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FREDERICK BOLD, JR.
(1913-2003)

June 3, 2005

Ms. Debbie Irvin, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

Re: ***CCWD's final comments on the Periodic Review of the 1995 Water Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary***

Dear Ms. Irvin:

Contra Costa Water District (CCWD) appreciates the opportunity to submit its final comments to the materials presented in the Periodic Review Workshops for the 1995 Bay-Delta Water Quality Control Plan. As general counsel for CCWD, we respectfully submit this letter pursuant to the invitation in the December 22, 2004 Supplemental Notice of Public Workshop.

The continuing degradation of Delta water quality needs to be reversed

CCWD is greatly concerned about the continuing degradation of Delta water quality in the fall as dramatically demonstrated in Slide 2 of the PowerPoint presentation posted on the SWRCB website as CCWD EXH-09.[1] Several of the proposals made in the current periodic review process could further degrade Delta water, such as increased DCC closures, elimination of the 0.7 EC standard in the south Delta, or major changes to the X2 standard. Those proposals will further complicate any attempts by the Board to reverse this decline, and should be reviewed cautiously, and only in the context of the state and federal anti-degradation policies, the general CALFED goal of improving Delta water quality, and the CALFED drinking water subcommittee's ongoing efforts to evaluate ways to improve drinking water quality and protect public health.

As is explained in more detail in Attachment 1 concerning degradation, the further degradation of water quality that would result from implementing these proposals will adversely impact CCWD's operations. Accordingly, CCWD requests that the SWRCB not allow any further degradation of the Delta.

Real drinking water objectives for the Delta are long overdue.

CCWD's primary concern is the absence of any objective in the 1995 Plan to protect drinking water and public health. The increased regulation of drinking water in light of new information since 1995 on disinfection precursors and other contaminants has made protection of water quality in the Delta even more important . A real drinking water objective [2] is needed in the Delta to protect the public health of the 23 million people that rely on the Delta for their drinking water supply.

In response to comments from the Chair and Board Members expressing concern about the absence of any proposal for a numerical drinking water objective, [3] CCWD has proposed 300 µg/L bromide as a numerical objective to "ensure the reasonable protection of beneficial uses" as

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1. CCWD's February 18, 2005 letter noted "from 1944 to 1984, water quality in the fall was better than 100 mg/l chlorides 70% of the time and worse than 150 mg/l only 5% of the time; in the last 20 years the situation has almost reversed: water quality better than 100 mg/l only 20% of the time, and worse than 150 mg/l 50% of the time."

2. As described by Dr. Greg Gartrell at the January 10, 2005 workshop, "in terms of protecting drinking water [we are] really relying on other standards." (Reporter's Transcript, 636:10-637:10.)

3. See remarks of Chair Baggett (Reporter's Transcript, 616:16-22 ("that is not real satisfactory to us. [¶¶] If we don't have a number to enforce, it makes it tough on everybody."); 639:23-640:10); remarks of Member Sutley (Reporter's Transcript, 617:1-3 ("what are we doing to discharge our own statutory responsibilities in the meantime to protect the beneficial use of the water?").)

reasonably protective of the health of urban users of Delta water, balancing the competing beneficial uses of Delta water. As is explained in more detail in Attachment 2, CCWD believes that the proposed drinking water objective can reasonably be met through a series of actions, including implementation in conjunction with completion of CCWD's proposed Alternative Intake Project in the Central Delta on or near Victoria Canal and other CALFED efforts, and should take effect immediately to help "drive" the cooperative efforts of CCWD, the projects, and other CALFED agencies to make necessary source improvements. [4]

The environmental review process for any amendments or revisions of the Plan should include a "hard look" at the full range of alternatives under consideration.

Whether the Board prepares an EIR, a Mitigated Negative Declaration, a Negative Declaration pursuant to Public Resources Code section 21080.5, or other environmental documentation that is functionally equivalent thereto, [5] CCWD believes that it is critical to the credibility of the periodic review process that the environmental analysis take the requisite "hard look" at the impacts of the proposed amendments and revisions to the Plan. (*Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4th 1745, 1752.) Because "the most important purpose of CEQA [is] to fully inform the decision makers and the public of the environmental impacts of the choices before them" (*Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 920), CCWD believes that the environmental analysis must include an in-depth review of the full range of alternative water quality objectives that have been proposed or are under consideration. [6]

At a minimum, this review should include the following possible drinking water objectives: the CALFED target of 50 µg/L bromide and 3 mg/L total organic carbon, CCWD's proposal of 300 µg/L bromide for drinking water protection (including mechanisms to achieve such an objective), and other relevant alternatives such as the 150 ug/L bromide goal in the 1991 Water Quality Control Plan. The analysis should include projections of water quality at selected municipal intakes, including a combination of CCWD's current and potential future intakes.

