CENTRAL DELTA WATER AGENCY
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Via Facsimile (916) 341-5400
and First Class U.S. Mail

Division of Water Rights
SWRCB
P. O. Box 2000
Sacramento, CA 95812-2000

Attention: Gita Kapahi, et al

Re: Review of 1995 Water Quality Control Plan

Dear Ladies and Gentlemen:

This submission is intended to supplement our oral comments on January 8, 2004.

The 1995 Water Quality Control Plan resulted from the so-called Bay-Delta Accord or December 15, 1994, Principles Agreement. The Bay-Delta Accord was in our view simply a deal negotiated outside of the public process in which the SWRCB participated.

The Vernalis Fish Flows in particular appear to have been based on the agreement rather than science. The pulse flow requirements are simply to conduct the Vamp experiment and are not supportable as reasonable requirements to protect beneficial uses. As noted in the 2003 Annual Technical Report on Vamp, "The relationship between salmon survival, Vernalis flow, and SWP/CVP exports are no longer statistically significant." Our understanding of the evidence in the D-1641 proceeding was that there never was a significant relationship.

If the pulse flow requirements are simply an experiment, then the pulse flow standards should be eliminated and the requirement of an experiment substituted in their place. As suggested previously by us such an experiment could be structured to minimize the additional releases of stored water by simply conforming export pumping limits with the expected flow resulting from unaltered operations along the San Joaquin River Tributaries. If San Joaquin River flow standards are required either as a single minimum level or a variable level dependent

upon year type, it would appear that standards should be set for Stockton either in lieu of or in addition to the standards at Vernalis. The evidence indicates that the operation of the head of Old River barrier (or South Delta barriers) rather than flow at Vernalis will be controlling. The 1995 Water Quality Control Plan did not require the installation of the HOR barrier. It is uncertain that the SWRCB could require the installation of such a barrier as part of a water quality standard and in any event it is quite clear that permits from other agencies will be required for construction and operation of any barriers. The appropriate approach would be to set flow standards at Stockton. With flow standards at Stockton, San Joaquin River flow combined with limits on export pumping or barrier operation could achieve the objectives.

The export pumping limits of 1500 cfs or 100% of San Joaquin River flow do not conform to the Delta Smelt biological opinion limits of roughly 50% and therefore are obviously not reasonably protective of the fishery needs.

The 1995 Water Quality Control Plan includes a narrative standard to achieve a doubling of the natural production of the Chinook Salmon. The flow, water quality, temperature and other measures necessary to achieve the narrative standard are not described in the 1995 Water Quality Control Plan. Without such description, it is impossible to determine whether any particular settlement or allocation will help or hinder later implementation of the narrative standard. More importantly it would appear that the narrative standard portion of the plan is not now being implemented.

The Bay/Delta Water Quality Control Plan should incorporate a salinity objective on the San Joaquin River upstream of Vernalis preferably at the Newman Wasteway or Hill's Ferry to assure that compliance with the objectives at Vernalis will be met. To date, the CVP has failed to put forth a plan to meet such objectives and in fact continues to produce modeling which forecasts substantial violations.

The relationship of dissolved oxygen to fish survival in the Lower San Joaquin River and to minimum flows needs greater examination. It would appear that the need for an adequate minimum flow is much greater than creating sustained pulses of high rates of flow. There is some evidence that pulses of short duration may be of some value in stimulating the migration of salmon smolts however, the depletion of carryover storage to the point that minimum flows for water quality or fish cannot be provided in dry periods must be carefully considered.

There is a need as a part of the Bay/Delta Water Quality Control Plan to address the instream flow requirements on each of the major tributaries to the Delta. There is evidence that fish protection requires that the patterns in the natural hydrology be reflected in river flow and that each of the major rivers contribute accordingly. The 1995 Plan which was based on the "deal" rather than science ignored this evidence. By way of example, 15 cfs minimum flow in

the Mokelumne River downstream of Woodbridge does not have a rational relationship with a 1500 cfs minimum flow in the Stanislaus River. Setting the instream flow requirements on the major tributaries is a necessary prerequisite to setting rational Delta objectives for fish.

Your review should also consider the Vernalis Salinity Objective to protect agricultural uses. The .7 EC should be extended to apply in March, September and October in addition to the currently covered April through August period. The 1.0 EC for November through February although marginal continues to be necessary for the irrigation of asparagus, walnuts and perhaps other crops in the upland areas of the Delta.

Yours very truly,

DANTE JOHN NOMELLINI
Manager and Co-Counsel

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