



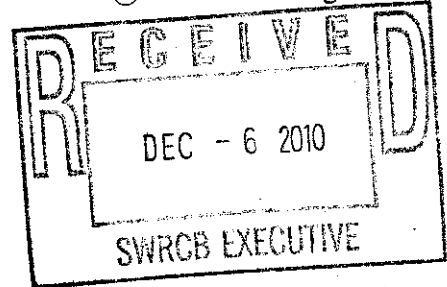
CALIFORNIA FARM BUREAU FEDERATION

NATURAL RESOURCES AND ENVIRONMENTAL DIVISION

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December 6, 2010



Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000

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

Dear Ms. Townsend:

The California Farm Bureau Federation is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing approximately 81,000 members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

The California Farm Bureau Federation reserves any comment whatsoever on the Southern Delta Salinity Standards. These comments instead focus on the instream flow proposals for the protected fish species, to the extent these instream flows are separately required to maintain a particular level of flow at various times of the year on the San Joaquin River at Vernalis.

The obvious, overarching point to be made with respect to the Board's proposed approach and range of instream flows is that the water supply impact of these flows is not only greatly overreaching and unacceptable but also, as a practical matter, completely infeasible. As shown on page 88 of the Draft Report, Table 5-3(b), the water supply impact of a re-creation of anywhere from 20 to 60 percent of unimpaired run-off from the Stanislaus, Tuolumne, Merced River and Lower San Joaquin River systems is quite staggering, ranging anywhere from 23,000 acre-feet per year (in a Wet Year at 20 percent) to a high of 1,723,000 acre-feet per year (in an Above Normal Year at 60 percent). At 40 percent of unimpaired flow, the *minimum* water cost per year is 389,000 acre-feet in a Critical Dry Year, and from there ranges precipitously higher.

To put this in perspective, as noted on page 85 of the Draft Report, the median *total annual diversions* for 82 years of simulated hydrology in the San Joaquin River watershed is estimated

at 2,235,000 acre-feet, with *maximum* annual diversions for the same period of 2,567,000 acre-feet and *minimum* diversions of 1,351,000 acre-feet. Accordingly, at the high end of the range, the water cost of the Board's analytic range actually approaches or *exceeds* the equivalent of the *total amount* of water diverted in the watershed today. Thus, for example, in some months, the Draft Report notes on page 85 that the simulated Water Supply Impacts ("WSI") at the various levels of unimpaired hydrology are in fact "greater than all diversions [in the watershed]" for the same months.¹

What this, of course, means is that if the level of instream flows being presently proposed for analysis were actually implemented (even on at the lower end of the proposed range), the result would be a severe impairment of existing beneficial uses in the respective watersheds—the majority of which are uses associated with senior water rights employed for the irrigation of agricultural crops and the production of food and other agricultural products for human consumption on several hundreds of thousands of acres of highly productive agricultural land along the Eastside Tributaries of the Lower San Joaquin River and along the Lower San Joaquin River itself in the Valley below.²

Putting aside for a moment the puzzling nature of the mindset and thought-process that could produce such a proposal or contemplate such a result even in the abstract, it should in any case be quite clear that numerous restraints on the books, in our judicial precedents to date, and inherent in our Western system of water rights make such a proposal a legal impossibility. Even the considerable scope and breadth of the legal difficulties associated with the proposed approach, however, recedes somewhat, when one considers the practical absurdity of managing our existing water resources and infrastructure in the manner suggested.

Turning to some of the most important of the numerous legal constraints that militate against the Board's proposed approach, Farm Bureau urges the Board to consider the following:

Porter-Cologne Act and Balancing Beneficial Uses:

In establishing water quality objectives in water quality control plans to "ensure reasonable protection of beneficial uses and the prevention of nuisance," the Water Board is required to consider various factors, including (a) "past, present, and probably future beneficial uses of water"; (b) "[w]ater quality conditions that could *reasonably be achieved* through the coordinated control of *all factors* which affect water quality in the area; (c) "[e]conomic considerations."³ Similarly, albeit in a water rights and post-1914 appropriative water rights

¹ As if this were a matter of little concern, the Draft Report reassures us that, except in "a few cases for SJR flow objectives greater than 60 percent minimum unimpaired [flow]," the WSI "for a whole year does not exceed total diversions *during the months of February through September* for that same year." Of course, though, were it not for the matter-of-fact tone of this passing note, it would seem a matter too dire and obvious to require any comment at all that *any scenario* whose net result is a 100-percent reduction in diversions *in any month or year* is, on its face, an *impossible and infeasible* scenario.

