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October 28, 2005

Chairperson Tam Doduc
State Water Resources Control Board
1001 I St.
PO Box 100
Sacramento, CA 95812

Re: Comments on the Central Valley Regional Water Quality Control Board Basin Plan Amendments for the Dissolved Oxygen in the Stockton Deep Water Ship Channel.

Dear Chairperson Doduc:

In the State Water Resources Control Board ("SWRCB") meeting on October 20, 2005, the San Joaquin River Group Authority ("SJRG") raised serious concerns with the Central Valley Regional Water Quality Control Board's ("CVRWQCB's") proposed Basin Plan Amendments for the Control Program for Factors Contributing to the Dissolved Oxygen Impairment of the Stockton Deep Water Ship Channel ("DO TMDL").

The DO TMDL and Salt & Boron TMDL are Incompatible

The DO TMDL and CVRWQCB Basin Plan Amendments for the Control Salt and Boron in the San Joaquin River Salt & Boron ("Salt & Boron TMDL") impose conflicting legal obligations on water right holders. Furthermore, each frustrates the other in improving Delta water quality.

The DO TMDL recognizes that

The impact of reduced flow on excess oxygen demand conditions in the [Deep Water Ship Channel (DWSC)] has been well documented under current geometry and variable loading conditions. As flow into the DWSC at a given dissolved oxygen concentration is reduced, less oxygen demand can be exerted before dissolved oxygen concentrations drop below the Basin Plan objectives. (DO TMDL, p53.)

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The DO TMDL apportions one-third responsibility for excess net oxygen demand in the DWSC to those responsible for reduced DWSC flow and subsequently recommends “the SWRCB use its water rights authority for existing activities that reduce flow through the DWSC to require that the associated impacts on excess net oxygen demand be evaluated and their impacts reduced.” (Id., p53.) The DO TMDL further recommends that the SWRCB amend “current water right permits for activities that reduce flow through the DWSC to require that their impacts on excess net oxygen demand be evaluated and reduced.” (Id., p54.)

Implementing the Salt & Boron TMDL would have the opposite effect. The Salt & Boron TMDL would combine real-time load allocations with drainage re-operation, which would alter the timing of releases to the Lower San Joaquin River to coincide with period of greater assimilative capacity. (CVRWQCB and Impairment in the Stockton Deep Water Ship Channel (“DO TMDL”) and for the Control of Salt and Boron Discharges into the Lower San Joaquin River (Salt & Boron TMDL, p76.) Dischargers would have to store drainage when flows and, consequently, assimilative capacity, are low, but these are the periods when the DWSC needs more flow, not less. (Id.) Drainage could only be released when flows and, consequently, assimilative capacity, are high. (Id.) As a result, eight to eighteen-thousand acre-feet of water, at a minimum, and up to fifty-thousand acre feet, would have to be retained at all times and flows through the DWSC would be reduced. (Id.)

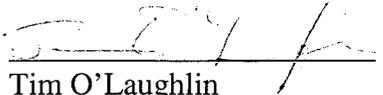
Retaining drain water would reduce flows in the San Joaquin River and, consequently, flows in the DWSC. Conversely, maintaining or increasing flows in the San Joaquin River, as recommended in the DO TMDL, would require drain water releases, which would contribute to salt loading in the San Joaquin River. Implementation of one TMDL would frustrate implementation of the other and expose water right holders to conflicting legal obligations and the threat of enforcement irrespective of their actions. Neither TMDL analyzes or attempts to reconcile their inherent conflicts with the other. Considering that the CEQA checklist in each TMDL determines water quality objectives will suffer “no impact”, one must ask whether the Regional Board merely “checked the boxes”, rather than conducting any analysis.

The impacts of each TMDL must be considered in light of the other. Accordingly, the SJRGA requests that the SWRCB return both TMDLs to the Regional Board for further analysis.

Very truly yours,

O’Laughlin & Paris, LLP

By:


Tim O’Laughlin

Cc: San Joaquin River Group Authority