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March 18, 2009

VIA ELECTRONIC MAIL AND U.S. MAIL

Ms. Anne Short
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, California 95812-2000
ashort@waterboards.ca.gov

Re: Comments on Notice of Preparation for Environmental Documents for Update and Implementation of the Water Quality Control Plan for Bay-Delta

Dear Ms. Short:

The following comments are made on behalf of Stockton East Water District to the State Water Resources Control Board (State Water Board) Notice of Preparation for and Scoping Environmental Documentation for the Update and Implementation of the Water Quality Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary: Southern Delta Salinity and San Joaquin River Flows.

Sources of Salinity to the Bay-Delta/Allocation of Responsibility

The State Water Board must include in the environmental documentation a thorough investigation of all sources of salt entering the Delta. Identification of the sources of salt is absolutely crucial for assigning responsibility for diluting the salts. For far too long New Melones Reservoir has been utilized as the sole dilution source. An investigation into all sources of salt entering the Delta must be conducted including identification of all drainage sources must be presented so that the State Water Board can move forward with assigning responsibility appropriately. This State Water Board cannot continue to disregard the Congressional directive contained in H.R. 2828 to reduce the use of New Melones Reservoir to meet the existing Bay-Delta water quality objectives. Congress authorized and the President of the United States signed legislation that expressly directs the Bureau of Reclamation, with the assistance of the State, to initiate and implement actions to achieve the Bay-Delta water quality objectives while reducing the demand on water from New Melones Reservoir for meeting these objectives.

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The State Water Board should solicit input from the Central Valley Regional Water Quality Control Board regarding all relevant information that it has developed to date on the sources of salt. This information is critically important in order to properly assign responsibility.

The Environmental Impact Report (EIR) must discuss the adverse impacts that have been identified to the beneficial uses protected by the salinity objectives. In turn, the EIR must analyze and attribute responsibility to water right holders for those impacts. Only those water right holders who have been responsible for adversely impacting the Bay-Delta watershed may have conditions imposed upon their water rights; and only then in proportion to their contribution to the impact.

The State Water Board cannot, as they have previously suggested, invoke the authority of the public trust in order to skip the step outlined above, and make the leap of faith that all water users of a certain size are responsible in some pro-rata proportion for the decline of the Bay-Delta watershed. Such equitable apportionment is supported neither in law nor in fact.

Evaluation of Alternatives

Salinity Control by Flow Measures

In the past, the State Water Board had assumed in its environmental analysis that Vernalis salinity objective will be met with dilution flows released from New Melones Reservoir. This assumption cannot continue. The obligation for meeting Vernalis salinity objective was first imposed upon New Melones Reservoir in D-1422, however, since that time the salt load and concentration of the San Joaquin River has drastically increased and the timing of drainage has changed. Imposition of this requirement upon New Melones Reservoir based upon current conditions is an unreasonable and non-beneficial use of water pursuant to Article X Section 2 of the California Constitution, and therefore cannot be imposed by the State Water Board or voluntarily provided by the Reclamation.

There are additional flow alternatives that are reasonable and must be evaluated in the EIR. The salinity problem is caused by deliveries from the San Luis Unit of the CVP. The Congressional authorization for this unit conditioned water deliveries upon completion of a drain. Because deliveries were made without provision for a drain, contamination of the San Joaquin River has resulted. Consequently, one of the alternatives for achieving the Vernalis salinity objective should be imposition of a condition upon the San Luis Unit permits to release water to comply with the Vernalis salinity objective. Several alternatives would be available under this scenario, including releases from San Luis and/or the Delta Mendota Canal with or without recirculation. All of these alternatives must be evaluated.

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The salinity problem is also caused by discharges from wetlands and wildlife refuges. The environmental document must analyze reducing, eliminating or otherwise diluting at the source of this discharge. One very effective way of mitigating the adverse impact caused by the wetland and wildlife refuge discharge is to require the wetlands and wildlife refuges to reserve a portion of their water supply for use to dilute the discharge in the spring months.

