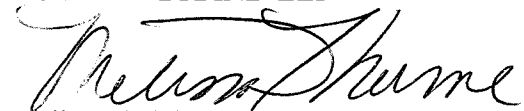
- Include a description of the nature of the actions necessary for all dischargers to achieve the southern Delta EC water quality objectives (including recommendations for appropriate action by municipalities),
- Provide a reasonable time schedule for implementation of any recommended actions, particularly those to be taken by municipal dischargers, and
- Include a description of the surveillance required to determine compliance by all regulated entities, including municipal dischargers.

(See accord Statement of Decision in *City of Tracy v. SWRCB*, Sacramento Superior Court Case No. 34-2009-80000392 (May 10, 2011).)

We look forward to working with the State Water Board to adopt a reasonable and workable approach to maintaining acceptable salinity levels in the southern Delta.

Respectfully submitted,

DOWNEY BRAND LLP



Melissa A. Thorne  
Special Counsel for the City of Tracy

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cc: Steve Bayley, City of Tracy