O'Laughlin & Paris LLP Attorneys at Law

April 14, 2010

Via e-mail to Bay-Delta@waterboards.ca.gov and 6 copies to Phillip Crader, SWRCB

Mr. Charles R. Hoppin, Chair
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: Delta Outflow Proceeding

Dear Chairman Hoppin:

Thank you for the opportunity to comment on the Delta Outflow Proceedings. These comments are made on behalf of the SJRGA and its member entities. The SJRGA did not submit testimony or witnesses in the Delta Outflow Proceeding. The SWRCB has already commenced a review of the San Joaquin River Flows under its Basin Planning Process. We are of the belief that many due process issues and administrative irregularities would result from a mixing of the proceedings. We will be submitting information for the Board's consideration in the SJR Basin Plan process.

We thought the presentation by the Delta Environmental Flows Group was of particular interest; specifically, the concept of flow being tied to functionality. What is it about a certain rate, volume, duration and timing of flow that impacts/changes dissolved oxygen, velocity, predation, water temperature, food, turbidity, refugee, habitat, substrate, and floodplain inundation? So, how is it that flow can change these functions for the better and/or the worse? On the San Joaquin River, the flow and functionality would then be applied to two species: Fall Run Chinook Salmon and *O.mykiss*.

The Board could develop a simple matrix that would have a flow rate on one axis, and function on the other axis. You would have one matrix based on the life history of Fall Run Chinook Salmon and one for *O.mykiss*. You would look at the boxes to see how flows would change functionality, either positively or negatively. You would also look at each flow for SJR Fall Run and *O.mykiss* to determine that a flow action for one wasn't causing harm to the other species.

When we submit our information for the upcoming SJR Basin Plan process we will follow the functionality analysis presented by the panel with an important caveat. Itwas clear from witnesses such as Mr. John Burua that the physical habitat/configuration of the South Delta is a major factor, if not the major factor, driving functionality in the

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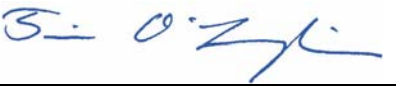
South Delta. We have not completed our analysis, but it may be that no matter what the flows, given the linear, shallow, trapezoidal channels, rip-rapped levees, that any amount of flow can change functionality. It may not be possible to overcome the limiting habitat conditions in the Southern Delta with flow.

Several other comments: Dr. Carl Messick raised an interesting point in the panel discussion that was not addressed by any of the submittals. To paraphrase his statement, "prolonged and sustained low flow years were destroying the salmon runs". This raises a fundamental question that none of the biologists addressed. Are the flow prescriptions to be done to raise the roof, or to raise the floor? The panelists talked in general terms of more variability. Currently the system has managed to cut off the peaks and slightly raise the floor. So, we see less flow in higher years as a percentage and more flow in dry years as a percentage. Do we want to manage the system for higher wet year flows and less dry year flows? Looking at the TBI flows, we would see large flows on the SJR in 1986 and 1987, minimal flows through 1992, big year in 1993 and then minimal flows from 1994-1998. The system would operate in a boom bust fashion. Is that better, or more, protective for Fall Run Chinook Salmon and *O.mykiss*?

The SJRGA firmly supports variability in the context of managing for the species. Unfortunately, the most inflexible people are the regulatory agencies. They want 60 days of a certain flow, at a certain point. Given all of the evidence that salmon smolts move both on the increase and decrease of flow it would seem flow variability is an important cue in moving smolts out of the tributaries.

Thank you for the consideration of our questions and ideas.

Very truly yours,
O'LAUGHLIN & PARIS LLP

By: 

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