Summary discussions of specific proposals

The final attachment (Attachment 3) sets forth CCWD's final comments on several of the proposals under consideration by the Board in the Periodic Review process. The topics are discussed in the general order of priority to CCWD.

If you have any questions regarding CCWD's comments, please contact Richard Denton, CCWD's Water Resources Manager, at (925) 688-8187.

Yours Very Truly,

Carl P. A. Nelson

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4 The intended concept is similar to that used in the 1995 Plan to defer the South Delta electrical conductivity (EC) agricultural objectives at four locations 0.7 EC objective to a date anticipating the construction of permanent barriers in the South Delta. In Attachment 3, CCWD expresses its serious concerns about the linkage between the objectives and the proposed barriers.

5. See September 30, 2004 Staff Report for the Periodic Review of the 1995 Water Quality Control Plan, p. 12.

6. "[A]n EIR must describe 'a range of reasonable alternatives to the project, or to the location of the project, which could feasibly obtain the basic objectives of the project....' [¶].... '[W]hat is required is the production of information sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned. ...[A]n objective, good-faith effort to comply... requires a "hard look" at environmental consequences in recognition of the factors described in [CEQA]....'" (*Save Our Residential Environment, supra,* 9 Cal.App.4th at 1751-1752 (quoting *Residents Ad Hoc Stadium Committee v. Board of Trustees* (1979) 89 Cal.App.3d 274, 286-287).)

Attachments: 1 – Degradation of Delta Water Quality
2 – Proposed Drinking Water Quality Objective
3 – CCWD's Specific Comments on Periodic Review Issues

cc: Ron Milligan (USBR)
Amy Aufdemberge (DOI)
Cathy Crothers (DWR)
Ken Landau (CV RWQCB)

The Continuing Degradation of Delta Water Quality Needs to be Reversed

Although considerable strides have been made in the improvement of water quality at other times of the year, over the last twenty years, it is a fact that fall water quality in the Delta continues to decline. At the January 10, 2005 workshop, Dr. Greg Gartrell presented graphs of measured chlorides going back to 1944 at Contra Costa Canal. [1] In his words, this data "demonstrates … a change in the way the system is operated. (Reporter's Transcript, 634:23-25.) In particular, "since around the mid '80s there has been something of a shift in the Delta… in the fall." (Reporter's Transcript, 635:3-4.) As Dr. Gartrell summarily characterized it:

> [I]n the dry years the salinities are much higher, and now in the wetter years, excepting for those El Nino years where there is more water than anybody knows what to do with, you get salinities in the fall in the Delta that are not too much different from what you see in the very, very dry years. That is a disturbing trend. It is one that we are disturbed by. It is one that, I think, CALFED is trying to address with their continuous improvement in water quality.

(Reporter's Transcript, 635:14-23.)

In evaluating the legal implications of this downward trend, it is important to keep in mind that degradation that does not result in a violation of a numerical objective can be significant. (See e.g., July 28, 2004 letter from the Chief of the Water Rights Division conditionally approving the Water Quality Response Plan ("significant degradation of water quality may occur in the absence of violation of water quality objectives" at least where water quality degradation impairs a senior water right of water of a usable quality).) [2] This is true in part because the Board's anti-degradation policy *is itself a water quality objective*:

The requirement in SWRCB Resolution No. 68-16 to maintain the existing high quality of water unless a change (1) is consistent with maximum benefit to the people of the state, (2) will not unreasonably affect the beneficial use of the water, and (3) will meet the water quality objectives is itself a water quality objective. (See SWRCB Order WQ 86-17 at 17 ["Resolution 68-16 has been adopted, as a general water quality objective, in all . . . regional water quality control plans."].) Accordingly, allowing the water quality to be degraded until it barely meets the numerical objective could violate this objective.

(Order WRO 2004-0043-EXEC, p. 7, fn. 6.) [3]

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1. See the PowerPoint presentation posted on the SWRCB website as CCWD EX-09[1], particularly Slide 2.

