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May 23, 2011

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VIA E-MAIL AND REGULAR MAIL

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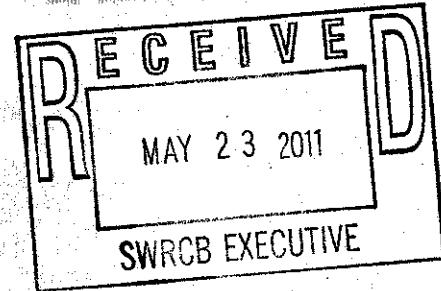
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RE: Comment Letter – Southern Delta Ag and SJR Flow Revised NOP

Dear Ms. Townsend:

These comments are submitted on behalf of the Friant Water Authority (FWA).

The process must address illegal downstream diversions.

A major problem that was not addressed in D-1641 but will need to be addressed this time is the right for junior appropriators downstream of the releases of senior/stored water to divert water whose specific designated purpose is to meet objectives set by the Board. The FWA is concerned that the State Water Board will not adequately police the diversions of those who are physically downstream of any user bypassing water to meet the flow objectives. To deprive a senior water right holder upstream of Vernalis of its water to meet a beneficial use in the Delta, only to have such bypassed water be diverted by a junior appropriator and never achieve its intended benefit is contrary to law because it reverses the water right priority and thus senior rights become junior rights.

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Under the 2006 Bay-Delta Plan, "Unless otherwise indicated, water quality objectives cited for a general area such as the southern Delta, are applicable for all locations in that general area and compliance locations will be used to determine compliance with the cited objectives." The San Joaquin River Flow objectives are water quality objectives and, under the Bay-Delta Plan, must be met throughout the San Joaquin River in the Delta. As a result, diversion and consumptive use below Vernalis, even when the flow objectives are met at Vernalis, would result in a violation of the objectives. This problem manifested itself throughout the performance of the VAMP experiment under the San Joaquin River Agreement, as authorized by D-1641, and simply must be addressed by the State Water Board in these proceedings to ensure that the water bypassed achieves its intended purpose and is not simply diverted by someone else.

The Draft San Joaquin River Fish and Wildlife Flow Objectives Program of Implementation states that the State Water Board may take water right and other actions to assure that the flows required to meet the San Joaquin River

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flow objective are used for their intended purpose and are not rediverted downstream for other purposes. Therefore, it is the FWA's position that riparian diversions should cease or be limited based on unimpaired natural flows when stored water is being released to meet the downstream objectives. Likewise, any downstream junior appropriator should cease diversion at any time a senior appropriator is releasing water to meet the objectives. And we expect that the Board will implement a robust and thorough enforcement program and will not require additional releases without such a program in place.

If a pure water rights priority approach is used, it has to be accompanied by an impacts analysis. If impacts are greater than benefits derived, water shouldn't be taken from the affected junior appropriator.

Flow regimes must be implemented on a tributary-by-tributary basis.

FWA supports evaluation of scientifically supported flow regimes by tributary for the benefit of the each tributary's fishery management program. Several flow regimes will be modified in the near future as a result of FERC relicensing and the implementation of the San Joaquin River Restoration Program (SJRRP). An extension of VAMP as a functional equivalent should be instituted until such time as the revised flow regimes for the San Joaquin River and tributaries are implemented. The failure to do so will result in an extreme waste of resources in resolving this issue through an adjudicatory proceeding that at the very best, may end up no better and no sooner than the flow regime modifications as described above.

The San Joaquin River Restoration Program and this Process.

FWA appreciates the Board's support for the SJRRP. A key goal of the SJRRP, and an objective against which success will be measured, is the Water Management Goal of the Settlement. The Water Management Goal is "to reduce or avoid adverse water supply impacts to all of the Friant Division long-term contractors that may result from the Interim Flows and Restoration Flows provided for in this Settlement." The Settlement calls for the Secretary of the Interior to develop and implement "a plan for recirculation, recapture, reuse, exchange or transfer of the Interim Flows and Restoration Flows for the purpose of reducing or avoiding impacts to water deliveries to all of the Friant Division long-term contractors caused by the Interim Flows and Restoration Flows." Included in this is the ability to recapture and recirculate Interim and Restoration Flows below the Merced River confluence and in the Delta, in accordance with all applicable laws, regulations, and standards. This process

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and the Substitute Equivalent Document must recognize this part of the
SJRRP.

Sincerely,

RUDELL, COCHRAN, STANTON,
SMITH, BIXLER & WISEHART, LLP

By


D. Zackary Smith

DZS/mmb
Enclosures
#20977