

SOUTH DELTA WATER AGENCY

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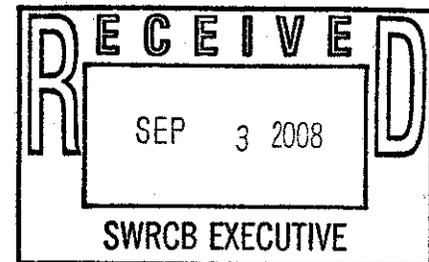
Alex Hildebrand
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September 3, 2008

Via E-Mail commentletters@waterboards.ca.gov
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Ms. Jeanine Townsend
Clerk of the Board
State Water Resources Control Board
P. O. Box 100
Sacramento, CA 95812

Mr. Chris Carr, Environmental Scientist
Bay-Delta Unit
State Water Resources Control Board
P. O. Box 100
Sacramento, CA 95812



Re: San Joaquin River Flows Workshop

Dear Ms. Townsend and Mr. Carr:

The South Delta Water Agency ("SDWA") is in the process of retaining an expert on fishery issues, and expects to provide more in depth comments and evidence as the process reviewing the WCQP moves forward. These comments will focus on the history of the current situation which may not be known to the current Board members.

In the development of fishery flows in the 1995 WCQP, the SWRCB avoided any determination of who may have caused the harm to the fisheries needing protection of the water quality objectives. (In addition, the Board inexplicably linked export levels to fishery flows, not requiring flows needed for fish to be allowed to flow into the Bay, but adopting a "no net loss" principle for exports. No net loss shifted exports in a manner which turned out to be at least as bad for the fisheries as were prior operations. This, in combination with the CalFed disaster of

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combining exporter interests with regulatory consideration of operations likely resulted in the fishery crash we are now experiencing.]

The current Vernalis fishery flows were developed from previous work done regarding Delta smelt. Initial conclusions were that certain flows were needed to move smelt away from the export pumps at certain times of the year. However, those flows were also linked to a range of decreases in exports. When combined (the flows and decreased exports) any benefits from either were blurred, leaving us with no clear understanding of what flows are needed for the fishery.

The Board staff, in discussions with a limited number of parties recommended that the smelt flows be adopted as the fishery objectives, assuming apparently that protecting smelt would also protect salmon. Little if any consideration was given to steelhead. To make matters worse, the objectives were placed at Vernalis rather than downstream of the export pumps. This meant that the Board adopted a certain level of flows needed to protect the out and in-migration of fish, but only required them to be in existence upstream of the export pumps; not requiring the flows reach to the Bay (which is necessary to transport out-migrating fish and attract in-migrating ones). The result was that the "needed" flows (and fish) entered the Delta, but were then mostly, if not all exported. [This is because even the decreased export amounts are generally higher than the increased Vernalis flows.] The natural result is the decreased fishery abundance.

The flows provided for the Vernalis flows were "purchased" from the tributary agencies who made no changes in their consumptive use of water, but apparently simply altered their schedules of mandatory releases for flood storage capacity to provide the water at a slightly different time than it would have come down absent the San Joaquin River Agreement. The tributary agencies created this Agreement with DWR and USBR so that none of them would be ordered to be responsible for those releases, and of course, there would be no investigation of who should be responsible.

As part of the SJRA and D-1641, DWR and USBR agreed to "backstop" any responsibility for objectives which would otherwise have been placed on San Joaquin basin water right holders (see D-1641 at page 19, Footnote No. 26). However, neither DWR or USBR made any efforts to plan for or provide this backstop, the result of which has been insufficient flow for the objectives and violations of fishery and water quality standards. The projects were to investigate recirculation, exchanges and purchases to meet these obligations, including the backstopping, but did virtually nothing. The current DWR and USBR position regarding meeting the standards is directly contrary to this backstopping commitment.

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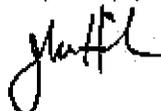
Eight years into the SJRA, the fisheries are in dire trouble. During this time we have found out that the DWR never applied for or received a take permit under the California ESA. DFG continued to work with the exporters to approve EWA, transfers, and make up pumping all the while knowing there was no permit for take because it is the issuing agency. The Bureau take permits pursuant to Biological Opinions were found to "not based on the best science" and in fact did not take into account the population of the species when allowing large numbers to be "taken." During the 1995 WQCP and the life of CALFED, thousands upon thousands of endangered and threatened species were killed. The federal court's response to this was to sharply curtail exports during certain times, concluding that a net downstream flow was necessary. A similar downstream flow as the one the SWRCB adopted but then did not implement in a fashion which would have allowed the flow to pass the exports to the Bay.

The response by the tributary agencies is to try to slacken water quality objectives downstream in the Southern Delta and to attack Delta water rights. These efforts are aimed at removing water use by Delta interests with the hopes that such decreases in use will make up the needed additional flow for fishery needs, notwithstanding that the Delta diversions have slowly decreased since the 1920's.

With this background, the SWRCB will hopefully be able to better address the problem. The process should determine what is necessary to mitigate the impacts the export projects have had on fish, what is necessary to mitigate the impacts tributary projects have had on fish, order such mitigation on the responsible parties, and then determine if additional water is necessary which should be provided according to water right priorities, with consideration given to the preferences in area of origin and Delta Protection Act statutes.

Please call me if you have any questions or comments.

Very truly yours,



JOHN HERRICK