² See San Joaquin River Agreement Final EIS/EIR, Chapters 3-1 ("Affected Environment") and 3-6 ("Land Uses"), <http://www.sjrg.org/EIR/contents.htm>.

³ See Water Code, § 13241 (emphasis added).

context (that is, as opposed to a pre-1914 or riparian context), “[i]n acting upon application[s] to appropriate water,” section 1257 of the Water Code requires the Board to “consider the relative benefit to be derived from (1) *all beneficial uses of the water concerned* including, but not limited to, use of domestic, irrigation, municipal, industrial, preservation and enhancement of fish and wildlife, recreational, mining and power purposes, [as well as] any uses specified to be protected in any relevant water quality control plan.”

The obvious flaw in the Board’s current approach to the San Joaquin Flow Objectives (and also the Board’s approach in the Board’s recently issued Delta Flow Criteria) is that this approach focuses almost obsessively on maximal protection of a *single beneficial use* at virtual *any cost*, to the exclusion or tremendous detriment of *all other existing beneficial uses*. This objective is both here and in other similar documents frequently framed with reference to an environmental or biological baseline in the now distant past, while ignoring or relegating to apparent irrelevance the protection of *present* beneficial uses of water. Needless to say, such an approach is both *contrary to the public interest* and inconsistent with the Board’s core water rights and water quality control planning functions.

Water rights

Unique among other western states, with the exception of Oregon, California operates under a hybrid system of riparian and appropriative rights. Riparian rights attach in perpetuity to lands directly abutting rivers and streams, whereas appropriative rights attach to flows surplus to the reasonable needs of riparians, based on their relative priority in time (the Doctrine of Prior Appropriation, epitomized in the often repeated phrase, “first-in-time, first-in-right”). Many rights on the San Joaquin River’s Eastside Tributaries are riparian or very senior “pre-1914” water rights. Unlike permitted water rights, perfected after passage of the Water Commission Act in 1913, pre-1914 rights are not subject to the direct jurisdiction of the Water Board. Not only are such rights among the very last casualties of any scenario requiring curtailment of diversions on the basis of relative seniority but, so long as a pre-1914 or riparian diverter’s water use is *reasonable*, such rights are generally beyond the pale of the Water Board’s authority.

The concept of reasonable use changes over time, in response to changing circumstances.⁴ However, so long as an existing beneficial use of water evidences no gross or obvious waste of water, long-continuing practices consistent with local custom are generally presumed to be reasonable in the absence of convincing evidence to the contrary. In an agricultural context, it is also important to consider that some on-farm use in excess of the bare consumptive use requirements of a plant or crop is often subsequently subsumed in greater basin-level

⁴ See *Tulare Irrigation District v. Lindsay-Strathmore Irrigation District* (1935) 3 Cal.2d 489, 567: “What is a beneficial use, of course, depends upon the facts and circumstances of each case. What may be a reasonable beneficial use, where water is present in excess of all needs, would not be a reasonable beneficial use in an area of great scarcity and great need. What is a beneficial use at one time may, because of changed conditions, become a waste of water at a later time.”

efficiencies, through reuse of return flows and in the form of groundwater recharge.⁵ This fact underlines the importance of properly distinguishing between actual “efficient use” on one hand and “optimal use” on the other. Furthermore, it explains why, in many cases, the adoption of advanced technologies to maximally reduce on-farm efficiencies may, in fact, do little or nothing to improve already high regional efficiencies in most or all of the state’s major agricultural basins—and why, at the basin level, some traditional methods of irrigation are, in fact, comparable in terms of net efficiency to the maximum system-wide efficiencies that may be achieved through widespread adoption of more optimally efficient alternatives.⁶

It is also a mistake to assume that improved on-farm efficiencies and water conservation will necessarily translate into reduced diversions or appropriately timed instream flows. On the contrary, water “savings” from costly investment in increased efficiency may translate into similar net water consumption with enhanced plant growth and higher yields, the bringing of new acreages into production, and water transfers.⁷ Moreover, increased efficiencies or reduced surface water availability may be offset by increased groundwater pumping, reduced recharge, and reduced return flows.

