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Sent via U.S. Mail and e-mail to JSimi@waterboards.ca.gov

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April 15, 2009

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

FROM MODESTO:  
(209) 577-8200  
(209) 577-4910 FAX

Re: Comment Letter - Upstream SJR Salinity Objectives/TMDL

Dear Mr. Simi:

On behalf of the County of San Joaquin and the San Joaquin County Flood Control and Water Conservation District (collectively, hereinafter, "County ") we submit the following comments in response to the Notice of CEQA Scoping Meeting and Public Workshop concerning the Development of an Amendment to the Regional Water Quality Control Plan for the Sacramento and San Joaquin River Basins to establish New Salinity and Boron Water Quality Objectives in the Lower San Joaquin River and Total Maximum Daily Loads ("TMDL") to Implement Salinity and Boron Water Quality Objectives. However, it should be said at the outset that the County believes the EIR scoping process is premature, as the Project has not yet been adequately described.

Prompt action is necessary and required.

The County is extremely disappointed with the status of the development of a salinity objective upstream of Vernalis as reported by the Regional Board Staff on March 30, 2009. On March 30, 2009 Staff indicated that a draft Basin Plan Amendment and TMDL will not be released until January 2011, which would then be considered by the Regional Board in March of 2011. It is difficult to see how such an extended timeline is justified, given that at the Regional Board Staff Workshop held on February 8, 2006, which was the last public status update on this effort, Staff represented that a draft plan amendment and TMDL to establish objectives to the Mendota Pool would be released in April of 2006, for consideration for approval by the Regional Board in September of 2006. It is baffling why the draft was not released within two months of the Staff workshop in 2006. Now, *three years later* Regional Board Staff indicates a draft will require an *additional two years* of preparation.

The delay in moving forward with the adoption of salinity objectives upstream of Vernalis is unconscionable. In 1999 the State Board directed the Regional Board in Decision 1641 to “**promptly develop and adopt salinity objectives and a program of implementation for the main stem of the San Joaquin River upstream of Vernalis**” (emphasis added). The Regional Board is subject to the direction of the State Board, and it is impossible to interpret Decision 1641 to mean anything other than that the upstream standards should have been set in a timely manner.

In 2001, the County and numerous County water interests, including the City of Stockton, California Water Service Company, South Delta Water Agency, Stockton East Water District, Central Delta Water Agency, North San Joaquin Water Conservation District, Central San Joaquin Water Conservation District, South San Joaquin Irrigation District, and Delta Keeper, expressed their concern over the lack of progress on establishing salinity objectives on the main stem of the San Joaquin River upstream of Vernalis. In this unified joint letter, these entities requested that the Regional Board complete its work to establish these objectives and provided significant historical background on the development of such objectives. This May 23, 2001 letter is attached hereto, and provides important information on the need for the upstream salinity objectives and the history behind the requirement to establish such objectives. This information included in the 2001 letter and its attachment should be considered by the Regional Board to promptly establish salinity objectives upstream of Vernalis.

The State Water Board’s Resolution 2005-0087, which approved the Basin Plan Amendments implementing the salt and boron TMDL for Vernalis, dated November 16, 2005, resolved that the Regional Board shall adopt such water quality objectives for salinity and boron from the Mendota Dam to Vernalis by September 2006. This has not occurred. The Regional Board must follow the direction of the State Water Board and promptly act to establish salinity objectives above Vernalis to make meaningful progress on addressing the salinity of the lower San Joaquin River. The additional two years delay indicated by Staff is not “prompt” given the circumstances.

On July 16, 2008 the State Water Board adopted its Strategic Workplan for Activities in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary describing “a suite of priority activities the Water Boards [including the State Water Board and the Central Valley Regional Water Board] will pursue over the next five years to address the water supply and environmental crisis in the Bay-Delta” (State Water Board Strategic Workplan Resolution No. 2008-0056). On page 34 and 35 of the Strategic Workplan, it lists activities already committed to in Resolutions, including “Develop and adopt salt and boron water quality objectives in the San Joaquin River upstream of Vernalis, and an associated TMDL.” The State Water Board has clearly indicated that upstream objectives are a priority. The Regional Board needs to also make them a priority and act more promptly than the current proposed two year schedule to release the draft Basin Plan amendment. This is certainly feasible given the 2006

Staff representation that a draft would be released in April 2006, a mere two months following the Staff Workshop.

The Bureau must be required to participate and part of the implementation plan.

