



Consisting of 240,000 acres on the Westside of the San Joaquin Valley

January 2, 2004

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VIA FACSIMILE & MAIL – 8 PAGES
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RE: *Review of the 1995 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary*

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**COLUMBIA CANAL
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Dear Mr. Kapahi:

The watershed approach to achieving and maintaining water quality is “a coordinating framework for management that focuses public and private sector efforts to address the highest priority water-related problems within geographic areas, considering both surface and ground water flow.” (U.S. EPA Nonpoint Source Guidelines, 68 Fed. Reg. 205).

These are the comments of the San Joaquin River Exchange Contractors Water Authority and its members Central California Irrigation District, San Luis Canal Company, Firebaugh Canal Water District, and Columbia Canal Company (Exchange Contractors) regarding the State Water Resource Control Board's review of the 1995 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

I. INTRODUCTION.

In developing or reviewing a plan for improving water quality in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, the SWRCB should be guided by broad policy considerations. These policy considerations should not be forgotten when developing and implementing individual water quality control programs such as total maximum daily loads for target constituents to protect beneficial uses.

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Mr. Gita Kapahi

RE: *Review of the 1995 Water Quality Control Plan for the San Francisco Bay/Sacramento – San Joaquin Delta Estuary*

January 2, 2004

Page 2

Two examples of broad policy considerations that we believe should be revisited and re-emphasized in this review are (i) regional economic impacts and (ii) historic water rights. In order to develop a logical plan that benefits the people of the state, regional economics must be considered. If a water quality control program disrupts the economy of an entire region the general public will not support the effort and it is doomed to failure as a cooperative program. As a non-cooperative program, it will require extensive regulatory administrative civil liability procedures to mandate compliance.

Similarly, a water quality control plan that does not respect the water rights priority system will, by necessity, be challenged by water rights holders, and such a plan will, in our view, be ineffective. The SWRCB should consider these overarching policies in all phases of its review of the 1995 WQCP in order for the resulting water quality improvement program to be in the public interest.

A specific example where these broad policy considerations may conflict with a specific water quality control effort is in the process of developing and implementing water quality objectives for the San Joaquin River. Over sixty years ago, the federal and state governments made the decision to build the Central Valley Project (CVP). One of the key components of the CVP was Friant Dam. Friant Dam provided a firm water supply that allowed an entire region of the state to prosper. Friant water and the water imported by the Delta Mendota Canal (DMC) are the backbone of the economy of the San Joaquin Valley. Families, businesses and communities have been built based on this joint federal-state policy decision. California and the federal government must acknowledge their prior decisions and accept that the entire San Joaquin Valley has relied upon those decisions. This reliance must not be forgotten when the SWRCB develops and implements a water quality control plan for the Bay/Delta Estuary and water quality objectives for the San Joaquin River. Please recall that the SWRCB in 1959 rendered Decision 935 in which it specifically balanced the needed water supply for the Friant Division of the CVP and approved the Bureau of Reclamation permit that resulted in the exchange of water by which the Exchange Contractors received their water by the DMC in lieu of their San Joaquin River water right water. Given this approval, the SWRCB should also recognize that the Bay/Delta Estuary water quality was, and remains, affected by the removal of this large increment of San Joaquin River mainstem water flow.

One specific decision that must take into account these prior decisions is the establishment of water quality standards and objectives to protect agricultural beneficial uses in the Delta region and the Westside of the San Joaquin Valley. The decision to build the CVP has effectively limited achievable water quality for certain segments of the San Joaquin River. Segments of the river that are most clearly impacted by these prior decisions are those segments that are dry or nearly dry as a result of the CVP and SWRCB's Decision 935. California and the United States

Mr. Gita Kapahi

RE: *Review of the 1995 Water Quality Control Plan for the San Francisco Bay/Sacramento – San Joaquin Delta Estuary*

January 2, 2004

Page 3

understood that certain segments of the river would be dry after the completion of the CVP. They also understood that water flowing into other sections of the river would be limited to seepage and return flow water. The decision to build Friant Dam, and the region's reliance on that decision must be considered when establishing water quality standards and objectives to protect agricultural and other beneficial uses. Ignoring prior decisions when addressing current societal concerns will result in illogical and inequitable policies.

