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April 14, 2009

Via Email to JSimi@waterboards.ca.gov

Joseph Simi
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Re: **Comment Letter - Upstream SJR Salinity Objectives/TMDL
on behalf of San Joaquin River Exchange Contractors Water Authority**

To Whom It May Concern:

In accordance with Public Resources Code section 21080.1, CEQA Guidelines section 15082 and the Notice inviting scoping comments on the proposed basin plan amendment to establish new salinity and boron water quality objectives in the Lower San Joaquin River upstream of Vernalis ("Project"), on behalf of the San Joaquin River Exchange Contractors Water Authority and its member agencies¹, we respectfully submit the following list of issues that the Regional Board should address in its environmental documentation for the Project:

1. The functional equivalent environmental document (hereinafter referred to as the "EIR") should, consistent with Guidelines section 15123(b)(2), identify and discuss all of the "areas of controversy known to the Lead Agency including "issues raised by agencies and the public" respecting the Project.
2. The EIR should, as required by Guidelines section 15123(b)(3) identify and discuss all of the "[i]ssues to be resolved including the choice among alternatives and whether or how to mitigate the significant effects" of the Project.
3. The EIR should provide a summary of "[e]ach significant effect with proposed mitigation measures and alternatives that would reduce or avoid that effect" as required by Guidelines section 15123(b)(1).

¹Central California Irrigation District, San Luis Canal Company, Firebaugh Canal Company and Columbia Canal Company.

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4. The EIR should, consistent with Guidelines section 15124, disclose “[t]he precise location and boundaries of the proposed project ... on a detailed map, preferably topographic,” as well as identify the location of the Project on a regional map.

5. The EIR should provide, consistent with Guidelines section 15124(b), “[a] statement of the objectives sought by the proposed project” in order to assist the Lead Agencies in developing “a reasonable range of alternatives to evaluate the EIR.”

6. The EIR should provide, as required by Guidelines section 15124(c), a “general description of the project’s technical, economic and environmental characteristics, considering the principal engineering proposals if any and supporting the public service facilities” including, for example, the Project’s impact on the agricultural economy, and the facilities or improvements needed to be constructed to comply with the Project. With respect to the construction of these facilities, the EIR should fully describe the number and duration of trips per hour of the construction crews and trucks, the days and times of operation and the noise, air pollution, traffic congestion and related impacts on affected public and private roads as required by Guidelines section 15124(c).

7. Consistent with Guidelines section 15125, the EIR “must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time of the notice of preparation is published” in order to identify “the baseline physical conditions by which the lead agency determines whether an impact is significant.” This baseline description must include and describe as the baseline the principle cause of the alleged salinity impairment: the failure of the United States Bureau of Reclamation to construct a drain as required by the San Luis Act and further described in *Firebaugh Canal Co. v. United States* (9th Cir. 2000) 203 F.3d 568.

8. The EIR should, consistent with Guidelines section 15126, include separate chapters discussing each of the following subjects:

- (a) Significant environmental effects of the Project;
- (b) Significant environmental effects which cannot be avoided if the Project is implemented;
- (c) Significant irreversible environmental changes which would be involved in the proposed Project should it be implemented;
- (d) Growth-inducing impacts of the proposed Project;

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- (e) The mitigation measures proposed to minimize the Project's significant effects;
and
- (f) Alternatives to the proposed Project.

9. Consistent with Guidelines section 15126.2, the EIR should fully disclose and discuss all of the potentially significant environmental impacts of the Project, including the "relevant specifics of the area to be affected," the resources involved, physical changes to the environment, alterations to ecological systems, changes induced in population distribution and concentration such as the loss of agricultural land, the human use of the land that may be affected by the Project (including agricultural, commercial and residential development), health and safety problems caused by the physical changes to the environment, and other aspects of the resource base such as water, historical resources, scenic quality and public services that may be affected by the Project. In particular, the EIR should analyze "any significant environmental effects the project might cause by bringing development and people into the area affected."

10. Consistent with Guidelines section 15126.2(b), the EIR must describe any significant impacts, including those which can be mitigated but not reduced to a level of insignificance. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be fully described and explained.

11. Consistent with Guidelines section 15126.2(c), the EIR should fully describe any significant irreversible environmental changes which the Project might cause, including existing land and water uses which might be harmed by the Project and the temporary or permanent retirement of agricultural lands to comply with the Project's requirements.

12. Consistent with Guidelines section 15126.2(d), the EIR should discuss the ways in which the proposed Project could stimulate economic or population growth, or the construction of additional housing or commercial development, either directly or indirectly, in the surrounding environment, and whether this growth would tax existing community service facilities such as streets, schools, parks, police, fire and other emergency services, and utilities including sewer, water, gas and electrical services.

13. As required by Guidelines section 15126.4(a), the EIR must describe the "feasible measures which could minimize significant adverse impacts," and where several measures are available to mitigate an impact, discuss the relative costs and benefits and efficacy of each and provide a basis for selecting a particular measure or measures rather than the others.

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14. Consistent with Guidelines section 15126.4(a)(2), the EIR must pose mitigation measures that are “fully enforceable through permit conditions, agreements or other legally binding instruments,” and provide a means for the public to monitor the effectiveness and enforceability of the measures after they have been adopted. One mitigation measure should be mandating that the United States Bureau of Reclamation construct a drain to capture salt and boron laden water before said water’s entry into the San Joaquin River.