The State Water Board, in D 1641, discussed and analyzed the state of the San Joaquin River. D 1641 states at page 89 that "The actions of the CVP are the principal causes of the salinity concentrations exceeding the objectives at Vernalis." Any effort to address the degradation of the lower San Joaquin River impacts and requires participation by the Bureau, due to its CVP operations. Due to these uncontroverted facts, salinity objectives need to be set at meaningful locations on the San Joaquin River, and will require Bureau and CVP participation. The current Staff proposal to set objectives only up to the Merced River is inadequate. Salinity objectives need to be set to the Mendota Pool in order to appropriately address the salinity degradation of the San Joaquin River.

Decreasing Flows is of Concern.

As a result of a traditional TMDL water releases are often curtailed. This has the effect of decreasing flows in the River. Such practice may temporarily decrease the salt load, but has an otherwise negative impact to the River. Any Basin Plan amendment needs to take this negative impact into consideration. An implementation plan needs to be developed that allows for nontraditional implementation of the salinity objectives in order to address the salinity problem within the River, rather than create additional problems and impacts which may result from less flow.

San Joaquin River Restoration Flows Need to be Considered.

It appears that due to the settlement of litigation regarding the flows along the San Joaquin River, modification of the operation of the River is imminent. This year Congress adopted the legislation necessary to allow for the implementation of actions stemming from the settlement agreement. The anticipated modifications of the flows on the San Joaquin River due to this settlement and its implementation need to be considered and analyzed in any EIR regarding salinity objectives on the San Joaquin River.

Salinity Standards need to Protect Beneficial Uses.

The salinity objectives are designed to protect agricultural beneficial uses. At the meeting on March 30, 2009 Staff discussed possible Modification of salinity objective values. Any new salinity objective must continue to protect agricultural beneficial uses. Currently the salinity objective at Vernalis is 0.7 EC from April through August, and 1.0 EC the remainder of the year. These objectives are to

protect agricultural beneficial uses. The County suggests that similar salinity objectives be established upstream of Vernalis in order to protect similar agricultural beneficial uses upstream of Vernalis. Thus the numerical salinity objective and the period of compliance upstream of Vernalis should be similar to the existing objectives at Vernalis.

#### Reliance on Dilution Flow From New Melones is Inadequate

The continued reliance on New Melones flows on the Stanislaus River to meet the existing water quality objective at Vernalis should cease. The environmental document should include an evaluation of the impacts due to this on-going practice. Taking action to establish salinity objectives, and implement such objectives, should reduce or eliminate the existing water quality releases from New Melones.

The Regional Board Staff report that supported the approval of the existing Basin Plan Amendment for the TMDL in 2004 recognized that dilution flows from New Melones are not adequate to meet the Vernalis objectives, and that other measures must also be implemented. However, the Bureau continues to rely on releases from New Melones to meet the water quality objectives. An additional salinity objective upstream of Vernalis should operate to eliminate the Bureau's unreasonable and inadequate reliance on New Melones.

#### Reliance on New Melones Water Deprives San Joaquin County Area of Origin Water

The Bureau's reliance on dilution flows from New Melones deprives San Joaquin County water interests of the prior right to water from New Melones in violation of the Watershed Protection Statute (Wat. Code § 11460) and their contracts with the Bureau. Reclamation relies on New Melones for dilution flows, and as a result there is little water in New Melones for the Bureau's only CVP contractors, which are two San Joaquin County water districts. These districts are (1) Stockton East Water District (which supplies agricultural water to eastern San Joaquin County and municipal water to the City of Stockton); and (2) Central San Joaquin Water Conservation District (which supplies agricultural water to portions of eastern San Joaquin County). It is also important to note that this deprives San Joaquin County of surface water which it greatly needs to mitigate its critically overdrafted groundwater basin as identified by the Department of Water Resources in Bulletin 118-80. The EIR should include these impacts, including the impacts to the critically overdrafted groundwater basin of Eastern San Joaquin County.

Thank you for providing this opportunity for the County to submit comments. We encourage the Regional Board quickly to move forward with establishing salinity objectives upstream of Vernalis, more quickly than the current 2011 proposal. The deplorable condition of the lower San Joaquin River, which is forced into serving as the much needed Valley Drain, essentially as a sewer, has been tolerated too long by those who have the ability to correct the problem. It should not be allowed to

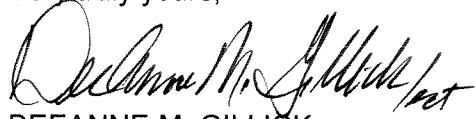
April 15, 2009

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continue further by the agency responsible for its regulation. Anything other than prompt action on this matter is unconscionable.

