

NID Nevada Irrigation District

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March 7, 1995

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EXECUTIVE OFFICE

Mr. John Caffrey, Chairman
State Water Resources Control Board
Paul R. Bonderson Building
901 P Street
P O Box 100
Sacramento, CA 95812-0100

Re: SWRCB Draft Water Quality Control Plan for the
San Francisco Bay/Sacramento San Joaquin Delta
Estuary Issued December 1994

Dear Mr. Caffrey, Members of the Board and Staff:

I presented testimony, both orally and in writing, at the State Board hearing on the 1994 Draft Water Quality Control Plan on Thursday, February 23, 1995, on behalf of the Delta Tributary Agencies Committee. I am presenting these written comments to you on behalf of Nevada Irrigation District, for which I am the General Manager, in response to your notice of public hearing regarding the December 1994 Draft Water Quality Control Plan.

We are extremely concerned that the draft environmental report supporting the 1994 draft plan be designed to make these documents withstand future legal challenges (either prior to or following water rights proceedings which you have currently scheduled to commence in June of 1995). And particularly we are concerned about the written comments of the Ag/CUWA group submitted along with their oral testimony on February 23 which made specific references to changes in the Draft Water Quality Control Plan.

For instance, Section IV(b) of the program of implementation in the SWRCB draft plan describes recommendations to other public agencies to undertake actions that would help achieve the water quality objectives which the Board sets forth in the plan. Written comments of Ag/CUWA reference the 12/15/94 principles agreement to identify and implement category III non-flow measures and states the following in their written comments at page 13:

Directors: David E. Southern, Division 1 • Ernst L. Bierwagen, Division 2 • Dale H. Birdsall, Division 3
R. Paul Williams, Division 4 • George Leipzig, Division 5
General Manager: James P. Chatigny • Secretary: Dorothy P. Miller • Treasurer: Teresita T. Andrews
Attorneys: Minasian, Minasian, Minasian, Spruance, Baber, Meith & Soares

"In that light, the joint agencies currently are working with various governmental agencies and environmental groups to develop a category III implementation plan for submission to the State Board and others by March 31, 1995. The proposed implementation plan is expected to include recommendations (where practical and appropriate) on: 1) specific measures that should be implemented in the short-term; i.e., in 1995 and in 1996 (fish screens is one identified in the principles); 2) procedures by which longer term actions can be adopted and implemented; and 3) possible mechanisms for funding and managing implementation of the category III program overall." See Ag/CUWA Written Comments at page 13.

The written comments further ask that the SWRCB add an additional paragraph on its Chapter IV on Implementation at category III which states as follows:

"The SWRCB acknowledges that there is an ongoing effort by state agencies, the federal government and agriculture, urban and environmental interests to identify, fund and implement (as warranted) measures to address the broader non-flow-related range of factors potentially effecting water quality and estuarine habitat in the Bay-Delta. . . the SWRCB intends to consider any such recommendations and incorporate them in future proceedings to the extent appropriate." See Ag/CUWA Written Comments at page 14. (Emphasis added.)

Ag/CUWA's comments at the February 23rd water quality hearing are now addressing the \$60 million annual mitigation fund of which MET guaranteed \$10 million annually and the monitoring fee fund which Walt Pettit told us at the Radisson Hotel in Sacramento on February 6 was currently unidentified in terms of annual cost. Additionally, in the Ag/CUWA written comments, great pains are taken by the Ag/CUWA group to make the draft environmental report exacting and complete, particularly where water will be sought from upstream areas such as Nevada Irrigation District to meet the water quality standards during the water rights proceedings. For example, page VIII-1 of the SWRCB's Draft Environmental Report states as follows at the second paragraph:

"The following discussion of environmental effects of the proposed standards is largely speculative because the SWRCB will not implement the objectives by allocating responsibility to meet the objectives until the water rights phase of the proceedings.

After that time, the SWRCB will prepare appropriate environmental documentation for its action. For this analysis, the SWRCB is using the SWP and the CVP as surrogates for the water right holders in the Central Valley that may be held responsible for meeting the standards." See SWRCB's DER at VIII-1.

The Ag/CUWA written comments submitted February 23rd at page 19 suggest the following:

"As discussed above, the use of the term 'speculative' could be misconstrued to suggest that the plan and the DER are in some way premature and/or incomplete, which they clearly are not. To avoid this confusion, we suggest that the first sentence (the sentence quoted above) be replaced with the following:

"The following discussion of the environmental effects of the proposed standards is a thorough analysis based upon the best available evidence, including scientific and technical reports, studies and data. As the SWRCB implements the objectives by allocating responsibility to meet the objectives at the water rights phase of the proceedings, additional information will be developed." See Ag/CUWA Written Comments at page 19, number 4.2.22.

