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February 8, 2011

Kari Kyler  
State Water Resources Control Board  
P.O. Box 2000  
Sacramento, CA 95812-2000

*Re: Comments on review and potential modification to the San Joaquin River Flow and Southern Delta Salinity Objectives Included in the 2006 Bay-Delta Plan*

Dear Ms. Kyler:

On behalf of the San Francisco Public Utilities Commission (SFPUC), I submit the following comments on review and modification of San Joaquin River flow objectives (“the flow objectives”) included in the 2006 Bay-Delta Plan.

As noted in our December 3, 2010 comment letter on the draft Technical Report, the Board must consider additional information to establish the flow objectives, including factors in and beyond the Delta that affect fish and wildlife beneficial uses. Such factors include export pumping, predation, invasive species, the lack of wetlands and floodplains along the San Joaquin in the Southern Delta, hatchery practices, toxics, hydraulics, in-Delta pumping, channel dredging, ambient temperature, ocean conditions, Global warming, and sea level rise in light of the time period for the flow objectives. Consideration of such factors is necessary to appropriately determine the efficacy of unimpaired flow objectives in relation to other factors that currently affect water quality and fish and wildlife species in the highly-altered Delta environment.

While the Board has provided a draft technical report for a scientific basis for San Joaquin River flow objectives, it has yet to provide the public with a proposed program of implementation for San Joaquin River flow objectives. The October 29, 2010 draft Technical Report notes:

[f]or illustrative purposes 20, 40, and 60 percent of unimpaired flows from February through June (Figure 3-9) will be used in the following water supply impacts analysis to demonstrate the ability of the analysis to appropriately evaluate the water supply effects of these and other potential alternative SJR flow objectives. In addition to an existing conditions scenario, these illustrative alternatives represent the span of the likely range of alternatives the State Water Board will evaluate in the environmental document supporting any revised SJR flow objectives. (*Draft Technical Report*, page 67.)

In order to properly evaluate the environmental impacts of the proposed alternatives, the flow objectives must identify a source of flow and a proposed program of implementation.

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A water quality control plan must identify and include the beneficial uses of water to be protected, water quality objectives, and a program of implementation needed to achieve those objectives. Water Code § 13050(j). The program of implementation must include "a description of the nature of actions necessary to achieve the objectives and a time schedule for the actions to be taken," a time schedule for actions to be taken, and a description of surveillance to be undertaken to determine compliance with the objectives. Water Code § 13242; *see also, State Water Resources Control Board Cases* (2006) 136 Cal.App.4<sup>th</sup> 674, 726. To satisfy these requirements, the program of implementation must identify the potential sources of the water deemed necessary to meet the water quality objectives, and potential actions of entities that may be necessary to achieve the water quality objectives.

The program of implementation must identify the potential parties who may be required to take actions to achieve the objectives, and should describe the criteria and standards that will be employed in requiring and enforcing such actions. The Board should look to identify actions that will have the least impact on beneficial water uses. For example, water not used reasonably and beneficially could be prioritized as the first actions or sources of supply and thereafter actions by the most junior users. The program of implementation also should consider the statutorily established priority of beneficial uses when reducing water rights on the basis of priority. Economic analysis may be appropriate in the program of implementation to appropriately balance the costs and benefits of assigning a higher burden to one use or user over another. However, economic analysis cannot be performed in the absence of direction from the Board on a program of implementation that identifies potential sources of the water deemed necessary to meet the water quality objectives, and potential actions of entities that may be necessary to achieve the water quality objectives.

The program of implementation also should take into account the past and current activities and investments of individual water users to conserve and extend their water supplies. The program should give due consideration to conservation, reclamation, and other efficiency measures including proactive use of rationing. An additional factor that must be considered in the program of implementation is the practicality of implementing an unimpaired flow alternative. One biologist has jokingly suggested that the flow schedules should be based on the previous year's day-by-day record of unimpaired flow, but the comment goes to the need for operational rules that can be implemented with due consideration of water delivery operations, flood control constraints, repair and maintenance of infrastructure and facilities, etc. In addition, the program for implementation could potentially significantly impact the State's energy system and air resources.

In conclusion, it is necessary that the flow objectives indicate which water rights holders and water users may be required to bypass flow or otherwise make flow available to meet the flow objective. Senior water rights holders and municipal water users should not be expected to shoulder the burden for meeting flow objectives. In addition, the Board will have to grapple with the fact that downstream diverters may not be able to divert at all if the majority of the water bypassed through facilities could have been stored by senior upstream water right holders. Again, this goes to the practicality of implementing a seemingly simple concept in a complex water supply and regulatory environment.

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Very truly yours,

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*signed in original*

Donn W. Furman  
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cc: Steve Ritchie  
Ellen Levin

plus: encl.