Very truly yours,



DEEANNE M. GILLICK  
Attorney at Law

cc: Mel Lytle, Ph.D., Water Resources Coordinator  
David Wooten, County Counsel  
Thomas J. Shephard

DMG:dmg



LOIS M. SAHYOUN  
Clerk of the Board

## BOARD OF SUPERVISORS

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May 23, 2001

Mr. Robert Schneider, Chairman  
California Regional Water Quality Control Board  
Central Valley Region  
3443 Routier Road, Suite A  
Sacramento, California 95827-3003

SUBJECT: ESTABLISHING SALINITY OBJECTIVES ON THE LOWER SAN JOAQUIN RIVER,  
UPSTREAM OF VERNALIS

Dear Chairman Schneider:

San Joaquin County, and other water interests that are signatories to this letter, join together to make a unified request that the Central Valley Regional Water Quality Control Board (Regional Board) promptly complete its work to develop and adopt salinity objectives and a program of implementation, for the main stem of the San Joaquin River, upstream of Vernalis.

San Joaquin River experiences serious water quality problems. The degradation of the San Joaquin River has been an ongoing concern for San Joaquin County since the early 1960's. The salinity problem on the San Joaquin River began with the reduction of flows due to upstream development and the advent of irrigated agriculture, which was exacerbated when the Central Valley Project was constructed. The San Joaquin River is affected by the salt load and quantity of flow on the Lower San Joaquin River from a combination of upstream diversions, discharges of saline drainage water to the San Joaquin River, and subsurface accretions to the River from groundwater. Despite the fact that only a small percentage of the salinity concentration of the San Joaquin River is due to uses within San Joaquin County, San Joaquin County has historically born the burden of remedying the water quality problems of the San Joaquin River before they reach the Bay-Delta Estuary.

The 1995 Bay-Delta Water Quality Control Plan contains salinity objectives for the San Joaquin River at Vernalis and at three other locations within the southern Delta. Vernalis is located within San Joaquin County downstream from the confluence of the Stanislaus River with the San Joaquin River. Due to the location of the water quality measuring point at Vernalis, the Stanislaus River is operated in such a manner as to provide substantial fresh water releases to the San Joaquin River, to dilute its salinity concentrations to comply with the salinity water quality objectives at Vernalis. The effect is that a substantial amount of Stanislaus River water is used to dilute pollution in the San Joaquin River. This use of high quality Stanislaus River water for dilution of salinity in the San Joaquin River deprives San Joaquin County water agencies of water that would otherwise be available for agricultural and municipal use within San Joaquin County. The County entities have previously encouraged the State and Federal governments to affirmatively address the water quality and salinity problems of the San Joaquin River. The Regional Board and State Water Resources Control Board have discussed this subject numerous times. Your attention is directed to the attached "Summary of Regional Board and State Board actions regarding salinity objectives on the San Joaquin River upstream of Vernalis," for a detailed review of these actions.

Mr. Robert Schneider  
SALINITY OBJECTIVES ON  
THE LOWER SAN JOAQUIN RIVER

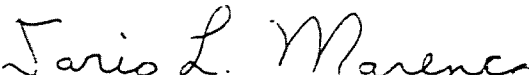
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Most recently, on December 29, 1999, the State Water Resources Control Board issued Decision D-1641 (D-1641) implementing the 1995 Bay-Delta Water Quality Control Plan. D-1641 directed the Regional Board to promptly develop and adopt salinity objectives and a program of implementation for the main stem of the San Joaquin River upstream of Vernalis. (D-1641, § 10.2.2)

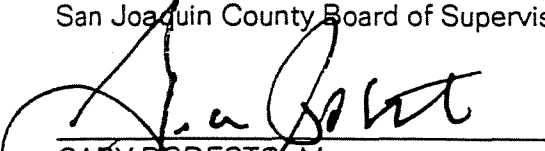
The Regional Board initially appeared committed to timely develop and establish salinity objectives upstream of Vernalis. A portion of a draft Basin Plan Amendment was released in the summer of 2000, and various workshops were held. However, since these workshops, no further reporting by the Regional Board has occurred. Further, Regional Board staff indicated at a staff workshop, held on March 1, 2001, that progress on the Basin Plan Amendment and establishing salinity water quality standards upstream of Vernalis has been delayed. This delay is inconsistent with the State Water Resources Control Board's clear directive to the Regional Board to promptly develop and adopt salinity objections upstream of Vernalis.