2. This letter is posted at http://www.waterrights.ca.gov/baydelta/water_quality_response_plan_approval.pdf .

3. The fact that the anti-degradation policy set forth in Resolution No. 68-16 is itself a water quality objective within the Delta has important implications, particularly for the DWR and Reclamation. In section 103(d)(2)(D)(i) of Public Law 108-361, the so-called "Calfed Bay-Delta Authorization Act," the Secretary of the Interior is required, by October 25, 2005, to "develop and initiate implementation of a program to meet all existing water quality … objectives for which the Central Valley Project has responsibility." To the same

Board Staff has recognized that many of the proposed changes would result in degradation of water quality:

> Some of the comments on the water quality objectives in the 1995 Plan request relaxation of water quality objectives or changes in the compliance locations where the location changes may amount to a less stringent requirement. Assuming that the SWRCB has information supporting a change and making the change appears to be in the public interest, the SWRCB will analyze the change pursuant to its "Statement of Policy with Respect to Maintaining High Quality of Waters in California" set forth in SWRCB resolution No. 68-16 and, if appropriate, pursuant to 40 CFR section 131.12 which is the federal anti-degradation policy, before making the change.

(September 30, 2004 Staff Report on the Periodic Review of the 1995 Water Quality Control Plan, p. 13.)

CCWD wholeheartedly agrees that the proposals that will likely result in further degradation of the Delta – particularly increased closures of the Delta Cross Channel, elimination of the 0.7 EC standard in the southern Delta, or major changes to the estuarine habitat (X2) objectives – should be carefully reviewed in light of the referenced antidegradation policies as well as in light of the general CALFED Bay-Delta Program goal of improving Delta water quality, and the CALFED drinking water subcommittee's ongoing efforts to evaluate ways to protect drinking water quality and public health.

Moreover, to the extent that the "flexibility" sought by these proposals is a euphemism for "increased exports," the Board will also need to take into account the contrary provisions of the Delta Protection Act. Water Code section 12204 prescribes that "no water shall be exported which is necessary to meet the requirements of Sections 12202 and 12203…." Section 12202 makes clear that the projects shall provide "salinity control and an adequate water supply for the users of water in the Sacramento-San Joaquin Delta." *A fortiori*, water that is necessary for salinity control is not available for export.

Finally, CEQA plainly requires that significant adverse environmental impacts be mitigated where feasible (or avoided where there arre feasible alternatives). (Pub. Resources Code § 21002 (a).). Thus, the revised CEQA Environmental Checklist Form (October 26, 1998) attached as Appendix G to the CEQA Guidelines indicates that mitigation should be provided for hydrology and water quality impacts not only if the project would violate any water quality standards or waste discharge requirements (VIII(a)) but also if the project would otherwise substantially degrade water quality (VIII(f)). (Appendix G, pages 7-8.) As one court recently put it, "CEQA compels process. It is a meticulous process designed to ensure that the environment is protected." (*Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 911.)

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effect is Water Code section 138.10, which requires the Director of the Department of Water Resources, "[o]n or before January 1, 2006," to prepare a plan to meet the existing permit and license conditions for which the department has an obligation, as described in the State Water Resources Control Board Decision No. 1641," which plan "shall be designed to achieve compliance with [those] permit and license conditions…."

For the reasons discussed above, and in recognition of the incidental protection that such objectives often have on the quality of water that is withdrawn elsewhere in the Delta for drinking water, by CCWD and by the urban agencies that receive water from the State and Federal export pumps, CCWD requests that the Board not allow further degradation of the Delta unless it makes an express determination based on substantial evidence that (1) the existing quality of water is better than the quality established in policies as of the date on which such policies become effective," and (2) "it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies." (SWRCB Res. 68-16, ¶ 1.) [4]

4. Of course, notwithstanding any such finding, the Plan is legally required to "ensure the reasonable protection of beneficial uses." (Water Code § 13241.)

The Time Has Come for a Real Drinking Water Objective

This attachment briefly elaborates on the discussion in the comment letter concerning the need for an objective specially formulated to protect drinking water and public health. As Dr. Greg Gartrell aptly stated at the January 10, 2005 workshop:

> If you look at this system as a whole and what we have in terms of protecting drinking water really relying on other standards. Most protective for the system as a whole, with respect to drinking water quality is the X2 for fisheries. That provides us a very high quality water for most of the spring and some of the winter. The agricultural objectives take us into the summer for most years, not in dry years, but certainly in the wetter years. Those are probably the second most protective. They are designed for the protection – basically based on growing corn in the Delta.
>
> [The] Industrial standard of 150 milligram per liter is not designed for drinking water protection, but all of those are surrogates for that now. As well as the municipal the 250 milligram per liter chloride, that is a taste issue. That was set at a level where people stopped drinking the water. You want to call it as a gag rule. There is not a drinking water protection standard for itself. …. What Contra Costa Water District is asking for … is a commitment from the Board to reach a decision on an objective for drinking water purposes.

