



O'Laughlin & Paris LLP

Attorneys at Law

January 7, 2004

Arthur Baggett, Chairman
State Water Resources Control Board
1001 "I" Street, 14th Floor
Sacramento, CA 95812-2000

Re: Triennial Review

Dear Mr. Chairman and Board Members:

We submit the following comments on behalf of the San Joaquin River Group Authority¹.

1(a) We believe the SWRCB should review the flow objectives for the 1995 WQCP for the time period of April 15-May 15. There are multiple reasons for the SWRCB to conduct such a review of this particular objective.

¹ Reference in this motion to the "SJRGA" encompasses all of the following agencies:

South San Joaquin Irrigation District

Oakdale Irrigation District

Modesto Irrigation District

Turlock Irrigation District

Merced Irrigation District

Friant Water Users Authority and its member agencies:

Alpaugh Irrigation District

Arvin-Edison Water Storage District

Atwell Island Water District

Chowchilla Water District

Delano-Earlimart Irrigation District

Exeter Irrigation District

Fresno Irrigation District

Hill's Valley Irrigation District

International Water District

Ivanhoe Irrigation District

Kern-Tulare Water District

Lindmore Irrigation District

Lindsay-Strathmore Irrigation District

San Joaquin River Exchange Contractors Water Authority and its member entities:

Central California Irrigation District

San Luis Canal Company

Firebaugh Canal Water District

Columbia Canal Company

City and County of San Francisco

Lower Tule River Irrigation District

Orange Cove Irrigation District

Pixley Irrigation District

Porterville Irrigation District

Rag Gulch Water District

Saucelito Irrigation District

Shafter-Wasco Irrigation District

Southern San Joaquin Municipal Utility District

Stone Corral Irrigation District

Teapot Dome Water District

Terra Bella Irrigation District

Tulare Irrigation District

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- (i) Judge Candee's decision on D-1641 stated:

The Board's commendable acknowledgement that the 1995 objectives may not always be met and its encouragement of the VAMP and SJRA are appropriate and permissible steps toward the implementation of the 1995 Plan, they do not satisfy at all times of the year the flow requirements of the 1995 Plan. These are the legal minimum flow objectives that must be satisfied unless changed in an appropriate proceeding to modify the 1995 Plan itself. This portion of D-1641 must be returned to the Board for further proceedings. While there is considerable merit to both the VAMP and SJRA, they can only be undertaken if all requirements of the 1995 Plan's minimum flow objectives are modified through another noticed hearing process.

We believe the SWRCB has the ability to phase implementation of the standards. In his decision Judge Candee acknowledged, in regards to the Narrative Standard, that the SWRCB could phase implementation. Our argument to the Appellate Court will be that the VAMP is a phased implementation of the 1995 WQCP. We also believe that the SWRCB did assign ultimate responsibility for the implementation of the flow objective to the USBR. (D-1641, p. 161, 2.a.) These issues will be briefed and decided by an Appellate Court.

Judge Candee's order on remand stated that the SWRCB could start a process to review the 1995 flow objectives and change those flow objectives to match the VAMP flow objectives. We recommend the Board do so. "Estimates of salmon survival rates under flow and export conditions tested in 2000, 2001 and 2002 have not been found to be significantly different. The VAMP program provides improved protection for juvenile salmon when compared to "without VAMP conditions." (2002 Annual Technical Report, p. 5). Based on these initial findings we believe the VAMP flows and conditions provide equivalent protection to the 1995 WQCP flows. We therefore recommend that the 1995 WQCP be changed to the VAMP flows.

- (ii) We believe footnote 14 of Table 3 of the 1995 WQCP needs to be expanded and implemented. Currently Footnote 14 calls for one or two separate pulses of combined duration to equal the single pulse flow. This should be expanded. Footnote 14 recognizes that the April 15-May 15 time period is too rigid to provide for the best

opportunity to protect outmigrating salmon and authorizes deviation from that specific time period based on real-time salmon needs. This element has not been incorporated into the implementation process.

- (iii) The current standard does not protect salmon fry. It is currently not understood what relationship outmigrating salmon fry have to overall salmon production. The April 15-May 15 pulse flow is clearly directed to help or protect salmon smolts. Studies have started and more studies have been proposed to ascertain the impact of salmon fry survival through the Delta and fry contribution to salmon production.

- 1.b. Yes, we believe other Vernalis flow objectives in the 1995 Plan should be amended. The current requirements for February-April 14 and May 16-June at Vernalis can adversely impact storage on the San Joaquin River in below normal and dry years. This past year was a classic example of this problem. In 2003 the USBR was making flood control releases on the Sacramento River. Because of those releases X-2 was required to be west of Chipps Island. The Vernalis standard therefore was 2,280 cfs when, at that time, the San Joaquin Valley Index was dry. This would have required the USBR to release more water from New Melones. This requirement should be changed so that Sacramento River hydrology does not drive New Melones' operations, which should be controlled by San Joaquin River hydrology.
- 4. The SWRCB should clarify the narrative objective for salmon protection on Table 3 in the 1995 WQCP. We believe the Narrative Standard needs to be clarified as to the following:
 - a. Production should be defined as set forth in Cal. F&G Code Section 6911.
 - b. The doubling objective is a goal rather than an absolute. See Cal. F&G Code Section 6902(a).
 - c. The goal is for the entire San Joaquin/Sacramento/ Bay-Delta Basin.
 - d. There should be no "doubling goals" for individual rivers.
 - e. The installation of a permanent operable head of Old River Barrier as set forth in the 1995 WQCP should be a condition of any requested change permit by DWR or the USBR at the export pumps.
- 5. No. The SWRCB should not modify the preliminary Water Quality Compliance and Baseline Monitoring program in Table 4 of the 1995 WQCP.
- 6. There should be no EC requirement at Vernalis for November-March. This standard was set to protect agricultural beneficial interest. Given cropping patterns and diversions in the Delta, it is clearly a waste and unreasonable use of water to release water from New Melones to meet an EC standard at Vernalis

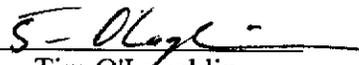
when there are little or no diversions for irrigation in the Southern Delta from November-March.

7. The 1995 WQCP must be integrated with proposed TMDLs and Basin Plan Amendments under those processes. The CVRWQCB in its Draft Amendments to the WQCP for the Sacramento and San Joaquin River Basins for salt and boron states at p. 72 that the USBR cannot meet the EC requirement at Vernalis because New Melones does not have sufficient water. The CVRWQCB states because there is not sufficient water in New Melones to meet the standard, then there is a need to allocate load and responsibility to meet the EC objective at Vernalis. The CVRWQCB completely ignores D-1641 wherein the SWRCB found the USBR was responsible for the salt problem and concluded that all CVP facilities were available to the USBR to meet the EC requirement at Vernalis. The EC requirement at Vernalis has been met every year since 1995 and the USBR has stated it will continue to meet the EC requirement at Vernalis.

Why are we going through a Basin Plan Amendment Process for salt when the SWRCB has assigned responsibility?

Very truly yours,

O'Laughlin & Paris LLP

By: 
Tim O'Laughlin
Attorney for San Joaquin River
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TO:jd