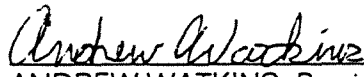
The Regional Board's failure to act is a violation of the Clean Water Act, the Porter Cologne Water Quality Control Act, and Article X Section 2 of the California Constitution. The State Water Resources Control Board has recognized the importance of this issue, and the seriousness of the Regional Board's 16-year failure to act upon its specific directive to adopt such standards. The failure to act continues a heavy burden on both the environment and on San Joaquin County and its water agencies. It is of the utmost importance that the Central Valley Regional Water Quality Control Board move forward with the establishment of salinity standards and a plan of implementation for the San Joaquin River, upstream of Vernalis.

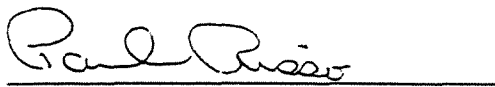
Sincerely,

  
DARIO MARENCO, Chairman  
San Joaquin County Board of Supervisors

  
JERRY ROBINSON, President  
South Delta Water Agency

  
GARY PODESTO, Mayor  
City of Stockton

  
ANDREW WATKINS, President  
Stockton East Water District

  
PAUL RISSO, District Manager  
California Water Service Company

  
ALFRED ZUCKERMAN, President  
Central Delta Water Agency

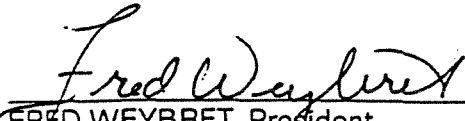
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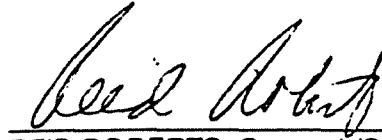
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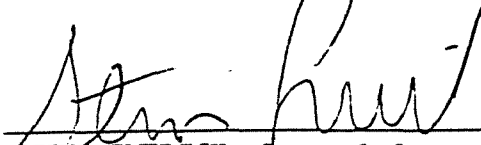
c: Senator Michael J. Machado  
Assemblymember Barbara Matthews  
Assemblymember Anthony Pescetti  
Members of the State Water Resources Control Board  
Members of the Central Valley Regional Water Quality Control Board  
Manuel Lopez, Director of San Joaquin County Public Works  
Members of the Advisory Water Commission


Mr. Robert Schneider  
SALINITY OBJECTIVES ON  
THE LOWER SAN JOAQUIN RIVER

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\_\_\_\_\_  
FRED WEYBRET, President  
North San Joaquin Water Conservation District

  
\_\_\_\_\_  
REID ROBERTS, Counsel/Secretary  
Central San Joaquin Water Conservation District

  
\_\_\_\_\_  
STEVE EMERICK, General Counsel  
South San Joaquin Irrigation District

  
\_\_\_\_\_  
BILL JENNINGS, Delta Keeper  
Delta Keeper



Summary of Regional Board and State Board actions  
regarding salinity objectives on  
the San Joaquin River upstream of Vernalis

Background of the San Joaquin River salinity problem

The serious degradation of the San Joaquin River was originally ~~Summary of Regional Board and State Board~~ recognized in the 1975 Basin Plan, and hundreds of reports have been produced over the years on the water quality problems plaguing the San Joaquin River. One of these reports includes a lengthy report entitled *Regulation of Agricultural Drainage to the San Joaquin River*, August 1987. The Final Report and its 10-volume Appendix was the product of the State Water Resources Control Board (State Board) Order WQ 85-1 adopted in February 1985. In Order WQ 85-1, the State Board expressed its concerns related to the discharge of agricultural drainage water into the San Joaquin River. The State Board directed the formation of the San Joaquin River Basin Technical Committee to investigate water quality concerns in the San Joaquin River Basin related to agricultural drainage and to report back to the State Board on proposed water quality objectives for the San Joaquin River Basin, proposed effluent limitations for agricultural drainage discharges in the Basin to achieve these objectives and a proposal to regulate discharges.

While the Draft Executive Summary released in May of 1987 set an implementation date of October 1993, for establishment of water quality objectives for salinity from Lander Avenue downstream on the San Joaquin River, the Final Report produced on the subject recommended adoption with an implementation date to be determined.