(Reporter's Transcript, 636:10-637:10.) CCWD also asked for the following finding:

> Due to concerns with disinfection by-products in treated water from the Delta and in keeping with the target of obtaining the best available drinking water, the Board finds that, wherever feasible, municipal water supply agencies should strive to achieve either: (a) average concentrations at Clifton Court Forebay and other southern and central Delta drinking water intakes of 50 ug/l bromide and 3.0 mg/l total organic carbon, or (b) an equivalent level of public health protection using a cost-effective combination of alternative source waters, source control and treatment technologies, consistent with the CALFED Bay-Delta Program's target for providing safe, reliable, and affordable drinking water in a cost effective way.
>
> Consistent with this approach, appropriate actions to improve Delta water quality and treated drinking water quality may include some or all of the following: making maximum use of high-quality uncontrolled flows through off-stream storage, elimination of agricultural drainage in the vicinity of drinking water intakes, relocation of urban drinking water intakes, modification of Franks Tract to reduce intrusion of saltier water into the Delta, source control of wastewater discharges, projects to improve water quality on the San Joaquin River, advanced treatment technology studies, implementation of additional or advanced treatment, and water quality exchanges.

(See CCWD-EXH-09[1], slides 9-10.)

As discussed in the comment letter, CCWD has proposed 300 µg/l bromide as a numerical objective reasonably protective of the health of the twenty-three million people who drink water drawn from the Delta, balancing the competing beneficial uses of Delta water. CCWD proposes that the 300 µg/l bromide objective take effect immediately and be enforceable at the end of the water rights phase, but that the enforcement be deferred based upon a reasonable schedule for the completion of CCWD's Alternative Intake Project and other projects.

Summary Discussion of Specific Proposals

As noted in the letter, this attachment summarizes CCWD's final comments on proposals, submitted to the State Water Resources Control Board for consideration in the Periodic Review process, that are of particular concern to CCWD.

1. *Potential new drinking water objectives* (Issue 4c)

On January 10, 2005, CCWD presented ample evidence concerning the need for additional drinking water protection (Reporter's Transcript 569:224-574:6 (Dr. Briggs), 618:10-634:12 (Ed Means), 586:1 – 602:7 (Dr. Denton) 634:14-640:13 (Dr. Gartrell)). As Ed Means aptly summarized the presentation: "The short of it is the 150-250 [mg/l objective] is not protective." (Reporter's transcript, 633:19-20). CCWD's February 14, 2005 letter (CCWD-EXH-15) noted, "As was discussed in detail at the January 10 and January 12, 2005 workshops, urban water agencies face increasing challenges in providing drinking water that meets all treatment regulations and fully protects public health. California drinking water providers need to control the production of disinfection byproducts (DBP) in treated water and this can only be achieved if there is also management of DBP precursors in the source water." As also stated in CCWD's February 14, 2005 letter, CCWD requests that the Board adopt a new bromide objective that protects drinking water quality that will be met through implementation of CALFED water quality projects, including intake relocation, on a time schedule consistent with those projects.

In CCWD's March 7, 2005 letter (CCWD-EXH-18), CCWD stated that:

> CCWD believes that with a new Delta intake at the western end of Victoria Canal, and implementation of other CALFED water quality improvement actions such as the San Joaquin River water quality management plan and modification of Franks Tract, a 300 µg/l daily bromide objective would be readily achievable at one or more of CCWD intakes without additional water supply cost.

In conclusion, CCWD believes that it is no longer credible to assert that the 150 mg/l and 250 mg/l chloride objectives provide reasonable protection of the beneficial use made of water drawn from the Delta for drinking by twenty-three million people.