The SWRCB, the San Joaquin River stakeholders, and society as a whole must look at the larger issues when attempting to improve Bay/Delta Estuary water quality. If we acknowledge these broad policy considerations and the impacts on achievable water quality by our previous decisions, we can improve water quality and protect appropriate beneficial uses in a logical and effective manner. Society's decision to impose manmade hydromodifications upon the San Joaquin River, and the entire region's reliance on that decision cannot be ignored.

Additionally, historic water rights must be respected in order to recognize, and protect the property rights represented by, California's system of water rights. If we do not acknowledge these broad policy considerations, we will not be able to develop a plan that is in the public interest.

With this background and hopefully agreed underpinning, there are two specific areas where we believe that the 1995 Bay Delta Estuary Water Quality Control Plan should be reviewed and modifications made:

II. COORDINATING THE 1995 BAY DELTA PLAN TRIENNIAL REVIEW WITH THE NECESSITY OF DRAINAGE MEASURES IN THE SAN JOAQUIN RIVER WATERSHED.

Salinity entering the Bay Delta Estuary through the San Joaquin River whether expressed in terms of exceeding the Vernalis salinity standards or in terms of TMDL for salt and boron or in terms of selenium loads or concentrations at locations entering the San Joaquin River or its tributaries are a result of an incomplete water resources development plan. The SWRCB recognized this in Decision 1641 when, after finding that the regional water quality problems on the Westside of the San Joaquin Valley were caused by the Bureau of Reclamation's operation of the Central Valley Project, it required the Bureau to develop and submit its plan to provide for drainage as a condition of its water right permits. The Central California Irrigation District and Firebaugh Canal Water District along with other interested parties caused the 9th Circuit Court of Appeals to recognize this breach of the Bureau's obligation to provide drainage as required by the San Luis Act in Firebaugh v. United States (2000) 203 F.3d 568 when the Court stated that the United States must move forward to choose and implement a drainage solution. It does no

Mr. Gita Kapahi

RE: *Review of the 1995 Water Quality Control Plan for the San Francisco Bay/Sacramento – San Joaquin Delta Estuary*

January 2, 2004

Page 4

good to set quality standards or basin plan objectives without recognizing that only completion of the water resources development plan will improve water quality.

The historical objections to the drainage system contemplated by the San Luis Act are well known. The cost and ability of agriculture to pay for such a system lies at the heart of the delay in its implementation. However, the Bureau has throughout the Western States applied the concept of ability to pay to water pricing and recovery of costs. Water customers who are required to bear the costs of drainage would, to the extent those charges exceeded their ability to pay, be entitled to reductions in the amounts of Restoration Fees payable under the 1992 CVP Improvement Act and reductions in the capital repayment component of their water charges. In fact, providing drainage improvements advances the Restoration Fund purposes. Such amounts would permit implementation of drainage measures that would control and manage salt loads entering the Bay Delta Estuary through the San Joaquin River.

The 1995 Water Quality Plan review should demand that the administration of the Department of Interior present its plan for financing and implementing its drainage plan. The oft given explanation that alternatives are under review and subject to a NEPA examination is not adequate after 40 years of delay. The Department of Interior should be asked by the SWRCB as part of this Triennial Review, coordinated with the water rights authority of the SWRCB in a proceeding discussed hereafter, to implement, as part of the Water Quality Control Plan, reductions in its charges to water customers within the San Luis Unit who advance and pay the costs directly of a comprehensive drainage management system, and the plan should recognize that until an export system is constructed, the San Joaquin River will be serving as a means of exportation of salt, boron and selenium which will flow into the Southern Delta.

The 1995 Water Quality Control Plan contemplated that New Melones water releases could compensate for increasing amounts of salts being discharged into the San Joaquin River. Obviously, the importation of salts from the Delta, the lack of a drainage system for the San Luis Unit lands and the piecemeal decision making all evidence that new physical works are required, and wishful references to management by agricultural users will not remedy the detriment being caused. The Exchange Contractors lands lying downslope of the San Luis Unit are seeing migration of poor quality water through the shallow underground, and are seeing elevated groundwater pressures from upslope irrigation pushing salts, boron and selenium into field drains which flow to the San Joaquin River. The concept of dischargers managing drainage in order to meet the 1995 WQCP objectives simply does not work when the cause of the salinity is a lack of a drainage system to serve the upslope lands and the increasingly impacted historically irrigated lands, and no monies are provided to implement the physical measures that can provide improvements in water quality.