When it adopted the 1995 Bay Delta Water Quality Control Plan, the State Board once again directed the Central Valley Regional Water Quality Control Board (Regional Board) to implement a plan to reduce the annual salt load discharged into the San Joaquin River, by at least 10%, and to adjust the timing of salt discharges from low flow to high flow periods. In fact, in April of 1995, the State Board sent a letter directing the Regional Board to timely incorporate salinity control measures into the Basin Plan.

SWRCB's 1998 CWA Section 303(d) List of Impaired Surface Waters includes the Lower San Joaquin River

The history associated with establishing standards along the San Joaquin River and the actions of the Regional Board in this regard establish a pattern of delay and inaction. In 1998, the Regional Board should have adopted salinity standards along the San Joaquin, as directed by the State Board in 1995. Instead, in May of 1998 the State Board, following the recommendation of the Regional Board, included 130 miles of the San Joaquin River on the adopted statewide list of impaired surface waters pursuant to the Federal Clean Water Act (CWA), Section 303(d).

Water quality standards have three parts: (1) the designated use of the water; (2) the water quality criteria that protect those uses; and (3) an anti-degradation requirement. Because the Regional Board has never adopted water quality criteria for the San Joaquin River upstream of Vernalis, California does not have the second component of that legally required water quality standard. We questioned how 130 miles of the San Joaquin River could be designated as a water

quality limited segment and placed on the 303(d) list, when there are no water quality standards for salinity on those 130 miles of the River.

As a result of this listing, the State is required to set water quality standards and Total Maximum Daily Loads (TMDL) which are then approved by the Administrator of the Federal Environmental Protection Agency. The 1998 recommendation from the Regional Board to the State Board elevated the priority for the San Joaquin River to "high". The Regional Board staff report at that time indicated that the priority for this work on the San Joaquin River had been elevated to high because of the water quality impacts, the Regional Board and their staff's commitment to comply with the 1995 Bay/Delta Water Quality Control Plan, and the increased stakeholder interest in salinity control due to the serious water quality impacts experienced. It is important to note, however, that the TMDL process does not replace the establishment of water quality standards on the San Joaquin River.

1999 Regional Board Basin Plan Triennial Review sets December 1999 for proposed Basin Plan Amendment to include water quality objectives and an implementation plan for salinity and boron

In April of 1999, the Regional Board considered a resolution regarding the 1998 Triennial Basin Plan Review of the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins. The Triennial Review Report by the Regional Board states the following:

Recognizing the importance of controlling salts in the San Joaquin River and restoring beneficial uses, the Board instructed staff to develop a program to control salts in the San Joaquin River. A work plan for developing a salinity and boron control strategy was presented by staff to the Board in June 1997. Staff is scheduled to propose a Basin Plan amendment, which includes water quality objectives and an implementation plan for salinity and boron, by December 1999." (Triennial Review, Summary of High and Medium Priority Issues, p. i.)

The Triennial Review Report also states: "The lower San Joaquin River, namely that part of the River from the Mendota Pool to the Delta, along with its tributaries Mud Slough (north) and Salt Slough have been listed in the Section 303(d) list as impaired due to boron and salts. The Clean Water Act requires that States establish total maximum daily load limits (TMDL) for all Section 303(d) listed water bodies." Again, the statement is made that "Staff is scheduled to propose a Basin Plan amendment, which includes water quality objectives and an implementation plan for salinity and boron by December 1999." (Triennial Review, p. 2-3.)

D-1641 directs the Regional Board to promptly adopt salinity objectives for the San Joaquin River upstream of Vernalis

On December 29, 1999, the State Board adopted Water Right Decision 1641 (D-1641) implementing the 1995 Water Quality Control Plan, including the Southern Delta Salinity Objectives. This order was revised by Order WR 2000-02 on March 15, 2000. In D-1641 the State Board addressed actions to meet the Vernalis salinity objective in section 10.2.2. These actions include specific direction to the Regional Board:

Several parties argued that the Central Valley RWQCB should adopt water quality objectives for salinity for the San Joaquin River at locations upstream of Vernalis. In SWRCB Order WQ 85-1, the SWRCB directed the Central Valley RWQCB to initiate a process to develop specific water quality objectives for the San Joaquin River basin that will result in the adoption of appropriate basin plan amendments by the Regional Board and the development of a program to regulate agricultural drainage discharges. (SWRCB 5(1), p. 34.) The Central Valley RWQCB is currently in the process of setting salinity objectives for the San Joaquin River. (R.T. p. 4847.) The Central Valley RWQCB is hereby directed promptly to develop and adopt salinity objectives and a program of implementation for the main stem of the San Joaquin River upstream of Vernalis. As part of its implementation plan for salinity objectives, the Central Valley RWQCB should evaluate a program to regulate the timing of agricultural discharges to the San Joaquin River. (Emphasis added.)