2. *Compliance Location of the 150/250 mg/l chloride objectives* (Issue 4b)

CCWD requests that the compliance location remain at Pumping Plant #1. However, CCWD is willing to entertain the concept of a reasonable monitoring agreement based on Holland Tract EC, as discussed in its January 10, 2005 letter (CCWD-EXH-014):

> The Pumping Plant #1 compliance location (C-5) must remain unchanged at the Contra Costa Canal Pumping Plant #1 to ensure water diverted by CCWD from Rock Slough is at or better than the 150 mg/l and 250 mg/l M&I chloride objectives. These objectives provide protection against salinity intrusion to all M&I diversion points in the southern and central Delta, and are necessary to ensure water quality protection at those Delta M&I diversion points, including CCWD's Old River intake.

In the near future, the circumstances in which local degradation leads to exceedances of water quality objectives in Rock Slough will be minimized by three factors, discussed at length during the presentation of Dr. David Briggs on January 10, 2005. (Reporter's Transcript 569:24-585:23; CCWD-EXH-07.) These factors are Veale Tract improvements, Contra Costa Canal Encasement, and in the longer term, increased use of Pumping Plant No. 1 to meet increases in CCWD demands.

CCWD urges that the Board reject the proposal by DWR and Reclamation to establish an alternative compliance location at Holland Tract to be used as a proxy for the objectives at Pumping Plant No. 1. That proposal fails to provide sufficient protection for the beneficial uses currently receiving some limited protection from the 150 and 250 mg/l chloride objectives. The objective needs to remain where the beneficial uses can best be protected.

However, as stated in CCWD's March 8, 2005 letter (CCWD-EXH-19), in the event that there is an exceedence of either chloride objective and the 3-day running average diversion rate at the Contra Costa Canal is less than 30 cubic feet per second, CCWD would be willing consider such an exceedence beyond the control of the State Water Project and Central Valley Project, provided the the daily EC at Holland Tract, measured three days previously, was 0.94 mS/cm or less (in the case of the 250 mg/l chloride objective) or 0.56 mS/cm or less (in the case of the 150 mg/l chloride objective).

3. *Issues Related to the Implementation of the 150/250 mg/l chloride objectives* (Issue 11)

As discussed above, CCWD recognizes that under certain conditions the projects may not currently be fully responsible for exceedances of the 150 mg/l and 250 mg/l objectives at Pumping Plant No. 1, and believes it is appropriate to establish a new monitoring location at Holland Tract as part of a reasonable approach to evaluate responsibility for exceedences of the municipal and industrial chloride objectives at Pumping Plant No. 1.

CCWD, DWR and Reclamation have continued to have further conversations in search of a mutually agreeable mechanism to help the SWRCB appropriately assign responsibility for compliance. Unfortunately, my January 10, 2005 comments concerning the status of these discussions are still true today:

> CCWD and the projects have some more talking to do. We differ in terms not only of numbers but in some degree with regard to what the concept is that we are shooting towards, and I think we need to focus on that and focus on what sort of language that we might propose jointly that would address the issue that we were discussing.

(Reporter's Transcript, 603:18-24.) From CCWD's perspective, the key criterion is that the procedure not weaken the protection afforded to beneficial uses by the established objective. CCWD's March 8, 2005 letter (CCWD-EXH-19) described "two important reasons why the Holland Tract salinity levels as proposed by DWR and Reclamation do not provide sufficient protection for the beneficial uses protected by the 150 and 250 mg/l chloride objectives":

The first is evident from reviewing the "scatter plots" presented by DWR an Reclamation on January 10, 2005: a significant number of the data points shown on the plot are above the proposed in-lieu salinity level; this necessarily means that each of these data points represents a violation of the 150 mg/l and 250 mg/l objectives at the Contra Costa Canal Pumping Plant #1. CCWD's proposed water quality criteria at Holland Tract are necessary to ensure the 150 mg/l and 250 mg/l objectives are met at the Contra Costa Canal Pumping Plant #1.

The second is that the Holland Tract salinity levels as proposed by DWR and the USBR address only the operational variations and the effects of "winds, tides and other factors" (the 'operational buffer' referred to by the SWC in their February 14 letter). To ensure the 150 mg/l and 250 mg/l objectives at the Contra Costa Canal Pumping Plant #1 will be achieved, any proposed Holland Tract salinity levels must also allow for general water quality degradation between Holland Tract and the entrance to the Contra Costa Canal from agricultural discharges to both Old River and Rock Slough, not just from Veale Tract (which could be called a 'degradation buffer').

