STATEMENT OF SAN JOAQUIN TRIBUTARIES ASSOCIATION
AND ITS MEMBERS TO THE STATE WATER RESOURCES CONTROL BOARD
(HEARING ON WATER QUALITY CONTROL PLAN FOR THE SAN FRANCISCO
BAY/SACRAMENTO-SAN JOAQUIN DELTA ESTUARY, MAY 22, 1995)

Chairman Caffrey, Vice Chair Forster and Members of the Board.

I am Kenneth Robbins, counsel to the Merced Irrigation District. I am appearing today as the representative of the San Joaquin Tributaries Association and its members, which in addition to my district are the Modesto Irrigation District, Turlock Irrigation District, Oakdale Irrigation District, and South San Joaquin Irrigation District.

My comments today are directed to the proposed flows of the San Joaquin River at Vernalis. As the Board knows, the footnotes to those prescribed flows simultaneously allow the state and federal projects to export 100% of the 3-day running average of the prescribed San Joaquin River flows at Vernalis.

The proposed standards never address the obvious linkage between San Joaquin flows and exports, but rather state that these flows are for the protection of delta smelt and salmon. We challenge the staff to point to any evidence justifying these flow standards for salmon. For delta smelt, the justification is that high flows are needed to push the smelt past the export pumps. Our position is that the projects are responsible for mitigating their own effects.

The Board has in its records ample statements and documentation from our member agencies on the San Joaquin that demonstrate that the San Joaquin water rights are among the mo
senior in the state and that the export permits are among the most junior. Moreover, the evidence is overwhelming, as the Board has long known, that the operation of the projects is the defining cause of deleterious effects on fish caused by water diversions.

The staff of the Board has repeatedly stated that issues of water rights - of whose uses will be impacted for the benefit of fish - will be deferred until later water rights hearings. In adopting these flow requirements and subsidy, however, the Board has preempted this process and directly dedicated senior water rights to the service of junior rights. It is not an answer that later hearings will determine with exactness who on the San Joaquin will bear the burden of this subsidy. By determining in advance that there will be a subsidy, the Board has gone beyond prescribing standards to protect fish to enacting flow contributions to protect exports.

The linkage between the prescribed flows at Vernalis and the export of 100% of those flows at Vernalis is not a product of scientific coincidence; it is a provision for export at the expense of the rights holders on the San Joaquin.

Finally, on a related matter, the December 15, 1994 agreement, which the Board is here otherwise mechanically implementing, called for the construction of an Old River barrier. This plan, by contrast, calls only for the study of that barrier, despite the protests of our group and some of the parties to that agreement that it should be constructed now. Absence of the barrier merely feeds San Joaquin flows - and its fish - directly into the export pumps.

In summary, we object to the adoption of the proposed
standards because, in the guise of water quality standards, it is an overt subsidy of the water export projects. Such an action is not only unsupported and unwise, but is legally deficient on the following bases:

- Enacting flow contributions from the San Joaquin for the benefit of exports is beyond the scope of the noticed hearing. Merely couching a water allocation action in the dress of standards is not enough. These standards both prescribe and inexorably require water rights reallocations in the guise of the adoption of water quality standards.

- Enacting flow contributions on senior rights holders to protect exports is a taking of water rights without compensation, in violation of the United States and California Constitutions.

- The proposed standards and export subsidy are in violation of the Area of Origin statutes, which were designed as a guarantee to senior water rights holders that the kind of action this Board is proposing would never occur.

- The record does not support that these flows are required to protect salmon at all, or to protect delta smelt except to try to push them past the pumps. The projects, however, must mitigate their own effects. The proposed action is thus arbitrary, capricious and without evidence in your record.

- The record, and the brokered deal you are asked to impose, both call for the construction and operation of
the Old River Barrier. Absence of the barrier merely feeds the fish you are trying to protect directly into the pumps, for inevitable and devastating destruction.

The water rights holders on the San Joaquin were completely excluded from the negotiations which led to the agreement you are asked to mechanically enact. Small surprise that the plan calls for the contribution of our senior water rights, which were passed down to us for over 100 years for the use of interests that, unlike us, were represented at the table – specifically, the exporters.

It is not enough to say that these issues will be deferred to the water rights hearings. By that time, staff and the exporters will insist that the standards and its built-in subsidy are a given. The Board is respectfully asked not to enact this thinly disguised subsidy, and to address this matter now. A flow standard at Vernalis should not be adopted without further study.

The San Joaquin Tributaries Association and its members will welcome and participate in dialogue with the Board's staff and others, so that such standards as are adopted reflect good science, and good sense.