A judgment as to the reasonableness of a particular use is a *location and use-specific, case-by-case, factual determination*, which may be reached only after a careful consideration of all relevant factors.⁸ Moreover, in a reasonable use context, except in certain limited contexts—as

⁵ See DWR California Water Plan Update 2009, Volume 2, Chapter 2, “Agricultural Water Use Efficiency,” Box 2-7—“Inter-relation between On-farm and Regional Efficiencies and Role of Water Reuse: In California, over-application of irrigation water that flows out of a field in excess of crop water requirements provides irrigation water to another field directly via surface water flows or indirectly via groundwater recharge and pumping. [...] Much of the water in the agricultural setting is being used and reused many times over, including re-use of water in wetlands. It is because irrigation water is reused that on-farm efficiency improvements will not result in regional water savings. Also, on-farm efficiency improvements often do not result in water savings for the region due to reuse of irrigation water. Regional efficiencies are, with few exceptions such as drainage problem areas and salt sink areas, always greater than individual field efficiencies. Indeed, reuse of water may be the least expensive mechanism and easily implemented measure to achieve very high regional efficiencies.” See also, “Agricultural Water Conservation and Efficiency in California—A Commentary,” Burt, Canessa, Schwankl, and Zoldoske, October 2008 at <http://www.itrc.org/papers/commentary.htm>.

⁶ In any case, it is settled as a matter of law that water use need not be “optimal” to be “reasonable.” (See *Tulare Irrigation District v. Lindsay-Strathmore Irrigation District* (1953) 3 Cal.2d 489, 573 [“While an appropriator can claim only the amount which is necessary to properly supply his needs, and can permit no water to go to waste, he is not bound [...] to adopt the best method for utilizing the water or take extraordinary precautions to prevent waste. He is entitled to make a reasonable use of the water according to the custom of the locality and as long as he does so, other persons cannot complain of his acts. The amount of water required to irrigate his lands should, therefore, be determined by reference to the system used, although it may result in some waste which might be avoided by the adoption of another or more elaborate and extensive distribution system.” (Emphasis added).])

⁷ The Water Code, after all, includes as a necessary incentives to water markets and water conservation, recognition of water conservation as a beneficial use in itself and the ability to transfer conserved water while at the same time retaining the rights to the water conserved. See Water Code, §§ 1011, 1725, 1731, 1735, 1737, 1745.02.

⁸ *Joslin v. Marin Municipal Water District* (1967) 67 Cal.2d 132, 140 (reasonableness “depends on the circumstances of each case”); *Tulare Irrigation District v. Lindsay-Strathmore District*, *supra*, 3 Cal.2d at 524, 567 (dependent on “the facts and circumstances of each case,” requiring “consideration of all factors involved”). See, also, Governor’s Commission to Review California Water Rights Law, Final Report, December 1978 at 57: “The Commission, after reviewing the benefits, difficulties and costs of attempting comprehensively to define reasonable

between domestic water use as “the highest use of water,” and irrigation as “the next highest use of water”⁹—there is no preference among different, competing beneficial uses, that could form the basis for adjudicating one beneficial use unreasonable, simply because some other beneficial use is adjudged by some person or persons to be preferable or a higher priority use. Furthermore, parties must be afforded full due process in any proceeding to determine the reasonableness of a particular use of water—and, of course, long before any such proceeding is commenced, the investigating or prosecuting parties must, first, make an affirmative demonstration that there is some misuse of water and, thereafter, work with affected parties to remedy any deficiency through voluntary measures.¹⁰

Public Trust Doctrine

In exercising its authorities concerning the allocation of water resources, the Water Board is “required by statute to take [public trust resources] into account.”¹¹ In considering public trust resources, however, such values must not be allowed to swallow or negate the co-existing portion of state law which has allowed, and *continues* to allow for the lawful utilization of the state’s waters, in the public interest and for “the general welfare,” “to the fullest extent of which they are capable.”¹² Thus, as the California Supreme Court observed nearly three decades ago in *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, “[n]either domestic and municipal uses [or other consumptive uses including irrigation] nor in-stream uses can claim an absolute priority.”

