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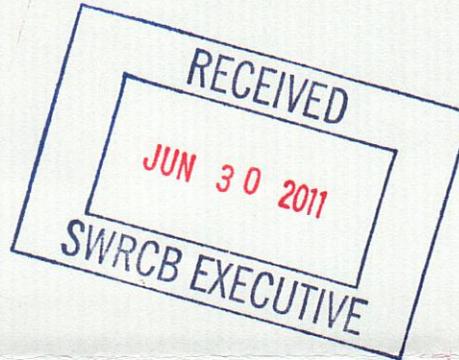
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SENT VIA ELECTRONIC TRANSMISSION/FIRST-CLASS MAIL

June 27, 2011



Charlie Hoppin
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State Water Resources Control Board
1001 I Street
PO Box 2815
Sacramento, CA 95812-2815

Re: SWRCB's Jurisdiction in the Bay-Delta Proceedings

Dear Members of the Board:

The San Joaquin River Group Authority ("SJRG") has repeatedly informed the State Water Resources Control Board ("SWRCB") that it was proposing to take actions outside of its jurisdiction in the above-referenced proceedings by proposing actions which would likely implicate the pre-1914 appropriative water rights of affected parties. (See, e.g., May 23, 2011 comments by SJTA, p. 12; February 22, 2011 unsolicited comment letter of SJRG requesting disclosure of legal theory, p. 2-3). Moreover, the SJRG has repeatedly advised the SWRCB that it must comply with the water right priority system in any plan of implementation. (See, e.g., SJRG's December 6, 2010 comment letter regarding Draft Technical Report, p. 19-22; February 22, 2011 unsolicited comment letter of SJRG requesting disclosure of legal theory, p.1-2; May 23, 2011 comments by SJTA, p. 7-10). The most recent notice continues to ignore these points.

It now appears that the SED is being prepared solely on the basis of percentage of natural flow, without regard to the nature or priority of the water rights affected, and will therefore be the subject of immediate litigation. Such errors are inexplicable in light of well-established precedent that has been recently relied upon by the San Joaquin County Superior Court in rejecting efforts by the SWRCB to act in excess of its jurisdictional authority.

In Young v. SWRCB, a case involving the scope of the SWRCB's authority to investigate claimed riparian and/or pre-1914 appropriative water rights, the San Joaquin County Superior Court determined that:

"The Court finds in Petitioner's favor- i.e., that the State Board lacked jurisdiction to determine the extent of riparian and pre-1914 appropriative water rights

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through the use of its limited cease and desist order authority pursuant to Water Code §1931.” (May 31, 2011 Statement of Decision, issued by the Honorable Lesley D. Holland, p. 7 [San Joaquin County Superior Court Case No. 39-2011-00259191-CU-WM-STK]).

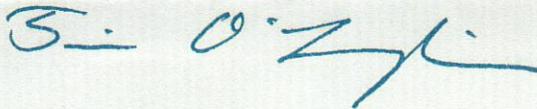
As the SJRGA has continually pointed out, the SWRCB does not have jurisdiction over pre-1914 appropriative water rights for any reason, including the implementation of water quality objectives adopted pursuant to the SWRCB’s authority under Porter-Cologne. Given the prevalence of pre-1914 appropriative rights held in the San Joaquin River Basin, and the scope of the percentage of natural flow that the SWRCB is considering, it is almost certain that there will be times and conditions where the SWRCB will not be able to implement a percentage of natural flow. It is arbitrary and capricious for the SWRCB to continue to consider a percentage of natural flow as one of its objectives without knowing how often, if ever, it will be able to require such percentage be met.

On this last point, SWRCB staff members continue to misspeak. The current process is being conducted under the authority granted the SWRCB under Porter-Cologne, not under the public trust. While public trust resources will be weighed and balanced in this proceeding, as will all beneficial uses, the public trust is not the basis for the SWRCB’s authority to implement its new objectives. As such, the SWRCB will not be able to expand its authority to include pre-1914 appropriative rights (or avoid compliance with the water right priority system) by relying on the public trust doctrine.

The legislature recently recognized this very issue of the SWRCB’s limited jurisdiction when it passed Water Code section 85087. Water Code section 85087 specifically recognizes the limited nature of the SWRCB’s authority. It only authorizes the Board to (1) complete a schedule and estimate of costs; (2) to be submitted by 2012; and (3) to be submitted by 2018 for all streams outside the Sacramento Valley, to complete instream flow studies. It does not give the Board authority to institute public trust proceedings.

Very truly yours,

O’LAUGHLIN & PARIS LLP



TIM O’LAUGHLIN

TO/tb

cc: Thomas Howard
SJRGA