

1 STATEMENT OF SAN JOAQUIN TRIBUTARIES ASSOCIATION
2 AND ITS MEMBERS TO THE STATE WATER RESOURCES CONTROL BOARD
3 (HEARING ON WATER QUALITY CONTROL PLAN FOR THE SAN FRANCISCO
4 BAY/SACRAMENTO-SAN JOAQUIN DELTA ESTUARY, MAY 22, 1995)
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6 Chairman Caffrey, Vice Chair Forster and Members of the Board.
7 I am Kenneth Robbins, counsel to the Merced Irrigation District. I
8 am appearing today as the representative of the San Joaquin
9 Tributaries Association and its members, which in addition to my
10 district are the Modesto Irrigation District, Turlock Irrigation
11 District, Oakdale Irrigation District, and South San Joaquin
12 Irrigation District.

13 My comments today are directed to the proposed flows of the
14 San Joaquin River at Vernalis. As the Board knows, the footnotes to
15 those prescribed flows simultaneously allow the state and federal
16 projects to export 100% of the 3-day running average of the
17 prescribed San Joaquin River flows at Vernalis.

18 The proposed standards never address the obvious linkage
19 between San Joaquin flows and exports, but rather state that these
20 flows are for the protection of delta smelt and salmon. We
21 challenge the staff to point to any evidence justifying these flow
22 standards for salmon. For delta smelt, the justification is that
23 high flows are needed to push the smelt past the export pumps. Our
24 position is that the projects are responsible for mitigating the
25 own effects.

26 The Board has in its records ample statements and
27 documentation from our member agencies on the San Joaquin that
28 demonstrate that the San Joaquin water rights are among the mo

1 senior in the state and that the export permits are among the most
2 junior. Moreover, the evidence is overwhelming, as the Board has
3 long known, that the operation of the projects is the defining
4 cause of deleterious effects on fish caused by water diversions.

5 The staff of the Board has repeatedly stated that issues of
6 water rights - of whose uses will be impacted for the benefit of
7 fish - will be deferred until later water rights hearings. In
8 adopting these flow requirements and subsidy, however, the Board
9 has preempted this process and directly dedicated senior water
10 rights to the service of junior rights. It is not an answer that
11 later hearings will determine with exactness *who* on the San Joaquin
12 will bear the burden of this subsidy. By determining in advance
13 that there will be a subsidy, the Board has gone beyond prescribing
14 standards to protect fish to enacting flow contributions to protect
15 exports.

16 The linkage between the prescribed flows at Vernalis and the
17 export of 100% of those flows at Vernalis is not a product of
18 scientific coincidence; it is a provision for export at the expense
19 of the rights holders on the San Joaquin.

20 Finally, on a related matter, the December 15, 1994 agreement,
21 which the Board is here otherwise mechanically implementing, called
22 for the construction of an Old River barrier. This plan, by
23 contrast, calls only for *the study* of that barrier, despite the
24 protests of our group and some of the parties to that agreement
25 that it should be constructed now. Absence of the barrier merely
26 feeds San Joaquin flows - and its fish - directly into the export
27 pumps.

28 In summary, we object to the adoption of the proposed

1 standards because, in the guise of water quality standards, it is
2 an overt subsidy of the water export projects. Such an action is
3 not only unsupported and unwise, but is legally deficient on the
4 following bases:

- 5 • Enacting flow contributions from the San Joaquin for the
6 benefit of exports is *beyond the scope of the noticed*
7 *hearing*. Merely couching a water allocation action in
8 the dress of standards is not enough. These standards
9 both prescribe and inexorably require water rights
10 reallocations in the guise of the adoption of water
11 quality standards.
- 12 • Enacting flow contributions on senior rights holders to
13 protect exports is a taking of water rights without
14 compensation, in violation of the United States and
15 California Constitutions.
- 16 • The proposed standards and export subsidy are in
17 violation of the Area of Origin statutes, which were
18 designed as a guarantee to senior water rights holders
19 that the kind of action this Board is proposing would
20 never occur.
- 21 • The record does not support that these flows are required
22 to protect salmon at all, or to protect delta smelt
23 except to try to push them past the pumps. The projects,
24 however, must mitigate their own effects. The proposed
25 action is thus arbitrary, capricious and without evidence
26 in your record.
- 27 • The record, and the brokered deal you are asked to
28 impose, both call for the construction and operation of

1 the Old River Barrier. Absence of the barrier merely
2 feeds the fish you are trying to protect directly into
3 the pumps, for inevitable and devastating destruction.

4 The water rights holders on the San Joaquin were completely
5 excluded from the negotiations which led to the agreement you are
6 asked to mechanically enact. Small surprise that the plan calls for
7 the contribution of our senior water rights, which were passed down
8 to us for over 100 years for the use of interests that, unlike us,
9 were represented at the table - specifically, the exporters.

10 It is not enough to say that these issues will be deferred to
11 the water rights hearings. By that time, staff and the exporters
12 will insist that the standards and its built-in subsidy are a
13 given. The Board is respectfully asked not to enact this thinly
14 disguised subsidy, and to address this matter now. A flow standard
15 at Vernalis should not be adopted without further study.

16 The San Joaquin Tributaries Association and its members will
17 welcome and participate in dialoge with the Board's staff and
18 others, so that such standards as are adopted reflect good science,
19 and good sense.

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