

COMMITTEE AGENDA ITEM:	"B" for 11 January 2011
ACTION NEEDED:	<i>Consider Whether the Draft Responses to the Legal Questions Posed by the LSJR Committee are Adequate for Transmission to the State Water Board Legal Counsel</i>
BACKGROUND:	<p>The LSJR Committee will encounter several legal challenges as it attempts to develop a Basin Plan Amendment for salinity and boron. The Committee identified several initial questions (Attachment 1) and sent three of these to the State Water Board legal counsel for answers. Many of the others however pose policy considerations and it was agreed that the Committee would develop draft answers for the State Water Board consideration.</p> <p>Roberta Larson and Adam Link along with Tess Dunham have drafted answers to the initial questions the Committee members have identified (Attachment 2). Once we are comfortable with the draft answers, we would forward them to the State Water Board for confirmation.</p> <p>A draft of the answers to seven of the legal questions is attached for your consideration.</p>
ISSUES:	<p>Is the LSJR Committee comfortable with the draft answers?</p> <p>Is there another way to pose the question or the response?</p> <p>Do the draft answers pose policy dilemmas for the LSJR Committee?</p> <p>Are the draft answers complete?</p> <p>Does this request for answers need to be coordinated with the Executive Committee of CV-SALTS?</p> <p>How do the LSJR Committee members want to proceed?</p>

**Legal Questions to Submit to Water Board Attorneys
September 2010**

1. Staff of the Central Valley Water Board held a CEQA scoping session in March 2009, with a project description to develop salinity objectives in the lower San Joaquin River from the Merced River to Vernalis.
 - a. If the project remains the same, does the May 2009 scoping session conducted by staff of the CVRWQCB satisfy the CEQA scoping requirements for a Basin Plan Amendment?
 - b. What occurrence or event would require a new CEQA scoping session?
2. In May 2005, staff of the Central Valley Water Board held a CEQA scoping session to develop salinity objectives in a larger reach of the lower San Joaquin River from Mendota Pool to Vernalis.
 - a. If the current project encompasses the section of river from Mendota Pool to Vernalis, will the May 2005 scoping session conducted by staff of the CVRWQCB satisfy the CEQA scoping requirements for a Basin Plan Amendment?
3. Under Resolution # 2009-0009, the SWRCB approved CAA funding for the development of water quality objectives in the Lower San Joaquin River (LSJR) for salinity. In the Resolution, the LSJR was defined as the reach from the Merced River confluence to Vernalis. The Sacramento/San Joaquin River Basins Plan however defines the Lower San Joaquin River Watershed as the area draining to the river between the Mendota Dam and Vernalis. Can the Lower San Joaquin River Committee expend CAA funds to study upstream of the reach defined in Resolution #2009-0009 (expand upstream of the Merced River to the Mendota Dam) in order to be consistent with the definition for the Lower San Joaquin River Watershed in the Basin Plan?
4. Under the State Board Sources of Drinking Water Policy, can "Potential" MUN use be removed and if so, what would be required to make such a demonstration?
5. Under the State Board Sources of Drinking Water Policy, is it possible to change a Potential MUN use to a "Limited" MUN use and if so, what would be required?
6. Is there a legal or policy definition of the term "Potential" in the designation of a beneficial use in the Basin Plan?
7. Is a Use Attainability Analysis required if the use has not been specifically designated in the Basin Plan for the water body in question?
8. Is a Use Attainability Analysis as described in the Clean Water Act regulations required if the use under consideration for change has been designated though the State Board Sources of Drinking Water Policy Resolution.
9. Can there be a seasonal requirement related to protecting the "Potential" beneficial use of cold water spawning?

ATTACHMENT 1

10. If a beneficial use is designated as a "Potential Use", does that designation apply to upstream tributaries?

ATTACHMENT 2

SEE THE ATTACHED FILE NAMED: 11-9-10 Draft of Legal Responses.pdf