15. As required by Guidelines section 15126.4(b), the EIR should identify mitigation measures which avoid or reduce the Project’s adverse impacts on historical resources, architecture, structures, features and artifacts (if any).

16. Consistent with Guidelines section 15126.6(a), the EIR “shall describe a range of reasonable alternatives to the Project, or to the location of the Project, which would feasibly attain most of the basic objectives of the Project, but would avoid or substantially lessen any of the significant effects of the Project, and evaluate the comparative merits of the alternatives.” On reasonable alternative should be mandating that the United States Bureau of Reclamation construct the drain as required by the San Luis Act or a finding by the Bureau, Regional Board and State Water Quality Control Board that the drain shall be the San Joaquin River and water quality standards should therefore be relaxed.

17. As required by Guidelines section 15126.6(c), the EIR should provide a range of potential alternatives, including “those that feasibly accomplish most of the basic objectives of the Project and could avoid or substantially lessen one or more significant effects” of the Project. The EIR must “describe the rationale for selecting the alternatives to be discussed,” and provide an explanation of the reasons why any alternatives that were considered were rejected as infeasible during the scoping process. One alternative should be a “no project alternative” or alternative where the State mandates that the United States Bureau of Reclamation build a drain as required by the San Luis Act.

18. Consistent with Guidelines section 15126.6(e), the EIR “shall include sufficient information about each alternative to allow meaningful evaluation, analysis and comparison with the proposed Project.”

19. As required by Guidelines section 15126.6(e), the EIR should provide an extensive discussion of the “No Project” alternative to allow the public and the lead agencies to compare the impacts of approving the proposed Project with the impacts of not approving the proposed Project, and to assure a thorough discussion of the existing conditions at the time the Notice of Preparation is published.

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20. Consistent with Guidelines section 15130, the EIR must provide a discussion of the Project's cumulative effects, including impacts that are created as a result of the combination of the project together with other projects, causing related impacts, reflecting the severity of the impacts and their likelihood of occurrence. One such cumulative effect is this Project's impacts on the Vernalis salt and boron TMDL and the dissolved oxygen TMDL at the Stockton Deep Water Ship Channel.

21. The EIR should fully describe the long-term purpose and scope of the Project, in particular, the long-term objectives and environmental effects of limiting release and requiring temporary on-land retention of salt and boron laced waters, evaporation ponds, or other compliance methods. If trucking the remaining salt and boron from retention ponds is considered, the related road and environmental impacts such as higher greenhouse gas emissions and use of carbon-based fuels must be analyzed.

22. The EIR should disclose, past, current and potential future adverse impacts of the Project.

23. The EIR should disclose the known and potential adverse impacts to global warming and the use of carbon-based fuels for completion of the Project and how landowners and entities subject to the Project can comply with the mandates of AB 32. The EIR should identify potential mitigation measures to address these impacts.

24. The EIR should address the Project's consistency, or lack thereof, with all applicable general and specific plans of counties, cities and existing decisions and plans of the State Water Resources Control Board that might be affected by the Project.

25. The EIR should disclose all comments and questions raised by other local, state and federal agencies regarding the impacts of and resource constraints on the Project, including, for example, concerns expressed earlier the San Joaquin River Exchange Contractors and other interested parties in relation to the Vernalis salt and boron TMDL and Stockton Deep Water Ship Channel dissolved oxygen TMDL.

26. The EIR should include complete multi-season or multi-year, if necessary, field surveys of the biological resources that may be affected by the Project, including, most importantly, threatened or endangered animals.

27. The EIR should address known and potential legal restraints on completion of the Project, including how the State of California can meet the requirements of AB 32 considering the Project's potential increase to use of carbon based fuels.

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28. The Project and ultimate TMDL must be phrased in terms of a daily standard as required the Clean Water Act, Porter-Cologne Water Quality Control Act and described in *Friends of the Earth, Inc. v. Environmental Protection Agency, et al.* (D.C. Cir. 2006 446 F.3d 140).

29. Pursuant to Public Resources Code section 21159, the EIR should include an environmental analysis of the reasonably foreseeable methods of compliance for the TMDL. At a minimum, this includes (i) an analysis of the reasonably foreseeable environmental impacts of the methods of compliance; (ii) an analysis of reasonably foreseeable feasible mitigation measures; and (iii) an analysis of reasonable foreseeable alternative means of compliance with the Project.

30. If the Project places financial responsibility on landowners and other entities for compliance, the EIR must analyze and describe the requirement expressed in the California Constitution and Government Code section 17516(c) where a subvention of funds must accompany a mandate from the State and Regional Boards to construct major waste water treatment facilities.

31. The EIR must describe the beneficial uses sought to be protected by the regulation and which beneficial uses will be regulated to the benefit of other beneficial uses.

32. The EIR, in the baseline description, should describe the person or persons (including State and Federal agencies) responsible for the failure to meet water quality objectives requiring the Project.

33. Pursuant to Public Resources Code section 21080.3, the EIR must list the persons and organizations consulted.

Thank you in advance for considering our comments on the scope of the issues to be addressed by the Regional Board for the Project.

Very truly yours,

MINASIAN, SPRUANCE,
MEITH, SOARES & SEXTON, LLP

By 

DUSTIN C. COOPER

DCC:aw

cc: San Joaquin River Exchange Contractors Water Authority