This degradation has been present since before the 1940s, and affects all locations in the Delta, not just Rock Slough water quality, and it affects the Rock Slough water quality whether or not CCWD is diverting from Rock Slough. Meeting the Pumping Plant #1 objective despite this generalized degradation is fully within the control of the State Water Project and Central Valley Project and is independent of CCWD's diversion rate.

4. *Changes to 150 mg/l chloride objective* (Issue 4a)

No evidence was presented to support eliminating the 150 mg/l objective. As Chairman Baggett noted on January 10, 2005: "given what we've heard so far and information in the record, that is not likely to be an issue here." (Reporter's Transcript, 564:17-19.) Accordingly, eliminating the 150 mg/l objective should no longer be considered as part of this Periodic Review. Similarly, no basis was presented to support changing from a calendar year to a water year for tracking compliance. With its January 10, 2005 letter, CCWD presented historical data showing no significant difference in the total number of days of 150 mg/l compliance using calendar year and water year accounting, and showing the 150 mg/l objective has easily been met historically, except in the critically dry year 1992 (which is unlikely to recur because the estuarine habitat (X2) objective requires higher outflows from April through June).

5. *Southern Delta Electrical Conductivity* (Issue 10)

In response to the proposal by DWR and Reclamation to change the current southern Delta electrical conductivity (EC) agricultural objectives at four locations [1] from 0.7 EC for April through August – which finally took effect – back to 1.0 EC, CCWD noted:

> Relaxing the existing 0.7 EC requirements in the south Delta to 1.0 EC will, at certain times, dramatically increase Delta salinity. For example, 0.7 EC at CCWD's Old River intake near Highway 4 is equivalent to a chloride concentration of 150 mg/l chloride. An EC of 1.0 at the Old River intake is equivalent to about 235 mg/l (representing an increase in chloride concentration of 85 mg/l). [¶] Relaxing the EC requirement in the south Delta could increase the concentration of bromide, a disinfection byproduct precursor, at Delta drinking water intakes. …. By way of comparison, at CCWD's Old River intake, an EC of 0.7 is equivalent to a bromide concentration of about 500 µg/l, which is already well in excess of the 300 µg/l drinking water objective requested by CCWD.

(April 15, 2005 letter from CCWD to SWRCB (CCWD-EXH-20)) [2] The letter also noted that such a relaxation "would constitute backsliding in contradiction of anti-degradation policies of the SWRCB and the federal government, allowing further degradation of water quality in the south Delta and resulting in direct adverse impacts on drinking water quality for CCWD's customers, as well as the customers of the Central Valley Project and the State Water Project."

Nor should the 0.7 EC objective be eliminated if and when the South Delta Improvements Program is actually implemented. On page 12 of the protest submitted by the South Delta Water Agency in opposition to the projects' petition to "change" the effective date of permit/license conditions that require that the south Delta objectives be met, the following was correctly stated:

> Even if a permanent barrier program is implemented to improve South Delta conditions, that program has no bearing on what is necessary to protect agricultural beneficial uses. The Board should at a minimum be aware that the barrier program does not address the Brandt Bridge standard and only addresses the Middle River and Tracy Old River standards because DWR eventually determined their initial program would not meet those standards. [3]

The permanent barrier program is "not … a method for complying with water quality obligations/permit conditions." (SDWA Protest, p. 12.)

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[1]. Located at San Joaquin River at Airport Bridge, Vernalis; San Joaquin River at Brandt Bridge site; Old River near Middle River; and Old River at Tracy Road Bridge

[2]. Also please see attached copy of CCWD's May 11, 2005 protest letter concerning the projects' petition to "change" the effective date of permit/license conditions that require that the south Delta objectives be met.

3. As was stated in the SDWA protest, "DWR informed the Board that permanent barriers would help meet the standards but not consistently meet all of them." (SDWA Protest, p. 12.)

6. *Closure of Delta Cross Channel* (Issue 2)

CCWD urges the Board to specify that the Delta Cross Channel (DCC) remain open at least 50% of time to protect water quality, as was always intended, and believes that the 1995 Plan should be revised to clarify that the maximum number of days between November through January that the DCC may be closed is 45. The only exception would be additional closures for flood protection (i.e., when Sacramento flow is greater than about 25,000 cubic feet per second). As CCWD explained in its December 16, 2004 letter:

> Closure of the DCC under low Delta outflow conditions and high exports results in degradation of water quality at CCWD's intakes. This degradation can impact CCWD's beneficial use of Delta water, even when the municipal and industrial chloride objectives are not exceeded. For example. the water may no longer be of sufficient quality to be diverted to storage and later released from CCWD's Los Vaqueros Reservoir as blending water, or the degradation may require CCWD to release additional blending water.