“As a matter of *current and historical necessity*,” the *National Audubon* court wrote, “[t]he population and economy of [the State of California] *depend[s] upon* the appropriation of vast quantities of for uses unrelated to in-stream trust values.”¹³ “Now that the economy and population centers of this state have developed *in reliance upon appropriated water*,” the Court observed, “it would be *disingenuous* to hold that such appropriations are and have always been improper to the extent that they harm public trust uses.”¹⁴

Rather, the Court held that “in the planning and allocation of water resources,” “[t]he state has an affirmative duty to take the public trust *into account* [...] and to *protect public trust uses*

beneficial use, has concluded that further clarification of the requirement should continue to be left for treatment by the courts on a case-by-case basis. Reasonable beneficial use varies substantially depending upon the region of use and hydrologic conditions.”

⁹ Water Code, § 106.

¹⁰ Accordingly, it is also improper and legally ineffective to categorically declare some particular beneficial use a *de facto* “unreasonable use,” as in the end the what constitutes a “reasonable” use in a particular instance is a *question of fact, and not of law*. (See *People ex rel. State Water Resources Control Board* (1976) 54 Cal.App.3d 743 [“We wish to make in unmistakably clear that [...] the question of reasonable use or reasonable method of use of water constitutes a factual issue which cannot be properly resolved by a motion for judgment on the pleadings”—i.e., as a matter of law].)

¹¹ See *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 444. Water Code §§ 1257, 1243, and 1243.5.

¹² Cal. Const., Art. X, Sec. 2.

¹³ *National Audubon Society v. Superior Court*, *supra*, at 446 (emphasis added).

¹⁴ *Ibid* (emphasis added).

whenever feasible,” and “so far as *consistent with the public interest.*”¹⁵ And yet, “[a]s a matter of practical necessity,” “consistent with the same *public interest,*” the Court was both frank and pragmatic in its recognition that, “the state may have to approve appropriations *despite foreseeable harm to public trust uses.*”¹⁶

In addition to its public trust authorities in connection with new appropriations of water, the Court in *National Audubon* noted that the Board is also “not confined by past allocation decisions,” whereas “the public trust imposes a duty of continuing supervision over the taking and use of [already] appropriated water.”¹⁷ Thus, under *National Audubon*, even in a watershed where the public trust has received “due consideration” in the past, the Water Board has jurisdiction to “reconsider” past allocation decisions.¹⁸

It is important to bear in mind, however, that the context for the *National Audubon* decision was the Los Angeles Department of Water Power’s historic diversions from Mono Lake, which had previously *never* received any consideration of the public trust. In contrast, current and past management of the Stanislaus, Tuolumne, Merced, and San Joaquin Rivers incorporate extensive and aggressive measures to provide instream flows for protection of the public trust, while at the same time balancing significant demand from other competing beneficial uses—including, *inter alia*, Vernalis Adaptive Management Plan (VAMP), various upstream components of the existing NMFS biological opinion for the Operations and Criteria Plan (OCAP) of the Central Valley and State Water Projects, on-going flow and non-flow actions in the Central Valley Project Improvement Act (CVPIA) Anadromous Fish Restoration Program (AFRP), existing controls in Revised Decision 1641 and the Water Board’s Bay-Delta Water Quality Control Plan (WQCP), and the San Joaquin River Restoration Program.

On the East Side tributaries of the Lower San Joaquin River, the Water Board is hardly faced with a Mono Lake-style situation, where extensive efforts, resources, and attempts to balance competing demands were not *already* in place. Certainly, the Board is within its authority and bound to *consider* protection of public trust resources to *the extent feasible*;¹⁹ and yet, as the California Supreme Court, the Porter-Cologne Act, and the Water Code make abundantly clear, the Board must at the same time *consider and appropriately weigh the broader public interest.* As the Supreme Court clearly stated in *National Audubon*, the intent of that decision was not to abolish water rights, but rather to signal the State’s interest appropriately consider both:

¹⁵ Ibid (emphasis added).

¹⁶ Ibid (emphasis added).

¹⁷ Id. at 447.

¹⁸ Ibid.

¹⁹ The California Environmental Quality Act (CEQA) defines “feasible” as “capable of being accomplished in a successful manner within a reasonable period of time, *taking into account economic, environmental, social, and technological factors.*” Pub. Res. Code, § 21061.1. As defined in common usage by Merriam-Webster, “feasible” means “capable of being done or carried out,” and has the additional connotation of something which is “reasonable.” “Reasonable” is variously defined as “in accordance with reason,” “not extreme or excessive,” and “fair.” Synonyms of “feasible” include “viable,” “workable,” and “practicable.”