In D-1641, the State Board again, as it had over the past 14 years, since, 1985, specifically directed the Regional Board to take action and to promptly develop and adopt salinity objectives upstream of Vernalis.

#### Regional Board Basin Plan Amendment Progress in 2000 – Release of portions of Draft Basin Plan Amendment

On April 28, 2000, the Regional Board's Agenda item number 9 included a status report on the Development of a Basin Plan Amendment Addressing Salinity and Boron in the Lower San Joaquin River. The Staff Report to the Regional Board stated that staff was preparing the proposed Basin Plan amendments addressing salinity and boron in the Lower San Joaquin River, a 130 mile reach of the river from Mendota Dam to Vernalis. The proposed amendments were expected to include new water quality objectives for both salt and boron and an implementation plan for meeting the objectives by identifying numerical water quality objectives that will protect the identified beneficial uses and describe the actions the Board will take to achieve compliance with these objectives.

This April report to the Regional Board was encouraging. Some progress continued as in June through August of 2000 various workshops were held regarding the salinity and boron in the Lower San Joaquin River. The workshops included the release of draft chapters of the Basin Plan dated June 20, 2000, which were circulated and commented upon by interested parties. The draft material included Chapter V Water Quality Objectives and Chapter VI Program of Implementation.

The first page of Chapter V of the draft chapters dated June 20, 2000 correctly states the following: "The State Water Resources Control Board (State Water Board) directed this Regional Board to set numerical objectives for salinity in the San Joaquin River upstream of Vernalis." In addition, Page 9 of Chapter V of the draft chapters correctly states the following: ". . .the State Board has directed the Regional Board to promptly adopt salinity objectives and a program of implementation for the main stem of the San Joaquin River upstream of Vernalis

(Water Rights Decision 1641)." (Emphasis added.) Since these workshops in the summer of 2000, no further reporting by the Regional Board has occurred.

Current Status - Regional Board Defers Establishment of Standards

At the March 1, 2001 Regional Board Staff Workshop regarding establishing TMDLs in the Lower San Joaquin River the Basin Plan Amendment was briefly discussed. It was at this workshop that Regional Board staff indicated that progress on the Basin Plan Amendment and establishing salinity standards upstream of Vernalis has been halted. Regional Board staff had delayed their work on preparing and developing the Basin Plan amendment and thus was delaying their work on establishing salinity objectives upstream of Vernalis.

During the Workshop, a representative from San Joaquin County specifically asked staff how this delay could be justified given the State Board's mandate to the Regional Board in D-1641. The Regional Board staff responded that staff's action was consistent with D-1641. We strongly disagree. A review of the actions of the State Board and the Regional Board clearly indicate that the Regional Board must immediately adopt salinity objectives upstream of Vernalis. The Regional Board's action directly violates the consistent and clear directives of the State Board in 1995, 1999 and 2000 that the Regional Board must promptly adopt salinity objectives and a program of implementation of the main stem of the San Joaquin River upstream of Vernalis.

Unified position of San Joaquin County interests due to the importance of San Joaquin River  
Water quality

San Joaquin County has repeatedly encouraged the state and federal governments to affirmatively address the water quality and salinity problems of the San Joaquin River. Recently, in 1999, the County joined several local water agencies in developing a uniform position to identify water management issues regarding the San Joaquin River and South Delta region. At that time, the local agencies adopted a Unified Position on Resolving Water Management Concerns for the Lower San Joaquin River and South Delta Region. The Unified Position included the support of a comprehensive plan to resolve San Joaquin River water quality problems. A component of the comprehensive plan supported included the "funding and completion of the Regional Water Quality Control Board - Central Valley Region Basin Plan Amendment for Salinity and Boron on the San Joaquin River to establish water quality objectives upstream of Vernalis including areas upstream of the Merced River by March of 2000."

Again, San Joaquin County entities make this request to the Regional Board to promptly adopt the Basin Plan Amendment for Salinity and Boron to establish water quality objectives upstream of Vernalis. The Central Valley Regional Water Quality Control Board must move forward with the establishment of standards and a plan of implementation for the San Joaquin River upstream of Vernalis.

TG:NE

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