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March 19, 2009

*Via E-Mail to Bay-Delta @waterboards.ca.gov and
 Overnight Mail to Anne Short*

Anne Short
 State Water Resources Control Board
 Cal/EPA Headquarters
 1001 "I" Street, 24th Floor
 Sacramento, CA 95814-2828

**Re: Comment Letter - Southern Delta Salinity and
 San Joaquin River Flow NOP**

Dear Ms. Short:

On behalf of the County of San Joaquin and the San Joaquin County Flood Control and Water Conservation District (collectively hereinafter the "County"), we submit the following comments regarding the Notice of Preparation and Scoping Meeting for the Environmental Documentation for the Update and Implementation of the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary: Southern Delta Salinity and San Joaquin River Flows (NOP).

1. Reliance on BDCP is inappropriate.

The NOP indicates on page 5 that "Implementation of the BDCP will likely require changes to the 2006 Bay-Delta Plan and water rights implementing that plan." This statement lends one to believe that the State Water Board will implement whatever outcome the BDCP recommends. This is an inappropriate position for the State Water Board and legally indefensible. The BDCP is being developed to advance the goals and objectives of the BDCP which are to protect the Delta exports by the State Water Project (SWP) operated by the California Department of Water Resources (DWR) and the Central Valley Project (CVP) operated by the United States Bureau of Reclamation (USBR). If but for the CVP and SWP the BDCP would not be developed. These interested parties and their associated water rights are regulated by the State Water Board and these water rights will be directly impacted by any decision of the State Water Board regarding Southern Delta Salinity and San Joaquin River Flows, the subject of the State Water Board's NOP.

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By relying on the DBCP process and by stating that “implementation of the DBCP will likely require changes to the 2006 Bay-Delta Plan and water rights implementing that plan” by the State Water Board, it appears that the State Water Board will rubber stamp the DBCP process and not independently evaluate the important issues before the State Water Board, which is the obligation, duty and role of the State Water Board. In addition this potentially violates due process rights of affected water right holders. The NOP at page 7 describes the goals of the DBCP and the Delta Vision stating that the “DBCP is being prepared to develop measures to . . . improve SWP and CVP and other water supplies.” The State Water Board’s duty is to protect beneficial uses within the Delta and the proper evaluation and protection of such may not allow for the improvement of SWP and CVP and other water supplies.

2. Description of San Joaquin County related to the Delta.

Nearly half of the legal Delta is located within San Joaquin County and changes within the Delta significantly impact the County. San Joaquin County’s population currently totals over 660,000 people. By the year 2030, the population is expected to increase by approximately 77 percent to 1.1 million. San Joaquin County is estimated to be the 3rd fastest growing county in California.

The County encompasses nearly 920,000 acres of relatively level, productive lands with 85% of the County’s 1423 sq. miles being used for agriculture. The County sustains a \$1.75 billion agricultural economy. Historically, San Joaquin has been one of California’s leading counties in gross value of agricultural commodities. In addition, industries that depend strongly on agriculture, such as food processing, wholesale trade, and transportation, benefit from San Joaquin’s bounty. The preservation of agricultural land is a key economic and quality of life component for the County.

The County of San Joaquin produced evidence in the 2004 Cease and Desist Hearings regarding enforcement of the southern Delta salinity objectives indicating that value of the crops produced within San Joaquin County within the Delta totaled approximately \$323,934,305. The County is currently updating this information to reflect current data.

The standards at issue impact agriculture and fisheries within the County. The status of these beneficial uses directly impacts such items as the economy, industries, agriculture, wildlife, fisheries and recreation within the County. These impacts need to be fully analyzed in the EIR/EIS. The EIR/EIS must not only consider enhancing the water supply of the CVP and SWP but also the impacts on the Delta.

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3. Salinity of San Joaquin River and South Delta impacts legal dischargers within County.

