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BEFORE THE STATE WATER RESOURCES CONTROL BOARD

CONSIDERATION OF AMENDED WATER QUALITY CONTROL PLAN FOR THE BAY-DELTA) SOUTH DELTA WATER AGENCY AND CENTRAL DELTA WATER AGENCY COMMENTS TO DRAFT WATER QUALITY CONTROL PLAN SEPTEMBER 2006

The South Delta Water Agency ("SDWA") and CENTRAL DELTA WATER AGENCY ("CDWA") submit the following comments to the Draft Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary ("Draft Plan").

The Draft Plan is the result of a review process begun in December of 2003 to determine if there is any basis for changing the 1995 Water Quality Control Plan. Certainly many things have transpired since the adoption of the 1995 Plan; however, the relevant questions pertain to whether there is any basis for changing the objectives previously set to protect identified beneficial uses.

As in the past, SDWA's concerns and comments relate to those objectives which affect South Delta agriculture; specifically the salinity objectives and the export limitations under the fish and wildlife objectives.

SALINITY OBJECTIVES

Appendix 1 to the Draft Plan gives a comprehensive overview of the various parties'

1 evidence and recommendations with regard to the Southern Delta salinity objectives. In addition,
2 it provides an accurate analysis of the evidence and testimony submitted, resulting in a
3 recommendation to not make any changes to those objectives. The SDWA fully supports the
4 Staff's recommendations.

5 As discussed in SDWA No. 9, page 15, et seq., the development of the current salinity
6 standards took many years. Literally thousands of man-hours were expended and almost every
7 interested party contributed to the effort. Existing studies and new studies were reviewed, and
8 the Board determined what was necessary to protect the agricultural beneficial uses in the
9 Southern Delta. Once developed (first in 1978) and later adopted, no party objected to these
10 standards or litigated their appropriateness.

11 After numerous false starts, the 1995 Plan sought to immediately implement the Vernalis
12 and Brandt Bridge objectives, and have the Middle River at Old River and Tracy Blvd. Bridge at
13 Old River standards implemented no later than December 31, 1997. Again, no party objected to
14 or litigated these standards or time lines.

15 D-1641 implemented the Vernalis Standard, but the other three were delayed until April
16 of 2005. Again, no party objected to or litigated either the standards or the time frame for
17 implementation.

18 Once 2005 approached, we suddenly heard a hoist of objections. Those objections
19 included: The objectives were not really enforceable against DWR and the Bureau; Salinity needs
20 more study; 0.7 EC was not needed; 1.0 EC or higher was sufficient; Reservoirs would have to
21 be drained to meet the objectives; It was too big a burden to meet these objectives. However, in
22 trying to support these objections, the parties failed to provide any real evidence.

23 DWR presented a report by Mr. John Letey which purported to show that 1.0 EC was
24 protective and thus 0.7 not needed. This evidence/testimony was subject to cross-examination at
25 the Cease and Desist Order hearing. In that cross-examination, we heard:

26 Q. By Mr. Nomellini: Mr. Letey, based on your
27 testimony, am I correct you are not offering any testimony with
28 regard to the impact of salinity in the water on agricultural
operations in the Delta?

1 A. My testimony is generic, not specific to any
2 location. (October 25, 2005 transcript, 167:11-17¹.)

3 Why could Mr. Letey's "study" not be relied upon to support change to the Southern
4 Delta standards? The explanations were given by SDWA's expert witness at the CDO Mr. Terry
5 Prichard who clarified three errors of Mr. Letey. (See CDO transcript, November 21, 2005, 4:6-
6 11; 5:2-12; 22:20-21; and 23:2-11.) First, Mr. Letey assumed a soil permeability associated with
7 a sandy soil whereas the South Delta has over 70 soil types including significant areas of very
8 low permeability. Second, Mr. Letey wrongly assumed different root zones will take in water at
9 different rates. It was clarified that pervious data and studies contradict this new assumption by
10 Mr. Letey.

11 Third, Mr. Letey looked at three possible rainfall scenarios in order to estimate the effect
12 of rainfall on soil leaching without considering the other and numerous variables associated with
13 actual effective rainfall. Again, Mr. Prichard clarified why Mr. Letey's approach did not yield
14 information relative to the situation in the South Delta.

15 Importantly, no party offered any evidence, testimony, or cross-examination to contradict
16 Mr. Prichard's analysis or refute his factual assertions.

