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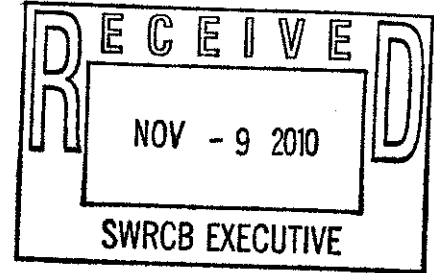
11/16/10 Bd Wrkshp Item 10
Instream Flow Studies
Deadline: 11/10/10 by 12 noon

Attorneys at Law

VIA Electronic Mail

November 9, 2010

Jeanine Townsend, Clerk to the Board (commentletters@waterboards.ca.gov)
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Re: Comment Letter – Instream Flow Studies Report

Dear Members of the Board:

The San Joaquin River Group Authority (“SJRG”) recognizes that the Legislature has ordered the State Water Resources Control Board (“SWRCB”) to develop a prioritized schedule and estimated costs of instream flow studies. The purpose of Water Code section 85087 appears, first and foremost, to inform the Legislature of the time and cost of conducting instream flow studies so the Legislature may then choose whether to appropriate funds and direct the SWRCB to conduct the studies. The staff report is insufficiently detailed to adequately inform the Legislature.

As the staff report acknowledges, the new Water Code section 85087 is ambiguous. Unfortunately, it does not explain specifically how it addresses Water Code section 85087’s ambiguity. “All major streams outside the Sacramento River watershed” literally means every “major” river or stream in California. Neither the statute nor the staff report provides a definition or criteria for a “major” river or stream. Since Category 2 rivers and streams are not defined, it cannot be determined whether the rivers and streams included in Priority 2 and 3 are sufficient to comply with the statutory mandate, if other rivers and streams have been omitted, or if too many rivers and streams are listed. Similarly, with respect to the cost of instream studies, the staff report does not describe how cost ranges were estimated for the High, Middle, and Low cost ranges or what criteria were used for classifying streams into High, Middle, and Low cost ranges.

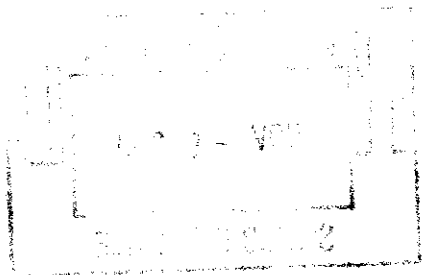
As for existing studies, in 2008 the Department of Fish & Game submitted a list of instream flow recommendations to the SWRCB, pursuant to Public Resources Code section 10000. However, all of the recommendations are based on studies that are at least 10 years old and for some streams nearly 30 years old and potentially based on outdated methodologies. A more detailed assessment of the information requested by the notice is not possible in the time given for comments. The public notice was issued at 5:13 pm on November 3, 2010. The deadline for comments was November 10, 2010, leaving only a

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week to survey the literature. Even then, it is difficult to know what to look for, because it is unclear what constitutes a "major" river or stream.

The SJRGA concurs with the staff report that the Legislature's schedule is unrealistic. The reality of doing so is similarly unrealistic, given the costs and staff time involved. The State of California is looking at further deep budget cuts in 2011 and severe austerity for years to come. The SWRCB will be no better off. The passage of Ballot Proposition 26 will only make funding the instream flow studies more difficult.



Very truly yours,
O'LAUGHLIN & PARIS LLP

By:


KENNETH PETRUZZELLI