The salinity problem is also caused by agricultural drainage and tile drainage entering the San Joaquin River from westside agricultural interests. The Grasslands Bypass and West Side Drainage Projects have successfully reduced a significant amount of salt laden drainage entering the San Joaquin River. The environmental document must evaluate additional drainage reuse and other measures to control these discharges or change the timing of these discharges to occur with there is natural assimilative capacity in the San Joaquin River.

Salinity Control by Non Flow Measures

In addition to controlling salinity by providing dilution flows, there are additional salinity control actions that should be analyzed, including subsurface storage of drainage, land retirement and out of valley disposal. Adoption of salinity objectives for the entire river and implementation through waste discharge permits that would prohibit discharge rather than control its timing should also be evaluated.

San Joaquin River Flow Objectives

At this point in time it is difficult to provide input on San Joaquin River Flow objectives as there are no proposed objectives, these are being developed as part of a separate hearing. As SEWD as previously commented, the District believes that the San Joaquin River Flow Objective should be eliminated because there is no scientific or biological basis for the established objectives. The existing objective was a by-product of a negotiated solution (the Principles for Agreement) by some parties interested in the Delta. Absent from these negotiations were the interests on the San Joaquin River tributaries and San Joaquin County water users that were not export contractors, yet requirements for San Joaquin River flows were contained in the negotiated solution. In developing the San Joaquin River Flow Objective, which is the San Joaquin River contribution to the Delta Outflow, the parties arbitrarily set the San Joaquin Flow Objective at either 10%, 20% or 30% of the surrogate X2 Delta Outflow at either Collinsville or Chipps Island. There was no biological assessment, no scientific justification, the parties simply picked a percentage. Thus, one of the proposals for San Joaquin flow objectives should include no San Joaquin River Flow Objective.

San Joaquin River Flow Objective Alternatives

Assuming some San Joaquin River Flow Objective is evaluated, the EIR must discuss the adverse impacts that have been identified to the beneficial uses protected by the San

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Joaquin River Flow objective. The EIR must analyze and attribute responsibility to water right holders for those impacts. Only those water right holders who have been responsible for adversely impacting the Bay-Delta watershed may have conditions imposed upon their water rights; and only then in proportion to their contribution to the impact.

If the EIR is going to consider an alternative that assigns responsibility on Central Valley Project (CVP) and/or State Water Project (SWP), all potential CVP and SWP facilities should contribute to the flow objective. Friant Reservoir and the San Luis Unit cannot be excluded from releasing water to meet this objective. As such, the analysis must include the release of water from San Luis and/or the Delta Mendota canal with or without recirculation. In addition, flows from Friant Reservoir must be considered.

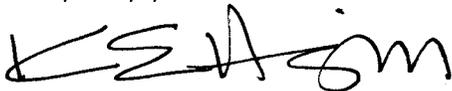
Additionally, in any alternative that includes a contribution from New Melones Reservoir it is important to note that releases from New Melones Reservoir must be limited to 1,250 cfs because of a court order issued when the original water rights were issued. The court found that non-flood control releases must be kept at 1,250 or less for the protection of the agricultural users along the Stanislaus River.

Evaluation and Implementation of Mitigation Measures

For each significant effect, the EIR must identify specific mitigation measures. Where several potential mitigation measures are available, each should be discussed separately; and the reasons for choosing one over the others should be stated. If the inclusion of such a measure would itself create new significant effects, these too must be discussed. (CEQA Guidelines, 15126, Subd. (c); *Stevens v. City of Glendale* (2d Dist. 21981) 125 Cal.App.3d 986, 995-996). In the past, the State Water Board has ignored providing effective mitigation measures.

We appreciate the opportunity to comment.

Very truly yours,



KARNA E. HARRIGFELD
Attorney-at-Law

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