Mr. Gita Kapahi

RE: *Review of the 1995 Water Quality Control Plan for the San Francisco Bay/Sacramento – San Joaquin Delta Estuary*

January 2, 2004

Page 5

The San Joaquin River Exchange Contractors and other interested San Luis Unit Bureau Contractors have developed a plan that can manage drainage conditions and provide for treatment of and physical removal of salts from a portion of the water entering the San Joaquin River and South Delta. The cost is estimated at \$128 million, and implementation over 8 years with eventual treatment at a cost of approximately \$700 per acre foot of concentrated drainage flows. Hopefully the treated water would have a market value to offset a portion of these treatment costs. One can only ask how a 1995 Water Quality Control Plan review can be realistic and useful unless it examines implementing measures such as these in light of the failure of the Bureau to provide for a comprehensive drainage project. Moreover, dealing with and achieving and maintaining water quality is, according to U.S. EPA “a coordinating framework for management that focuses public and private sector efforts to address the highest priority water-related problems within geographic areas, considering both surface and ground water flow.” (USEPA Non-Point Source Guidelines, 68 Fed. Reg. 205). Only a regional plan such as that developed by the Exchange Contractors can hope to achieve improved water quality conditions in the San Joaquin River watershed and the Bay-Delta Estuary.

Since the Department of Interior and Office of Management and Budget (OMB) are making little progress in complying with your Decision 1641 order, this Triennial Review should be combined with a formal demand that the Department of Interior and OMB (Washington, D.C.) appear at a hearing and present their drainage and funding plan and stage of development for SWRCB approval or disapproval under both the Triennial Review process and the Decision 1641 implementation process.

III. COORDINATING OF THE REGIONAL BOARD TMDL PROGRAM FOR THE SAN JOAQUIN RIVER WITH THE BAY DELTA ESTUARY TRIENNIAL REVIEW PROCESS IS ESSENTIAL.

The idea of a Water Quality Control Plan for the Bay Delta Estuary, the idea of a TMDL to limit loads of salt, boron and selenium contributed to the San Joaquin River and the concept of a Regional Board review of the Water Quality Control Plan for the San Joaquin River piecemeal the thinking process and dilute the human ability to address the very real problems. This piecemeal process detracts from the regulating agencies’ ability to develop a regional plan that will actually achieve water quality improvements. And, as set forth above, ignoring the watershed approach to achieving and maintaining water quality is to ignore the most recent pronouncement of the U.S.EPA on the subject of eliminating nonpoint source pollution. The SWRCB should through its Triennial Review Process try to bring these administrative procedures together to recognize that regulation and management pursuant to a Plan will do little. The solution lies in requiring physical works and facilities to be installed and not in treating the helpless agricultural interests as dischargers.

Mr. Gita Kapahi

RE: *Review of the 1995 Water Quality Control Plan for the San Francisco Bay/Sacramento – San Joaquin Delta Estuary*

January 2, 2004

Page 6

The Exchange Contractors, consisting of Central California Irrigation District, San Luis Canal Company, Firebaugh Canal Water District and Columbia Canal Company, irrigate approximately 240,000 acres on the west side of the San Joaquin Valley between Mendota in the south and Crows Landing in the north. They have a pre-1914 right to divert water from the San Joaquin River.

The United States, in 1939, purchased water from the Exchange Contractors' predecessors, Miller and Lux. Also in 1939, the Exchange Contractors' predecessors and the United States entered into the first Exchange Contract with the Bureau of Reclamation. Under the Exchange Contract, they agreed not to exercise their pre-1914 water right to divert water from the San Joaquin River so long as the Bureau provides them their water – approximately 840,000 acre feet a year – from the Sacramento River watershed delivered by the Central Valley Project's Delta pumps through the Delta Mendota Canal (DMC) instead of from the San Joaquin River.

Since 1951, the Exchange Contractors have been receiving their water from the DMC rather than from the San Joaquin River. Under the Exchange Contract with the Bureau, the Exchange Contractors agree not to exercise their pre-1914 water rights so long as the Bureau provides them substitute water delivered by the CVP's Delta pumps through the DMC. The DMC water has a much higher salt content than San Joaquin River water by several orders of magnitude.

For example, San Joaquin River water above Friant Dam is generally thought to have a quality of 25 to 50 parts Total Dissolved Solids (TDS). Compare the substitute water delivered to the Exchange Contractors which has the following water quality parameters set forth in the Exchange Contract:

800 TDS	Mean daily water quality
600 TDS	Mean monthly water quality
490 TDS	Mean annual water quality
450 TDS	Five-year average water quality.