“Just as the history of this state shows that *appropriation may be necessary for efficient use of water despite unavoidable harm to public trust values*, it demonstrates that an appropriative water rights system administered *without consideration* of the public trust may cause *unnecessary and unjustified harm* to trust interests. [...] The public trust doctrine and the appropriative water rights system are *parts of an integrated system of water law*. [...] Our objective is to resolve a legal conundrum in which *two competing systems of thought*—the public trust doctrine and the appropriative water rights system—existed independently of each other, espousing principles which *seemingly suggested opposite results*. [...] The human and environmental uses of Mono Lake—uses protected by the public trust doctrine—deserve to be *taken into account*.”²⁰

Reasonable Use

Article X, Section 2 of the California Constitution prohibits “waste or unreasonable use” and declares that the “general welfare” requires that “the water resources of the State be put to beneficial use to the fullest extent of which they are capable.”²¹ This Constitutional prohibition on waste *applies to all beneficial uses of water, both consumptive and instream*. “The right to water or to the use or flow of water *in or from* any natural stream or water course in this State is and shall be limited to such water as shall be *reasonably required* for the beneficial use to be served, and such right *does not and shall not extend to the waste or unreasonable use* or unreasonable method of use or unreasonable method of diversion of water.”²²

Past cases that have found various uses of water to be wasteful have generally justified this finding on the adverse impact of the wasteful use on one or more other uses, and also on the disproportionality of the water cost of the wasteful use in relation to the benefit produced.²³ Under this standard, an instream flow regime that proposed to deprive hundreds of thousands of highly productive agricultural land of the water that these lands require, and yet that, in all likelihood, had fairly poor prospects of producing the desired result (“fish doubling” or any some similar objective) might, quite possibly, constitute a wasteful and unreasonable use of the state’s water resources in violation of the California Constitution. Moreover, where as the California Supreme Court held now many years ago, an examination of the reasonableness of a particular use must consider, not only the particular facts of each case, but also “statewide considerations of transcendent importance” and “the water situation in the State as whole,”²⁴ such a conclusion would be all the more compelling, if the regulatory climate in our state were ever to reach a point at which one might observe a pattern of similar regulatory actions playing out simultaneously on

²⁰ Id. at 446, 452 (emphasis added).

²¹ Cal. Const., art. X, sec. 2.

²² Ibid.

²³ See, e.g., *Tulare Irrigation District v. Lindsay-Strathmore Irrigation District* (1935) 3 Cal.2d 489 (use of entire streamflow for “sub-irrigation” and for purpose of the drowning gophers an unreasonable use); *Joslin v. Marin Municipal Water District* (1967) 67 Cal.2d 132 (reliance upon full natural flow of river for deposition of sand, rock, and gravel on downstream riparian lands unreasonable).

²⁴ *Joslin v. Marin Municipal Water District* (1967) 67 Cal.2d 132, 140-141.

multiple fronts, in several other areas of the state, all with similar far-ranging adverse effects on the State's major centers of agricultural production.

In the present or any other instream flow context, the Water Board must bear in mind the California Constitution's prohibition on waste and unreasonable use and recognize that this constraint applies as fully to the use of water for the protection of fish and wildlife preservation purposes as to any other beneficial use of water.²⁵ Thankfully, it is part of the architecture of our existing system that, properly applied, the reasonable use doctrine furnishes an element of relative certainty and stability that is essential to the state's economy, operating as a "check" on the values of preferences of any one segment of society, or of one interest group over all others. Were this not the case, the wit, persistence, or vociferousness of some one group or segment of society in the important area of water resources might succeed in overwhelming the broader interests of society at large. Fortunately, government agencies such as the Board are charged with exercising their authorities on behalf of all Californian's in the public interest, capable of perceiving the risks of a failure to do so, and generally adept at fulfilling their charge in a responsible manner. In this and other inflow proceedings, we fully expect that Board will do no less.

Takings

It is well settled that water rights are a species of real property right,²⁶ potentially subject to Takings Clause of the Fifth Amendment of the United States Constitution.²⁷ As the United States Supreme Court has observed, the basic purpose of the Fifth Amendment is to "bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."²⁸

A permanent regulatory reallocation of water away from an affected user or group of users (or from one beneficial use to another), that were so significant in scope as to fundamentally impair the economic use of a user's lands for the purpose the user had previously used them, is an action which might properly require payment of the just compensation to the affected party.

