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April 15, 2009

VIA ELECTRONIC MAIL

Mr. Joseph Simi  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, California 95670  
[jsimi@waterboards.ca.gov](mailto:jsimi@waterboards.ca.gov)

Re: Comment Letter – Upstream San Joaquin River Salinity Objectives/TMDL

Dear Mr. Simi:

The following comments are made on behalf of Stockton East Water District (District) to the Central Valley Regional Water Quality Control Board (Regional Board) Notice of CEQA Scoping for Development of an Amendment to the Basin Plan to Establish New Salinity and Boron Water Quality Objectives in the Lower San Joaquin River and Total Maximum Daily Loads (TMDLs) to Implement Salinity and Boron Water Quality Objectives (Upstream Salinity Objectives).

### **General Comments**

At the Public Workshop held on March 30, 2009, the Regional Board staff's presentation provided a timeline that set the Upstream Salinity Objectives draft Basin Plan Amendment (BPA) and TMDL release for January 2011. This timetable is completely unacceptable. The State Water Resources Control Board (State Water Board) directed the Regional Board to adopt upstream salinity objectives since 1995. Fourteen years have gone by and NO OBJECTIVES. I have attached to this letter a detailed summary San Joaquin County interests submitted to the Regional Board in 2001 which details the various direction from the State Water Board and the history of Regional Board inaction.

More recently, in February 2006, the Regional Board held a workshop and presented salinity objective alternatives to be considered in a BPA amendment. It contemplated the BPA would be completed by April 2006. The plain facts are simple; the work for a BPA amendment for salinity has been completed, and suggesting a further delay until 2011 is unacceptable. I have been told by Regional Board staff that the Staff Report and Basin Plan Amendment have in fact been prepared for years and are simply

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waiting Regional Board management approval. This process must move forward in an expeditious fashion and must be completed in 2009.

#### **Sources of Salinity – Allocation of Responsibility**

The Regional Board should include in the environmental documentation an evaluation of all sources of salt entering the San Joaquin River upstream of Vernalis. Identification of the sources of salt is absolutely crucial for assigning responsibility to reduce the salt load and/or concentration entering the San Joaquin River. Those entities that are causing the degradation of San Joaquin River water quality must solve the problem. Continued reliance on others downstream that have not caused the problem, namely, New Melones Reservoir to dilute the salts entering the lower San Joaquin River cannot continue. The environmental document must evaluate mitigation measures, including the introduction of dilution flows at the source of the discharge to mitigate for the salt load and concentrations entering the San Joaquin River.

#### **Effect of Reduction of Flows**

The environmental document must evaluate the effect of the reduction of flows in the San Joaquin River caused by implementation of the TMDL. There are various means to reduce salt load that may or may not have an adverse affect on flows in the San Joaquin River. For example, real time management of drainage flows may allow for the exportation of salts when there is sufficient assimilative capacity. Alternatively, the environmental document must evaluate mitigation measures which require the introduction of dilution flows at the source of the discharge to ensure that the adverse environmental affect of reduces flows in the San Joaquin River are mitigated.

We appreciate the opportunity to comment and look forward to the Regional Board adopting the Upstream Salinity Objectives in a timely manner.

Very truly yours,



KARNA E. HARRIGFELD  
Attorney-at-Law

KEH:md

cc: Kevin Kauffman



## ATTACHMENT "A"

### 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 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 this 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 directs 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 Regional Board must move forward with the establishment of standards and a plan of implementation for the San Joaquin River upstream of Vernalis.