17 The other evidence submitted to support changing the South Delta salinity standards was
18 submitted by San Joaquin River Group Authority ("SJRG"), and it was quite voluminous.
19 Tellingly, this evidence was also listed for submittal in the CDO hearing but when the time came,
20 SJRG chose to not submit it or provide its authors for cross-examination. Notwithstanding
21 this, SDWA addressed the SJRG's incorrect assumptions and concerns through its Exhibits 4,
22 5, 6, 7, 8, and 9A. Page 68 of Appendix 1 of the Draft Plan is Staff's brief summary of how
23 SDWA pointed out why some of the SJRG evidence was not supportive of changes to the
24 Southern Delta Salinity objectives. It is important to note that no witness and no evidence was
25 submitted to address the specifics of the situation which exists in the South Delta. That situation

26
27 ¹ The documents for the CDO hearing are found at
28 http://www.waterrights.ca.gov/Hearings/usbr_exhibits.html. SDWA submitted all of its document
in that proceeding as evidence in this review process.

1 is that with the numerous soil types, many of which have extremely low permeability, it is not
2 possible to adequately leach the salts out of the soil profile unless water with a quality of 0.7 EC
3 is available. Again, none of the contrary evidence submitted addressed this low permeability
4 issue as it relates to the ability to remove salts from the soils.

5 SDWA also put on other evidence supporting the current objectives. This evidence
6 included such things as how farming practices limit leaching opportunities (SDWA 7) and the
7 ongoing damage to crops which each year adversely impacts Delta farmers (CDO Testimony of
8 Bill Salmon designed SDWA-3 therein). In addition, SDWA put on extensive evidence at the
9 CDO showing the significant monetary impacts to San Joaquin County and the Delta resulting
10 from changes in the objectives (CDO Testimony of Sean Snaith, PhD, designated SDWA-6
11 therein). None of this was refuted.

12 Hence, we are left with only one conclusion at this time, the conclusion Staff reached
13 which is, “[T]he State Water Board does not have adequate evidence on which to base
14 substantive changes to the Southern Delta EC (salinity) objectives for the protection of
15 agricultural beneficial uses at this time.” (See Appendix 1, page 70.)

16 SDWA also supports staff’s clarification set forth on page 9 of the draft Plan. That
17 clarification notes that although we have three distinct compliance locations in the Southern
18 Delta, the 0.7/1.0 EC standard applies generally throughout the area. Though helpful, it should
19 go without saying that good water quality is needed throughout the South Delta, not just at
20 certain points.

21 EXPORT LIMITS

22 Table 3 of the Draft Plan sets forth certain water quality objectives for fish and wildlife
23 beneficial uses, and includes “export limits” as one of the measures necessary for protecting
24 those beneficial uses.

25 Footnote 18 of that Table sets a limit on exports during the April 15 - May 15 pulse flow
26 period. That pulse flow is to assist out migrating smolts in their journey to the ocean and is
27 intended to assist them in moving past the effects of the export pumps. Footnote 18's limits on
28 exports during this period are 1,500 CFS or 100 percent of the San Joaquin River flow at

1 Vernalis.

2 First with regard to this, SDWA submits that the purpose of the pulse flow is frustrated if
3 the export projects can export all of the Vernalis pulse flow. That is to say, if all of the flow can
4 be exported, there is no pulse to move the smolts past the export pumps.

5 Second, the footnote also provides that variations in the maximum export rate are
6 authorized and that this "flexibility is intended to result in no net water supply cost annually
7 within the limits of the water quality and operational requirements of this plan."

8 An "intent" to protect net exports may or may not be desirable, but it has nothing to do
9 with protecting fish and wildlife beneficial uses. Not being able to export at times when fisheries
10 can be harmed protects fish, but being allowed additional exports at other times does not address
11 the protection of fisheries. Similarly, the current Biological Opinion for Delta smelt limits
12 exports at this time anyway. SDWA is aware of nothing in the Record which suggests that
13 allowing additional exports during a time when a Biological Opinion precludes them would
14 somehow protect fish and wildlife beneficial uses. There is no reason to allow exports in excess
15 of what current regulations specify as the upper limits of what is necessary to protect those
16 fisheries.

17 The subject footnote should set a limitation on exports which allows for the specific pulse
18 flows of the plan to provide their benefits by transporting out migrating smolts past the pumps
19 and the "no net loss" provision should be removed.

20 OTHER


21 As previously provided, SDWA believes that the 0.7 EC standard should be expanded to
22 include other months. We hope that the upcoming workshops beginning in January will examine
23 this issue as well as the other issues specifically described.

24 Also as previously stated, SDWA believes that the protection of agricultural beneficial
25 uses requires minimum flows into the Delta and minimum water levels. The flows are necessary
26 for numerous reasons, such as having sufficient flow for the temporary and permanent barriers to
27 operate and perform efficiently and to provide necessary water levels in those areas no longer
28 affected by the Delta tides.

