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COMMENTS BY THE SOUTH DELTA WATER AGENCY REGARDING EXPORT LIMITATIONS FOR THE PROTECTION OF FISH AND WILDLIFE BENEFICIAL USES PERIODIC REVIEW OF THE 1995 WATER QUALITY CONTROL PLAN

The Board has asked whether it should amend the Export Limits criteria in the 1995 Water Quality Control Plan listed under the Fish and Wildlife Beneficial Uses. Since this objective is for the protection of fish and wildlife, it should be based upon what is reasonably necessary for the protection of this beneficial use. In addition, meeting such objective should not adversely affect the meeting of any other designated beneficial use or adversely affect water right holders whose rights are superior to those who are eventually required to meet the objective.

Table 3 of the 1995 Plan sets forth the current export limitations for the protection of fish and wildlife beneficial uses. The first export objective deals with export rates during the spring pulse flow (also an Objective), and limits exports during this (approximate) 30 day period to the criteria set forth in Footnote 22. Initially, this Footnote allows 1500 cfs, or "100% of 3-day running average of the San Joaquin River at Vernalis, whichever is greater." Footnote 22 goes on to allow "variations" to this rate "restriction" and this "flexibility" is "intended to result in no net water supply cost annually..." Finally, the Footnote allows the CALFED operations group to adopt such variations (with disputes decided by the CALFED policy group) which become effective immediately unless objected to by the SWRCB Executive Director. All of these conditions to the export restriction should be changed.

First, there is no scientific or biological support for the "1500 cfs" or "100% of the San Joaquin River flow" criteria. All of the fishery agencies and environmental interests agree that decreased pumping during the pulse flow is necessary to protect by salmon and smelt, each of which is either an endangered or threatened species. The FWS Biological Opinion for Delta smelt requires decreased exports in order to decrease the number of fish killed at the State and Federal pumping plants. Even the Board recognized this in D-1641 when it allowed the implementation of the San Joaquin River Agreement/VAMP. This program seeks to better determine the effects of flows and export limits on these endangered species. Since there is no scientific data supporting the current objective, and voluminous data supporting limited exports during this period, the Board can not adopt (or continue) the current objective. Allowing the export of 100% of the San Joaquin River flow, when that flow is artificially elevated for the purpose of transporting salmon smolts and delta smelt past the pumps would in fact be the opposite of protecting the beneficial use. It would allow the increased killing of these species. As the Board may recall, this "100%" export provision was the result of negotiations between certain limited stakeholders who were not attempting to develop the objectives, but were trying to limit the manner by which implementation of such objectives would affect them. Obviously, adoption of such an objective has no place in these proceedings.

Second, those very same negotiations developed the "no net loss" provision. A water quality control plan is to designate beneficial uses, and then develop objectives which will reasonably protect those uses (Water Code Sections 13050 (j) and 13241). The effects on total exports should not be a criteria which limits what is necessary to protect the beneficial use, especially when exports are, generally, the most junior water rights. The Board does not decide that releases from a dam or that Delta outflow should be so limited, neither should it do so here. Such considerations should be made at the implementation phase, not when determining what is necessary to protect the beneficial uses. Section 13241 does allow the Board to consider "economic" factors in developing the objectives. However, such consideration would not seem to be controlling when the "lost" exports would not be allowed anyway under ESA and other operational limitations.

Third, allowing various CALFED groups and the Executive Director to "modify" export rates to protect those responsible for the objectives is again confusing the development of objectives with the implementation of the objectives. Being able to adjust exports to protect exporters, not fish is contrary to purpose of the export limitations; the protection of fish and wildlife beneficial uses. In addition, past experience indicates that whatever CALFED group is making the decision, the general public has little input and no part of the decision. Hence the group ends up "cutting a deal" between exports and the number of fish killed while ignoring other users and beneficial needs. Notwithstanding the effects of these decisions on users in the South Delta, the Board need only look at the salvaged (i.e. killed) fish at the pumps during the past few years to see that CALFED should not be deciding where the trade off between fish and exports should be. Finally, with regard to this, it would seem questionable at best to allow a real time decision with only a ten day review period to substitute for the environmental review requirement for the adoption of a water quality control plan.

As stated above, a water quality objective should not be developed or achieved in such a way that it is expected to adversely affect other objectives, or users with rights superior to those charged with meeting the objective. With regard to exports, the record is clear that operation of the State and Federal export pumps causes changes in the flows, patterns, elevations and quality of water in the South Delta. This occurs with no barriers, or with temporary or permanent (as projected) barriers are in place. SDWA will present more information on these issues when these workshops move on to Topics 8 and 9. However, the Board cannot ignore the effects of exports on other objectives or users.

For example, absent the export pumps, much of the flow of the San Joaquin River would continue past the River's split with Old River. With the pumps, a larger percentage of the River "turns" into Old River in response to the gradient caused by the pumps. This decreases the flow in the mainstem to Stockton and the Deep Water Ship Channel ("DWSC"). The DWSC is the location of a dissolved oxygen ("DO") objective. Pursuant to the Central Valley Regional Board's TMDL efforts, it is now understood that decreased flow in the mainstem is one cause of low DO in the DWSC. Since DO is also an objective for the protection of fish and wildlife, exports should not be allowed to adversely affect it. This issue is not only important in summer and fall, the times traditionally believed to be when DO problems occur. It is important in all months as DO violations can occur throughout the year. Hence, at those times when DO is at

risk and exports are affecting flow in the mainstem, an export objective should apply.

The Board will receive more information on barriers in later workshops. However, as currently configured, the permanent barrier project is anticipated to increase the amount of water flowing into Old River in summer and fall, and will thus exacerbate the DWSC DO problem. Further, a DO objective is not only in the 1995 Plan (6.0 mg/l Sep-Nov), but also in the Basin Plan. The Basin Plan Objective is a lower 5.0mg/l, but is required throughout the Southern Delta, not just in the DWSC. Hence, if exports cause null zones where there is no net flow, one would expect that DO would drop. In fact, in the past two years there have been fish kills due to low DO in Old River in the area which is predicted to have such a null zone when the permanent barriers are installed and operated. [DWR has not done any modeling which would identify this same null zone under temporary barrier operation.]

Similarly, since the adoption of the 1995 Plan export operations have regularly caused low water levels in Middle River. These levels have been so low that at times, there is less than an inch of water in parts of the channel. Obviously, this must have an adverse effect on fish and wildlife. This issue was ignored in the 1995 Plan and improperly addressed in D-1641. The Board did not examine in the Plan or the Decision what levels were necessary to protect beneficial uses. Rather in the Decision, the Board asked the USBR and DWR to work out a Water Level Response Plan to address adverse impacts on local diverters. Besides the fact that the Response Plan has a dismal record in providing such protection, it in no way addresses the protection of fish and wildlife. Similarly, a decision by USBR, DWR and the Executive Director can not legally substitute for the necessary environmental review in establishing a water quality objective.

With regard to the protection of other beneficial uses, SDWA will present more information at a later workshop.

In conclusion, SDWA recommends that Footnote 22 be replaced and suggests the following language:

> Maximum exports during the spring pulse flow shall not exceed ____ cfs, or that amount allowed under the pertinent Biological Opinions, whichever is less.
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> Footnote 25 and Footnote 22 should also include the following:
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> Exports shall not result in changes to flows in the South Delta which (i) cause null zones or reverse flows which adversely affect DO levels, or (ii) impair other beneficial uses.

Respectfully submitted,

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