



SENT VIA ELECTRONIC TRANSMISSION/FIRST-CLASS MAIL

June 23, 2011

Charlie Hoppin
Frances Spivy-Weber
Tam Doduc
State Water Resources Control Board
1001 I Street
PO Box 2815
Sacramento, CA 95812-2815

Re: Salinity

Dear Members of the Board:

Based on the recent superior court ruling in *City of Tracy v. State Water Resources Control Board*, Sacramento Superior Court Case No. 39-2009-80000392-CU-WM-GDS, the San Joaquin River Group Authority requests that the State Water Resources Control Board re-notice the proceedings regarding the establishment of electrical conductivity objectives at Vernalis and the South Delta.* It is imperative that the baseline for the objective is properly identified before the substitute environmental document is prepared.

Although the issues before the Superior Court only involved municipal discharges, the Superior Court found that the State Water Board has never considered economic factors for any water users, as required by Water Code section 13241. While the EIR for the 1978 Delta Plan purportedly considered socioeconomic effects, the discussion was limited to the economic benefits to municipal, agricultural, and industrial water users of establishing water quality requirements. There was no meaningful discussion of the economic costs of adopting the objectives, and certainly no discussion of the costs associated with the methods identified to meet the objectives. The prior 500 mg/l TDS objective was also never subject to consideration of Water Code section 13241 factors. D-1422 required that New Melones "be allowed to meet TDS objectives of 500 ppm and DO objectives as required by the Interim Water Quality Control Plan." However, the Interim Water Quality Control Plan similarly did not consider costs to comply with the objective. As a result, no salinity objective for the South Delta has been adopted in compliance with Water Code section 13241. As a result, the proper baseline for evaluating any new electrical conductivity objective is no electrical conductivity objective.

* The San Joaquin Tributaries Association sued the SWRCB on this very issue in 1995. That litigation is currently tolled pursuant to an agreement between the SWRCB and the San Joaquin Tributaries Association.

Staff also needs to follow State Water Board precedent. Staff recently submitted a request for peer review of the final technical report on the scientific basis for alternative San Joaquin River flow objectives for the protection of fish and wildlife beneficial uses, and program of implementation and for alternative water quality objectives for the protection of southern Delta agricultural beneficial uses and program of implementation. According to the request, the draft program of implementation provides for making regulatory changes to allow wastewater treatment plants to discharge at existing levels, provided that they participate in activities to mitigate for any impacts of their discharges, in recognition of the minimal impact that wastewater treatment plants have on southern Delta agricultural beneficial uses and the limited measures that wastewater treatment plants have to reduce salinity discharges. While this may be the opinion of staff, the State Water Board has determined otherwise. In Water Quality Order No. 2009-0003, the State Water Board concluded that, contrary to the conclusion of the Regional Board, evidence in the record nonetheless supported the conclusion that the City of Tracy's discharge had a reasonable potential to cause or contribute to an in-stream excursion above water quality objectives for electrical conductivity in the Bay-Delta Plan. The Superior Court upheld this determination and found it proper. Furthermore, while the State Water Board drew a different conclusion for the City of Manteca in Water Quality Order No. 2005-0005, the State Water Board was clear that its decision with respect to Manteca was not precedential. Its decision with respect to Tracy was decided on different facts and was precedential. It is the State Water Board, not its staff, who makes decisions and sets precedent. The State Water Board should take care that staff comply with its decisions and precedent.

Very truly yours,

O'LAUGHLIN & PARIS LLP



TIM O'LAUGHLIN

TO/tb

cc: Thomas Howard (via email only)