Courts, including the United States Supreme Court, have examined the distinctions between physical and regulatory takings, classifying the former quite straightforwardly as a "*per se* taking," while treating the latter not as a taking resulting from any direct *physical seizure* of

²⁵ See *National Audubon*, *supra* at 443 (citing *Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 367; *People ex rel. State Water Resources Control Bd. v. Forni* (1976) 54 Cal.App.3d 743, 749-750).

²⁶ See *United States v. Gerlach Live Stock Co.* (1950) 339 U.S. 725, 752, 755; *Hill v. Newman* (1855) 5 Cal. 445, 446; *Alta Land & Water Co. v. Hancock* (1890) 85 Cal. 219; *Huffner v. Sawday* (1908) 153 Cal. 86, 91; *Thayer v. California Development Co.* (1912) 164 Cal. 117, 125, 128; *Collier v. Merced Irr. Dist.* (1931) 213 Cal. 554, 563-564; *Waterford Irr. Dist. v. County of Stanislaus* (1951) 102 Cal.App.2d 839, 844-45.

²⁷ See, e.g., *United States v. State Water Resources Control Board* (1986) 182 Cal.App.3d 82, 101: "It is [...] axiomatic that *once rights to use water are acquired, they become vested property rights. As such, they cannot be infringed by others or taken by governmental action, without due process and just compensation.*" See, also, *id.* at 143-144; *Jordan v. City of Santa Barbara* (1996) 46 Cal.App.4th 1245, 1270.

²⁸ *Armstrong v. United States* (1960) 364 U.S. 40, 49.

private property, but rather as the result of the government's exercise of its inherent *police powers* in limiting or conditioning a private party's exercise of a private property right, in the name of some *public purpose*.

Factors considered by the Courts in determining whether a compensable regulatory taking has occurred include "the economic impact of the regulation[,] [...] the extent to which the regulation interferes with reasonable investment-backed expectations[, and] the character of the government action."²⁹ Where the economic impact of a government regulation is very great and its effect to completely frustrate the "distinct investment-backed expectations" of the affected party or parties, the Courts have in some cases recognized an impact as a "taking" requiring payment of just compensation.³⁰

In this regard, the words of Justices Holmes in the 1922 United States Supreme Court case of *Pennsylvania Coal Co. v. Mahon* remain quite pertinent:

"The protection of private property in the Fifth Amendment presupposes that it is wanted for public use, but provides that it shall not be taken for such use without compensation. [...] *When this seemingly absolute protection is found to be qualified by the police power, the natural tendency of human nature is to extend the qualification more and more until at last private property disappears.* [...] The general rule at least is, that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking. [...] *We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.*"³¹

Reflecting on this language, it should be clear that, in conducting its present review of the San Joaquin River Flow Standards—and in considering other public trust matters, either pending now or which may come before the Board in the future—the Fifth Amendment stands as an additional limitation on the amount of water that may be required for such purposes, alongside the Board's duty under *National Audubon* to appropriately balance consumptive and instream uses in the broader public interest, and the reasonable use doctrine found in Article X, Section 10 of the California Constitution, among other important restraints.

²⁹ *Penn Central Transportation Co. v. New York City* (1978) 438 U.S. 104, 124.

³⁰ See *Penn Central*, *supra*, citing *Pennsylvania Coal Co. v. Mahon* (1922) 260 U.S. 393.

³¹ *Id.* at 415-416.

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Conclusion

The California Farm Bureau Federation thanks to Board for the opportunity to submit these comments on the Board's Draft Technical Report on the Scientific Basis for Alternative San Joaquin River Flow and Southern Delta Salinity Objectives. As the Board goes forward with its review of the existing San Joaquin River Flow Objectives—and as other instream flow questions, involving protection of fish and other public resources come before it as well—we are hopeful that the Board will carefully and appropriately balance such uses against all other existing uses in the public interest, as it must.

Very truly yours,



JUSTIN E. FREDRICKSON
Environmental Policy Analyst

cc: Merced County Farm Bureau
San Joaquin County Farm Bureau
Stanislaus County Farm Bureau