Compare the quality of this delivered water with the Vernalis water quality standard –

462 TDS	April through August
654 TDS	September through March

-- and it is easy to see how the Exchange Contractors cannot possibly meet the water quality standards contemplated by the salt and boron TMDL being considered by the Regional Board.

Mr. Gita Kapahi

RE: *Review of the 1995 Water Quality Control Plan for the San Francisco Bay/Sacramento – San Joaquin Delta Estuary*

January 2, 2004

Page 7

The Exchange Contractors have worked in administrative and in judicial forums since the early 1960's to try to get the government to deal with the water quality problems that were caused by the introduction of more than 1 million acre feet of additional water to the Westside region in the mid 1960's with the development of the San Luis Unit of the Central Valley Project. Moreover, bear in mind that had the San Luis Unit not been added, water quality objectives of the existing WQCP could have been met. The San Luis Act requires construction of a drain to remove salt from the valley.

As described above, two of the Exchange Contractors members, CCID and Firebaugh, have been involved in litigation against the Department of Interior and Bureau of Reclamation since 1988.

The SWRCB and the Regional Board are to be commended for recognizing that the Bureau's CVP operations are the reason for the severe water quality problems that plague the Westside and the lower San Joaquin River, and, in the Regional Board staff's recent draft salt and boron TMDL, recognizing the fundamental unfairness of holding the Exchange Contractors responsible for meeting all salt discharge loads without some relaxation due to the hydromodifications that have been made to the San Joaquin River in connection with the development of the CVP, and the poorer quality of the water delivered to the Exchange Contractors through the DMC.

The Regional Board proposes to give the Exchange Contractors approximately a 50% salt load relaxation, and while we understand that number is an arbitrary figure, we appreciate the accommodation. However, the 50% relaxation is based upon the Bureau agreeing to enter into the Management Agency Agreement proposed in this TMDL, and that may be a problem because the Bureau may refuse to do so.

In Decision 1641, the SWRCB found that the Bureau's actions have caused reduced water quality of the San Joaquin River at Vernalis. The SWRCB, therefore, amended the CVP permits under which the Bureau delivers water to the San Joaquin basin to require that the Bureau meet the 1995 Bay Delta Plan salinity objectives at Vernalis.

Due to Washington, D.C.'s demonstrated recalcitrance in accepting responsibility for dealing with the Westside water quality problems that its CVP operations have caused, we suggest that the Management Agency Agreement proposed with the Bureau be tied to the same schedule as the SWRCB imposed upon the Bureau in D-1641 and the Triennial Review Process bring this process together.

D-1641, dated December 29, 1999, requires the Bureau to meet the water quality objectives for agricultural beneficial uses at Vernalis within 5 years – by December 29, 2004, and if it is unable to do so, the Bureau is required to report to the Executive Director of the SWRCB all actions

Mr. Gita Kapahi

RE: *Review of the 1995 Water Quality Control Plan for the San Francisco Bay/Sacramento –
San Joaquin Delta Estuary*

January 2, 2004

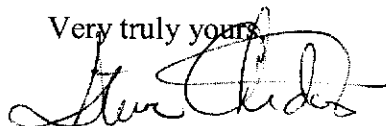
Page 8

taken in attempting to meet the objectives, including out-of-valley alternatives to deal with the Westside drainage problems.

The SWRCB should utilize the Triennial Review Process to coordinate requiring that the Department of Interior agree to enter into the salt/boron TMDL Management Agency Agreement not later than December 29, 2004, the same date as the date of the Department of Interior's required report to the SWRCB. If the Department of Interior has not agreed to the Management Agency Agreement by that date, the Exchange Contractors believe that the 1995 Plan update should include a SWRCB action imposing the condition to meet the salt and boron TMDL on to the Bureau's water right permits and licenses. Only then is the Management Agreement likely to have sufficient leverage to compel the Department of Interior to deal with the Westside and San Joaquin River water quality impacts that its CVP operations have caused, and OMB to cease blocking funding of the physical facilities required.

The Exchange Contractors look forward to working with the SWRCB and its staff to develop a logical and meaningful water quality improvement program for the Bay/Delta Estuary and San Joaquin River.

Very truly yours,



Steve Chedester,
Executive Director

cc: San Joaquin River Exchange Contractors Water Authority Board Members