

# FRIANT WATER AUTHORITY

March 28, 2013



**Harvey A. Bailey**  
*Chairman of the Board*

**Nick Canata**  
*Vice Chairman*

**Tom Runyon**  
*Secretary/Treasurer*

**Ronald D. Jacobsma**  
*General Manager*

**Jennifer T. Buckman**  
*General Counsel*

**Jeanine Townsend**  
Clerk to the Board  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95814-0100

**VIA EMAIL TO: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)**

**Re: Comment Letter – Bay-Delta Plan SED**

Dear Ms. Townsend:

**Member Agencies**  
*Arvin-Edison W.S.D.*  
*Delano-Earlimart I.D.*  
*Exeter I.D.*  
*Fresno I.D.*  
*Ivanhoe I.D.*  
*Kaweah Delta W.C.D.*  
*Kern-Tulare W.D.*  
*Lindmore I.D.*  
*Lindsay-Strathmore I.D.*  
*Lower Tule River I.D.*  
*Madera I.D.*  
*Orange Cove I.D.*  
*Pixley I.D.*  
*Porterville I.D.*  
*Saucelito I.D.*  
*Shafter-Wasco I.D.*  
*Stone Corral I.D.*  
*Tea Pot Dome W.D.*  
*Terra Bella I.D.*  
*Tulare I.D.*

Friant Water Authority ("Friant") is a joint powers authority which consists of twenty member water, water conservation, irrigation and water storage districts that receive water from the Friant Division of the Central Valley Project. The Friant Division serves water to approximately 1.3 million acres and supplies more than 15,000 mostly small family farms on the east side of the southern San Joaquin Valley in Merced, Madera, Fresno, Kings, Tulare and Kern counties. Friant Division water supplies are also relied upon by several cities and towns, including the City of Fresno, as a major portion of their municipal and industrial water supplies. Friant thanks you for the opportunity to review the draft Substitute Environmental Document (SED) that the State Water Resources Control Board (SWRCB) has prepared for the proposed update to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan), and we offer the following comments.

Friant and many of its members are parties to the San Joaquin River Settlement Agreement ("Settlement"), the implementation of which was ordered by the federal court in 2006 and which has the effect of establishing the flow regime for the San Joaquin River from Friant Dam to the confluence of the Merced River. To implement these flows, federal legislation was required; the authorizing act, the San Joaquin River Restoration Settlement Act, was passed by Congress in 2009.

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The Settlement is based on two equal goals:

1. A restored river with continuous flows to the confluence of the Merced River and naturally reproducing populations of Chinook salmon.
2. A water management program to minimize or avoid water supply impacts to Friant Division water users.

While the State of California was not a party to the Settlement, several state agencies and departments, including the California Environmental Protection Agency, signed a Memorandum of Understanding under which they agreed to support the implementation of the Settlement. In the MOU, the State acknowledged the public benefits of restoring the San Joaquin River, emphasizing that restoration in compliance with the Settlement will provide broad benefits to the environment.

Prior to the implementation of the Settlement, salmon had not been present in the San Joaquin River above the mouth of the Merced River for more than 60 years. The water operations approved by the SWRCB in D-935 have resulted in about 60 miles of the river downstream of Friant Dam dry in many years and the extirpation of salmon. Implementation of the Settlement changed this reality by establishing the restoration flow regime. These flows, which are specified under the Settlement and were approved by Congress, were specifically designed by Dr. Peter Moyle and Dr. Mathias Kondolf to re-establish spring-run Chinook salmon on the upper San Joaquin River above its confluence with the Merced. As the SWRCB is well aware, implementation of the Settlement is underway, Interim Flows are being released, a conservation hatchery is being established, and projects are being undertaken to eliminate passage barriers and other hazards so that the river will be ready to receive salmon when they are reintroduced. Under the Settlement, the success of the restoration flow regime may not be re-examined until 2025.

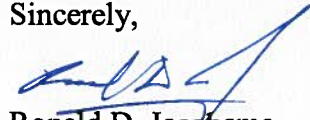
The changes to the Bay-Delta Plan that the SWRCB now proposes include revised San Joaquin River Flow Objectives for the Protection of Fish and Wildlife Beneficial Uses. Specifically, the SWRCB proposes to establish new flow objectives on the Lower San Joaquin River (below its confluence with the Merced River) and its three eastside tributaries for the protection of salmon runs on these rivers. At the workshops that the SWRCB has held on the Bay-Delta Plan update over the past few months, some commenters have expressed confusion as to why the proposed new flow objectives are limited to the Lower San Joaquin; these commenters appear unfamiliar with the requirements of the Settlement set forth above. We appreciate SWRCB staff's comments that it is not appropriate to adopt water quality objectives for the protection of salmon on the San Joaquin River above its confluence with the Merced when this reach has no salmon run and continues to have impassable barriers that block fish migration. We would be happy to provide materials to help commenters better understand the situation on the Upper San Joaquin River and the nature and status of the Settlement, should you wish.

In addition, your notice of the public comment period, dated December 31, 2012 contains a statement that appears to be in conflict with your obligations under CEQA as the lead agency. Your notice provides "submittals that do not have a timely date and time stamp will be considered late and may not be accepted for inclusion in the record of this proceeding."

Please be advised that Public Resources Code section 21167.6(e)(7) requires that a lead agency's record of proceedings includes "all written evidence or correspondence submitted to, or transferred from, the respondent public agency with respect to compliance with this division or with respect to the project." Even if comments are received after the comment period closes, we are not aware of any legal basis for the SWRCB to exclude those comments from the record of proceedings. In fact, we believe CEQA compels SWRCB to include all comments, even late submittals, in the administrative record. The statement to the contrary in your notice is troubling to us because it may be misleading to lay readers not familiar with CEQA's dictates.

Thank you for your consideration of these comments. Please feel free to contact me at (559) 562-6305 should you have any questions about our remarks.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ronald D. Jacobsma", with a stylized flourish extending upwards and to the right.

Ronald D. Jacobsma  
General Manager

cc: Jennifer T. Buckman, General Counsel