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April 27, 2009

Charles R. Hoppin, Chair  
Hearing Officer  
State Water Resources Control Board  
Cal/EPA Headquarters  
1001 "T" Street, 24th Floor  
Sacramento, CA 95814-2828

Arthur G. Baggett  
Hearing Officer  
State Water Resources Control Board  
Cal/EPA Headquarters  
1001 "T" Street, 24th Floor  
Sacramento, CA 95814-2828

**Re: POLICY STATEMENT - COUNTY OF SAN JOAQUIN  
REGARDING PETITION TO CHANGE PLACE OF USE TO  
CONSOLIDATE SERVICE AREA BY DWR AND USBR**

Dear Hearing Officers Hoppin and Baggett:

On behalf of the County of San Joaquin and the San Joaquin County Flood Control and Water Conservation District (collectively hereinafter the "County"), we submit the following Policy Statement for the April 27, 2009 Public Hearing Regarding Change of Place of Use of Department of Water Resources (DWR) and Bureau of Reclamation (USBR) to consolidate the place of use for certain State Water Project (SWP) and Central Valley Project (CVP) water right permits.

The County recognizes that California is experiencing unique and challenging hydrologic conditions. The current condition of lack of precipitation following a prior drought year is problematic and results in water shortages. San Joaquin County is concerned for the many who are suffering water shortages during this drought year throughout the State, including water users in our own County. Addressing these water shortages requires making tough decisions and adopting unique solutions. Due to the unique water shortages the State is currently experiencing, the County does not object to the petition to

temporarily consolidate the SWP and CVP places of use to more easily facilitate water transfers.

However, the County is gravely concerned about the CVP and SWP's continuing failure to observe, and the State Water Board's failure, to enforce the permit conditions applicable to DWR and USBR relative to the CVP and SWP, particularly related to salinity control requirements. Any approved petition must require DWR and USBR to meet the permit conditions of D1641 and Cease and Desist Order WR 2006-0006 (CDO). These conditions must be met by DWR and USBR and enforced by the State Water Board.

DWR and USBR have, and continue to demonstrate, a lack of commitment to meet these standards. The record of failure needs to change. The standards were violated in 2007 and 2008, and have already been violated in 2009. Despite these ongoing violations on March 24, 2009 in Stockton at a BDCP scoping meeting Department of Water Resources Deputy Jerry Johns stated that DWR is meeting its permit conditions. This is simply not correct as violations occurred at Old River near Tracy during periods in January and February and continuously from March 23, 2009 through April 20, 2009. See <http://www.woco.water.ca.gov/cmplmon/reports/DeltaWaterQuality.pdf>. (These violations are evident even as now reported by DWR with rounding to the nearest tenths instead of the nearest hundredths.) In addition the 30 day running average for the measuring location on Old River near Middle River was violated continuously from March 25, 2009 through April 12, 2009. These objective limit violations have not been reported to the County as a party to the Cease and Desist Order Hearing and most likely has not been reported to the State Water Board and other parties as required by CDO WR 2006-0006. This disregard by DWR to comply with State Water board orders and to meet the southern Delta salinity obligations needs to change and compliance must be a clear condition of the approval of the pending petition. The pending petition needs to be expressly conditioned on meeting the Southern Delta Salinity requirements.

Initial modeling demonstrates that operational changes can allow for salinity standards in the South Delta to be met, even in this time of drought. Operational changes include modification of the barrier programs and could also include recirculation. These modifications could be implemented this water year and such modifications must be required and facilitated in order to protect beneficial uses within the Delta and within the County of San Joaquin. DWR and USBR have taken the position that the conditions are impossible to meet. This position is neither acceptable nor in accordance with the facts.

Nearly two-thirds of the legal Delta is located within the County of San Joaquin and the County is an interested stakeholder in the future viability of the Delta. The County sustains an approximate \$2 billion agricultural economy. Historically, San Joaquin has been one of California's leading counties in gross value of agricultural commodities. In addition, industries that depend strongly on agriculture, such as food processing, wholesale trade, and transportation, benefit from San Joaquin County's agricultural bounty. The County of San Joaquin produced evidence in the 2004 Cease and Desist

Hearings regarding enforcement of the southern Delta salinity objectives indicating that value of the crops produced within San Joaquin County and from within the Delta totaled almost 324 million dollars. The southern Delta salinity objectives are critical for the continued viability of this most important part of San Joaquin County's economy.

In order to protect this necessary industry and the vested water rights of those within the Delta, the water right terms and conditions of the CVP and the SWP must be met by DWR and USBR and the SWRCB must require strict compliance and not accept more excuses. As pointed out on numerous occasions by the South Delta Water Agency, there are reasonable actions that DWR and USBR could take which would increase the flow on the San Joaquin River without requiring additional releases of fresh water from New Melones Reservoir. In 2004 Congress required the Bureau to implement such programs as recirculation in HR 2828 (Public Law 108-261, signed October 25, 2004). HR 2828 directed the Secretary of Interior to develop an implementation program to include recirculation to provide flow, reduce salinity concentrations and reduce the reliance on New Melones Reservoir for meeting water quality and fishery objectives through the use of excess capacity in export pumps and conveyance facilities. Any water right decision by the State Water Board should take into consideration the implementation by the USBR of this Congressional mandate.

In summary, the County does not object to the pending petitions to temporarily consolidate the places of use for the CVP and SWP. However, even in this time of water shortage DWR and USBR must be required to meet their permit conditions, including meeting the salinity objectives for the south Delta. The initial modeling demonstrates that this can occur. The State Water Board must condition the approval of DWR and USBR Petition's to take meaningful actions to implement these measures and meet these salinity obligations.

Very truly yours,



DeeAnne Gillick  
Attorney at Law

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cc: Each Member of the Board of Supervisors  
David Wooten, County Counsel  
T.R. Flinn, Director of Public Works  
Thomas M. Gau, Chief Deputy Director  
C. Mel Lytle, Ph.D., Water Resources Coordinator  
Thomas J. Shephard, Sr.