Due to the condition of the San Joaquin River and the salinity levels within the River as it reaches and flows through San Joaquin County, no assimilative capacity remains for legal discharges within the County. This impacts legal agricultural diverters along the San Joaquin River and within the Delta and dischargers and municipal discharges such as the cities of Manteca and Stockton, located within the County. Any negative changes to the salinity objectives will impact the already diminished assimilative capacity of the San Joaquin River and potentially impact these legal discharges and diverters. These impacts must be evaluated in the EIR/EIS.

4. Critical condition of groundwater overdraft.

The Eastern San Joaquin County Groundwater Basin (Basin) is the subject of much concern and numerous past and current studies, investigations and reports document the Basin's critical condition of overdraft.

Water demand in the County is approximately 1,600,000 acre-feet per year of which 60 percent is provided by groundwater. The Basin is not in a condition to meet the current demand put on it. The County's historical and continual reliance on groundwater has resulted in significant overdraft of the Basin of up to approximately 150,000 acre-feet annually, and is projected to increase to a deficit of approximately 175,000 acre-feet annually, if nothing is done to correct this problem. Additionally, as a byproduct of the overdraft conditions, salt water has intruded into the Basin from an ancient saline deposit underlying the Delta. Projections indicate that the migration of the saline front is approximately 150 to 250 feet a year. Long-term groundwater overdraft has lowered the groundwater table by two feet per year in some areas to 70 feet below mean sea level. Continued pumping of groundwater and deterioration of water quality in the Basin threaten the long-term viability of groundwater use within the County.

The use of surface water supplies is integrally tied to the groundwater Basin. Any changes to surface water supplies due to a change in salinity standards within the Delta will affect the Basin and these impacts need to be fully evaluated in the EIR /EIS.

5. Salinity and flow objectives should be met by using multiple factors and multiple sources and not overburden New Melones.

Currently the USBR and DWR are attempting to meet their obligation to meet the Southern Delta salinity objectives and San Joaquin River flow objectives almost exclusively through releases from New Melones Reservoir on the Stanislaus River. The County supports meeting the current objectives but strongly objects to the current level of reliance on New Melones for dilution flows. Such reliance directly impacts the already

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overdrafted Eastern San Joaquin County Groundwater Basin. This is due to such releases from New Melones by the USBR to meet the objectives decreases the water which USBR provides to its contractors, Central San Joaquin Water Conservation District and Stockton East Water District, located within San Joaquin County. These water districts provide municipal and irrigation water to farmers overlying the critically overdrafted groundwater basin and for municipal purposes to serve the greater Stockton area. The EIR/EIS needs to fully evaluate these direct impacts on the overdrafted groundwater basin.

6. Salinity Objectives should not be relaxed.

As the NOP indicates the salinity objectives in the South Delta are intended to protect southern Delta agricultural uses. Contributing factors to the current salinity problem in the South Delta includes the contributions of CVP imported salts to the San Joaquin River, the decreased flows in the River due to the CVP operations and concentrations of salts in Delta channels due to altered flow patterns due to the CVP and SWP pumps and other factors. We believe these effects are well documented and need to be included within any environmental document.

The existing salinity objectives were established in the 1978 Delta Plan. Salinity concerns in the South Delta exist as a result of a variety of factors as indicated on page 8 of the NOP. These factors existed in 1978 when the 1978 Delta Plan was adopted and the salinity objectives were initially imposed. These factors were re-evaluated in Water Right Decision D 1641 (D 1641) adopted in 2000. Regarding the responsibility to meet the Delta salinity objectives the State Water Board in D 1641 summarizes as follows:

“Salinity problems in the southern Delta result from low flows in the San Joaquin River and discharges of saline drainage water to the river. The actions of the CVP are the principal causes of the salinity concentrations exceeding the objectives at Vernalis. Downstream of Vernalis, salinity is influenced by San Joaquin River inflow, tidal action, diversions of water by the SWP, CVP, and local water users, agricultural return flows, and channel capacity. Measures that affect circulation in the Delta, such as barriers, can help improve the salinity concentrations.” D 1641 at p. 89.

