



SENT VIA EMAIL & FIRST-CLASS MAIL

January 24, 2011

Charlie Hoppin
State Water Resources Control Board
1001 I Street
PO Box 2815
Sacramento, CA 95812-2815

Re: Potential Modifications to San Joaquin River Flow Objectives
Inability to Respond to Request for Information by February 8, 2011

Dear Mr. Hoppin:

The San Joaquin River Group Authority (“SJRGGA”), while attempting to prepare information for submission by February 8, 2011 in response to the SWRCB’s November 22, 2010 Notice regarding the review of and potential modifications to the San Joaquin River flow objectives, has found that the SWRCB has not provided any information upon which to comment. First, pursuant to the November 22, 2010 Notice, the SWRCB has specified that any information submitted regarding the San Joaquin River flow objectives must not address the Draft Technical Report (“DTR”). Second, the SWRCB has not provided any additional information beyond that contained in the DTR upon which substantive, relevant comments regarding economics, beneficial uses, and/or implementation can be made. Thus, the SJRGGA urges the SWRCB to provide additional information, and in particular what the SWRCB contends the baseline condition is, to assist the interested parties in providing meaningful information and comments.

To date, the SWRCB’s focus has been on the development of the tools and information it needs in order to generate various flow alternatives and goals. The SWRCB has not, in fact, actually generated any alternatives and goals that currently may be considered and reviewed. The DTR itself was limited to technical information that could be used to develop alternatives, as by its own terms, the DTR contained “scientific information and tools needed to establish SJR flow” objectives. (DTR, p. 1). Indeed, the DTR recognized that based upon information obtained at the workshop and through the comments to the DTR, the SWRCB “will develop the tools *it will then use* to prepare the SED and revisions to the [SJR flow] objectives.” (DTR, p. 1)(emphasis added). Additionally, the DTR was not a preview of the alternatives themselves because, even though certain flow

alternatives were contained in the DTR, the DTR explained such “alternatives do not necessarily represent the alternatives that will be evaluated in the SED.” (DTR, p. 2).

The SJRGA and other parties provided the SWRCB with a significant amount of information demonstrating that the DTR did not contain sufficient tools and information necessary to inform the SWRCB’s decision-making with regard to new SJR flow objectives. According to your October 29, 2010 Notice, such information will be used by the SWRCB to make changes to the DTR. (October 29, 2010 Notice, p. 1). Moreover, after such changes are made, the DTR will be submitted to an independent peer review. (October 29, 2010 Notice, p. 1). Thus, it is clear that at this time the SWRCB does not even know if it has the necessary tools and information necessary to “consider potential changes to the San Joaquin River flow” objectives, let alone a set of actual alternatives that the parties can review.

The SJRGA recognizes that in the absence of knowing whether or not it has the tools and scientific information necessary to even consider potential changes to the objectives, let alone develop any alternatives to the existing objectives, the SWRCB is in no position to release or identify alternatives for review and comment. Nonetheless, the SJRGA submits that the SWRCB can identify what it contends is the existing baseline condition and seek review and comment on such contention. Knowing what the SWRCB contends is the baseline condition is critically important for identifying and evaluating impacts associated with any proposed alternative, and whereas the SWRCB cannot issue alternatives now, there is no reason it cannot immediately identify what it contends is the baseline.

The SJRGA suspects that what the SWRCB contends is the existing baseline condition will be the subject of tremendous debate. Given that there is no operation plan for New Melones, the U.S. has concluded that there is insufficient water at New Melones to comply with the requirements of the OCAP-BO, the San Joaquin River Restoration flows will soon commence, the Delta smelt OCAP-BO has been ruled to be arbitrary and capricious and will likely undergo revision, the DO-TMDL is being implemented, the SWRCB is evaluating the exercise of alleged water rights in the southern Delta and the VAMP has been extended for only one additional year, it is hard to imagine any particular baseline will be universally agreed upon. For example, the SJRGA will object if the SJR flow objectives contained in D-1641 are identified as the existing baseline, as such flows have never been fully implemented.

The SJRGA urges the SWRCB to identify in a draft report what it contends is the baseline condition and permit the interested parties to review, comment and participate in a workshop on such draft baseline condition. The SJRGA contends that this effort will need to be made, and can be undertaken in parallel with the SWRCB’s efforts to have the DTR peer reviewed and finalized. Absent the identification of the baseline condition, the SJRGA cannot submit any additional information to the SWRCB beyond that which it has submitted regarding the insufficiencies of the DTR and the inability of the SWRCB to rely upon the tools and information in the DTR to consider the need for or develop alternative flow objectives.

Charlie Hoppin-SWRCB

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If you or your staff could please inform us regarding these issues, then we will be able to respond in a meaningful and productive matter.

Very truly yours,

O'LAUGHLIN & PARIS LLP

A handwritten signature in blue ink, appearing to read "T. O'Laughlin".

By: _____
TIM O'LAUGHLIN

TO/tb

cc: SJRGA (via email only)
Tom Howard (via email only)
Les Grober (via email only)
Diane Riddle (via email only)
Barbara Evoy (via email only)