(December 16, 2004 letter from CCWD to SWRCB, pp. 1-2 (CCWD-EXH-3)) In response to a proposal by the Data Assessment Team (DAT), part of the CALFED Operations Group, to open the DCC only when necessary to avoid exceeding the 250 mg/l chloride objective, CCWD noted:

> [T]his does not protect CCWD from degradation when the 250 mg/l objective is being met. For example, an increase in chloride concentration at CCWD's Old River intake at Highway 4 from 55 mg/l to 80 mg/l can still significantly affect CCWD's operations and the quality of the drinking water CCWD delivers to its customers. **[4]**

7. Proposals for "flexing" the so-called X2 objective (Issue 5)

CCWD believes that the Board has no choice but to reject "out of hand" the concept of "flexing" as a way to give the projects more real-time operational flexibility. No proposals have been presented in a fashion sufficiently concrete to permit meaningful discussion, nor have any "sideboards" been established to limit the scope of X2 adjustments. (CCWD's February 18, 2005 letter (CCWD-EXH-17) noted that one of the necessary "sideboards" would be the protection of Delta drinking water quality.) Any changes in the operational rules governing the X2 objective will need to be developed and reviewed by stakeholders, and all others must have an opportunity to fully review and comment thereon, prior to them being incorporated into a draft Plan. As set forth in CCWD's February 18, 2005 letter:

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[4]. "lf intake water chlorides rise above CCWD's delivered chloride goal of 65 mg/l, CCWD begins releasing previously stored water in Los Vaqueros Reservoir to blend with Delta water to meet the 65 mg/l goal. This represents a cost to CCWD in terms of water supply, energy costs to replace the stored water, and potential subsequent degradation of CCWD's delivered water if CCWD runs out of blending water. It can also be considered as having the same effect as reducing the effective size of CCWD's $450 million, 100,000 acre-feet, water quality reservoir, representing a significant loss of a portion of this $450 million asset."

> The existing Collinsville X2 relaxation in the 1995 Plan was developed as part of the December 15, 1994 Bay-Delta Accord. The relaxation was designed to provide a balance between water supply and fishery protection in the most severe dry years, and was linked to the entire fishery protection package in the Bay-Delta Accord. Any further relaxation of this standard will upset that delicate balance. Because of the dramatic effect such a relaxation would have on fisheries and on drinking water quality, CCWD strongly opposes any further relaxation.

The water quality benefits that result from the current X2 objective were an inherent and intentional part of the balancing process that led to the Bay-Delta Accord and the 1995 Plan, and are, therefore, anything but "incidental." Any revisions to the X2 objective should be fully "vetted" through a process that will involve all Bay-Delta stakeholders and other interested parties.

DWR and Reclamation have suggested that decisions on flexing be left to the CALFED WOMT. This is manifestly inappropriate, in part because the WOMT has no active representation by any agency charged with protecting water quality, whether for drinking water or otherwise.

The CALFED Operations and Fish Forum (OFF) was recently tasked by the CALFED Operations Group (established under the Framework Agreement) to develop a proposal for reducing the impacts of Port Chicago X2 compliance on anadromous fish on the American River. One straw proposal developed as part of this OFF process was that releases from Nimbus Dam to meet Port Chicago X2 objective be limited to 4,000 cfs (rather than a typical maximum of about 8,000 cfs), consistent with the recommendations presented to the Board by the Sacramento Water Forum (WF-EXH-01, January 12, 2005). This straw proposal further suggested that (a) alternative operation of other upstream reservoirs and the Delta export pumps first be used to avoid the need for high American River, and (b) if alternative operations were not possible, and American River releases were limited by the proposed 4,000 cfs cap, DWR and Reclamation would be considered to have met the Port Chicago X2 objective if the 3-day average Delta outflow was 25,000 cfs (rather than the current 29,200 cfs requirement). The straw proposal acknowledged that additional days of 25,000 cfs would need to be provided to maintain the same level of Delta fisheries protection. Agreement could not be reached among the OFF group participants so no final proposal was developed. However, a similar operating plan, with similar level of specificity and "sideboard" constraints, needs to be developed and reviewed by the Bay-Delta stakeholders before the Board should consider allowing more flexibility in complying with the estuarine habitat (X2) objectives, or other Bay-Delta objectives.