D 1641 continues stating that the circulation problems in the Delta are caused by “. . . export pumping by the SWP and CVP and in-Delta diversions in the southern Delta [which] cause null zones, areas with little or no circulation.” D 1641 at p. 87. It is the County’s contention that these conclusions and environmental conditions have not changed substantially since D 1641 and any new environmental analysis will support these prior findings.

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The salinity objectives are the product of many years of sound research. The studies and research determined that a standard of 0.7 mmhos/cm electrical conductivity (EC) was needed in part due to the wide variety of soil conditions (more than 70 types) in the region that have different permeability qualities and leach fractions which require a 0.7 EC level in order to prevent crop damage and decreased crop yields within the Delta. Such things as low permeability and shallow groundwater present unique problems. These factors and others need to be fully evaluated and considered by the EIR/EIS and the County contends that such analysis will continue to support a salinity objective within the Delta of at least 0.7 EC.

7. Minimum Flows within the Delta and minimum water levels should be maintained to protect beneficial uses.

Minimum water flows are necessary to support agricultural uses within the Delta both as to quantity and quality. Due to the impacts of the CVP and SWP export pumps and the decreased natural flow of the San Joaquin River, water levels and flow within the Delta are altered and at many times greatly reduced. Adequate water levels are necessary to support fish and wildlife within the Delta and to provide legal and senior water right diversions and uses within the Delta. Portions of the Delta, including Middle River, have extremely low flows and even go dry at certain times of the year. This precludes legal, senior water right holders and parties protected by the Delta Protection Statutes and Area of Origin Statutes from exercising their water rights. Minimum water flows and minimum water levels should be analyzed in the EIR/EIS and standards established by the State Water Board in order to protect these beneficial uses within the Delta.

8. Impacts of decreased water quality and flows within the Delta will completely alter the Delta of today.

In the event that adequate objectives are not set and met within the Delta, the Delta will be potentially, completely destroyed. In the event that agricultural beneficial uses are not protected then the landowner farmers will not be able to continue to maintain their land and the associated levees within the Delta. This would alter the levees and water flow within the Delta and the fresh water and salt water flows within the Delta. If the levees fail, then the roadways and infrastructure within the Delta will also fail. In addition the fish and wildlife will be impacted and altered. Recreation uses will be impacted and altered. The economy of the County will be impacted and altered. These and the other potential impacts of a failure of the agricultural beneficial uses within the Delta need to be fully evaluated in the EIR/EIS.

9. Factors outside of the Delta impact salinity within the Delta.

The environmental analysis of impacts to the south Delta cannot be geographically limited to the Delta. Due to the operation of the CVP and the SWP hydrological impacts

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throughout the State and particularly within the Central Valley impact the San Joaquin River flows and South Delta salinity. Such analysis of the following, among others, is relevant to salinity within the South Delta: effect of CVP deliveries on San Joaquin Valley groundwater gradient and groundwater quality; effect of CVP deliveries on San Joaquin Valley groundwater entering the San Joaquin River; effect of CVP deliveries on leaching of naturally occurring soil salts; Water quality conditions in the San Joaquin River if Exchange Contractors received San Joaquin River water instead of DMC water; and changes to assimilative capacity of the San Joaquin River due to increases in consumptive uses and out of basin deliveries and due to importation of salts by the CVP.

Thank you for providing an opportunity for the County to submit comments to the State Water Board regarding the Southern Delta Salinity and San Joaquin River Flows. The County is available to discuss these comments and any referenced data, facts, studies, and reports in order to assist the State Water Board prepare its EIR/EIS.

Very truly yours,



DeeAnne Gillick
Attorney at Law

DMG/

cc: C. Mel Lytle
David Wooten
Thomas J. Shephard, Sr.