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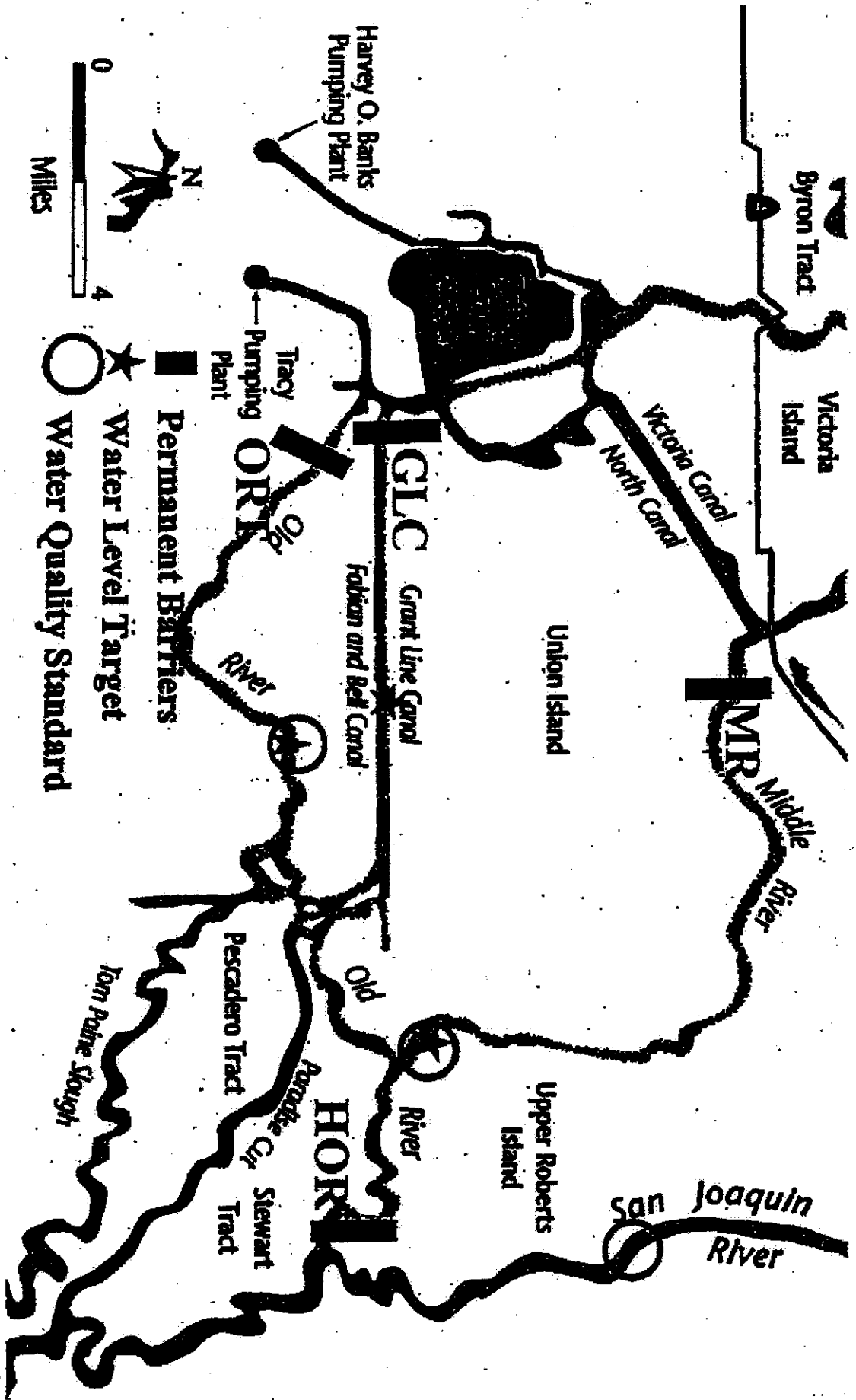
Levels are necessary to allow senior water right holders and parties protected by the Delta Protection and Area of Origin Acts the ability to exercise their rights. Without such minimum levels, portions of the Delta may have only a small flow of good quality but insufficient for agricultural or other uses. For example, at the times when Middle River goes dry in most years, that channel provides not only no water for local agricultural diverters, but also no protection for fish and wildlife beneficial uses. We hope the Board will promptly address these issues.




Dated: November 6, 2006



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SDWA\Comments\SDWQCP



-  Permanent Barriers
-  Water Level Target
-  Water Quality Standard