The Ag/CUWA group's assisting the SWRCB in making its DER legally acceptable by removing the "largely speculative language referring to environmental standards" is an obvious attempt to "put words in the mouths" of the SWRCB staff to make both the plan and the environmental report pass legal muster. We emphasize to you, Chairman Caffrey and members of the Board, that the 280,000-acre Nevada Irrigation District lying in 4 counties in the northeastern Sierras of California was subjected to a possible loss of between 30,000 and 40,000 acre-feet by the imposition of D-1630 in the early part of 1993 prior to Governor Wilson's requesting you drop D-1630 and instead concentrate on long-term and permanent remedies for the Delta, including an Environmental Impact Report. The pulse flow requirements imposed upon Nevada Irrigation District by D-1630 in light of existing District contractual, regulatory and other statutory (both state and federal) requirements would create a serious operational morass. For instance, the District would have been required to:

1. Determine under D-1630 which agency would insure water released from pulse flow reservoirs would get to Freeport from the northeastern Sierras, and who and how would they account for this water?

2. How much water would generally reach the Freeport gauge? What kind of water carry-over would our District plan for each year in order to meet pulse flow requirements?
3. How would we convince you, Mr. Caffrey (the SWRCB), that the District and PG&E Yuba-Bear/Drum Spaulding Projects must operate as they were designed? They have historically operated and must continue to operate to allow flows to be released at Camp Far West or Folsom Reservoirs and not down the Middle Fork of the Yuba River. [This is an example of the chaos created by D-1630 pulse flow requirements on our northeastern Sierra district.]

The failure of your '94 draft environmental report on the draft '94 plan issued in December to recognize major regulatory changes in water outflow requirements that would create significant regulatory changes in Nevada Irrigation District reservoir operations to enhance water quality standards in the Delta, is unacceptable by Nevada Irrigation District. You must recognize that there will be significant impacts on local water supplies by imposition of these standards. You cannot assume that they are "largely speculative" in your environmental draft report as you have done at paragraph VIII-1 as I have quoted above. Neither can you accept the Ag/CUWA's rendition of a "cover-up" to get rid of the term "speculative" in your draft DER and make the DER pass legal muster.

You must recognize in the DER that the customers and residents within the Nevada Irrigation District's service areas will be socially and economically impacted by water quality standards and you must review impacts in your DER such as the District's existing agreements between the Department of Fish and Game, PG&E, Davis-Grunsky recreation developments and future water supply.

Your DER does not even mention the impact which the imposition of these water quality standards and thereby regulatory changes are performing upon Nevada Irrigation District. For instance, the draft DER should consider vis a vis Nevada Irrigation District, the following:

"(1) The complex agreement between NID and PG&E which requires set amounts of water to be delivered to hydroelectric units during certain periods of time, payments of generation which pay for O&M, and debt service for this project. The draft environmental report does not address any prior contract commitments which our District possesses

with PG&E or Fish & Game and which could have a major effect and impact on the District financially and socially as well as affect the timing and water supply amounts.

"(2) You fail to mention or consider the complex agreements between NID and Fish & Game which set forth minimum reservoir pools, releases of water for fish and wildlife, and flow ramping rates on the Yuba and Bear Rivers. The draft environmental report supporting your '94 draft plan does not address the impacts or effects of these changes.

"(3) Your draft environmental report fails to recognize agreements between NID and the State of California Davis-Grunsky program for recreation facilities at District reservoirs which require specific water levels to enable a continuing recreation program to be available under certain water conditions, depending upon the year. The draft environmental report does not address these effects of adopting the standards of the water quality plan or the existing recreation requirements for District reservoirs."

You can't simply adopt the standards and then look for the water in a water rights hearings. You must first analyze, for instance, that the existing District water supply will require a dry year performance analysis in order to ascertain the cumulative effects and impacts of new operations to meet the '94 water quality plan objectives benefitting the Delta. This performance analysis should be performed as part of the environmental impact analysis and support the Draft Water Quality Control Plan. You should not wait to find the water during the water rights phase as suggested in paragraph VIII-1 of the draft environmental report as I discussed above.

Finally, we believe that the draft environmental report does not comply with Section 13241 of the Porter-Cologne Act as it relates to developing and adopting new water quality objectives based upon modeling assumptions for the State Water Project and the Central Valley Project as surrogates. In order to determine the overall water supply and water quality impacts of the preferred alternatives, the SWRCB must consider current beneficial uses of water within the area of origin and water quality objectives for the reasonable protection of those identified uses of water currently being put to use by the District.

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We urge you to determine the overall water supply and water quality impacts of the preferred alternatives in the draft environmental report. We urge you not to neglect this chore at this early date before you commence the water right hearings presently set for June. We urge the SWRCB to consider all beneficial uses of water within the area of origin of the Nevada Irrigation District and develop water quality objectives following this environmental review which objectives will be adopted for the reasonable protection of identified beneficial uses of water which are currently administered by this District.

We appreciate very much your consideration on these very important matters.

Very truly yours,

NEVADA IRRIGATION DISTRICT


James P. Chatigny
General Manager

JPC:sf