

**COMMENTS OF THE
SAN FRANCISCO
PUBLIC UTILITIES COMMISSION
BEFORE THE STATE WATER RESOURCES CONTROL BOARD
February 23, 1995**

San Francisco is a signatory to the comments provided to the Board today by the Joint Agencies. In addition to those comments, however, San Francisco would like to submit the following brief comments to the Draft Water Quality Control Plan ("Plan") and the accompanying Draft Environmental Report ("DER") for the purposes of today's hearing. San Francisco will be submitting more detailed comments before the comment period closes on March 10, 1995.

The Principles for Agreement on Bay-Delta Standards Between the State of California and the Federal Government ("Principles for Agreement") represent a first important step toward resolving Delta problems. It embodies a concurrence of north and south, as well as urban, agricultural and environmental interests in the State of California. This consensus process should be a model for addressing other outstanding Delta issues such as allocation, long term policy issues of environmental protection and creation of a reliable water supply at a reasonable cost.

The Principles did not attempt to address all Bay-Delta related problems, however. Implementation, allocation of responsibility for meeting standards, and biological justification for measures to protect endangered species are all subjects that remain to be addressed. Future actions by the Board and other interested parties must be directed toward resolution of all of these issues.

A preliminary list of specific concerns of San Francisco are listed below:¹

1. While the Plan can, in theory, stand on its own for purposes of compliance with the Porter-Cologne Act over the next three years, as a practical matter, the Plan cannot be divorced from an implementation plan which includes non-project water users. Implementation of the Plan will require allocation of responsibility, perhaps beyond the state and federal projects, and other measures to address non-flow actions. The DER states that the environmental effects of the standards contained in the Plan are "largely speculative" and that an environmental document will be prepared in conjunction with an allocation plan. At that time, the Board will have to perform economic balancing and environmental analysis as required under the Porter-Cologne Act and other state laws. This balancing may ultimately require reconsideration of the standards themselves.
2. The DER does not appear to clearly identify the scope of actions under analysis. It is unclear whether the intended scope of the DER is an analysis of the three year Principles for Agreement or of a longer term plan. For example, page VII-4 of the DER indicates a modeling assumption that "if there is insufficient water in New Melones to meet all of the requirements, the model obtains additional water from the San Joaquin River upstream of the

¹ The DER at page I-11 states that it "functions as a part of the plan." Accordingly, it is necessary to address both elements together in these comments.

confluence with the Stanislaus River.” This creates at least two conflicts. First, there is no provision in the Principles for Agreement for calling on upstream water beyond that to be supplied by New Melones. Second, the Reasonable and Prudent Alternatives in the Biological Opinion for Delta smelt state that if there is insufficient water in New Melones to meet the requirements of the Biological Opinion, the standard may be relaxed.

3. The DER states that a cap on fresh water releases for salinity control in the San Joaquin River is “reasonable because salinity control over the long term is unlikely to be achieved exclusively through releases of high quality water from upstream reservoirs.” San Francisco concurs with this statement, and recommends that the Board take the measures advocated by the Joint Agencies to clarify that intention in relation to the South Delta agricultural objective and the San Joaquin River dissolved oxygen objective. (DER at VII-10).
4. The Board should not adopt the inference that biological justification exists linking San Joaquin River flows to Delta smelt abundance. To date, there is insufficient evidence to validate the reasonable and prudent alternatives contained in the Biological Opinion for Delta smelt, the effectiveness of transport flows, or the necessity of San Joaquin River flows when the Old River Barrier is installed. The San Joaquin standards are to be reviewed over the next three years to evaluate the scientific support for these measures. (DER at III-24).
5. In the section discussing the environmental effects of the preferred alternative, the discussion of San Joaquin River flows does not mention the Old River Barrier, to be installed during the fall period. (DER at VIII-22). Mention of the recent use of the Old River Barrier as a measure to improve survival of outmigrating smolts is also absent from the discussion of the status of chinook salmon on the San Joaquin River. (DER at V-80). This is contradictory to the recommendation by the Board and by the Principles for Agreement to install the barrier.
6. Overall, the DER has a tendency to presuppose broad based allocation of responsibility for meeting Delta requirements.

San Francisco looks forward to participating in the consensus process to reach a comprehensive solution for the Bay-Delta. However, that solution must respect water rights and state water law. It would not be appropriate or legally supportable to impose a solution that results in an uncompensated taking of water from one user simply to give it to another. There are mechanisms available to apportion responsibility in a manner consistent with applicable law. One example is specified in the August 25, 1994, CUWA “Recommendations to the SWRCB on Bay-Delta Standards” at pages 36-37.