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December 8, 2006

**Via E-Mail Transmission:**  
**[commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)**

Song Her, Clerk  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100



**Re: 12/13/06 BOARD MEETING (Consideration Of A Resolution Adopting The Water Quality Control Plan For The San Francisco Bay/ Sacramento-San Joaquin Delta Estuary)**

Dear Ms. Her:

The San Luis & Delta-Mendota Water Authority ("Authority"), on behalf of its member agencies, submits this comment letter on Item 12 on the agenda for the December 13, 2006 meeting of the State Water Resources Control Board ("State Water Board"): The consideration of a resolution adopting the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary ("Bay-Delta Plan"), dated November 29, 2006 ("November Draft").

The Authority filed comments on an earlier draft of the Bay-Delta Plan, dated September 2006. In those comments, the Authority expressed general concern with the lack of context for certain historical statements "borrowed" from the 1995 Bay-Delta Plan, and the confusion that could have been created by text in the Program of Implementation. The Authority also presented detailed comments on the chloride, delta outflow, export limits, and southern delta agricultural salinity objectives.

Although the Authority believes the November Draft Bay-Delta Plan could benefit from additional revisions, it generally reflects careful consideration and incorporation by the

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State Water Board staff of concerns with the September Draft Bay-Delta Plan expressed by interested persons and entities, including the Authority. The Authority very much appreciates that effort by the State Water Board staff. Indeed, the November Draft Bay-Delta Plan now explains the history and clarifies many of the previously uncertain statements. The November Draft Bay-Delta Plan also provides important clarification in the Program of Implementation for the chloride and southern Delta agricultural salinity objectives and reflects an understandable approach to the "flex" proposal made by the Authority and others.

## Program Of Implementation For The Chloride Objectives

The Program of Implementation for the November Draft Bay-Delta Plan appropriately recognizes that each of the water quality objectives for municipal and industrial beneficial uses "is to be implemented through a combination of water right actions and other actions, depending on the location at which the objective applies." November Draft Bay-Delta Plan, p 27. Specifically, it notes:

[T]he water right permits and licenses of the DWR and the USBR currently are conditioned upon implementation of chloride objectives to protect municipal and industrial uses, [but that] [t]he salinity objectives at Contra Costa Water District's Pumping Plan No. 1 on Rock Slough, . . . are being implemented in part through flows provided by the [Department of Water Resources ("DWR")] and the [United States Bureau of Reclamation ("USBR")] on Old River at the head of Rock Slough and in part through infrastructure improvements that reduce water quality degradation caused by localized drainage into Rock Slough.

*Id.* (emphasis added). The recognition and notations are limited, but provide very important clarification and direction for implementation.

## Program Of Implementation For The Southern Delta Agricultural Salinity Objectives

The November Draft Bay-Delta Plan also makes clear how the southern Delta agricultural salinity objectives have and must be implemented. First, it recognizes:

Elevated salinity in the southern Delta is caused by various factors, including low flows; salts imported to the San Joaquin Basin in irrigation water; municipal discharges; subsurface accretions from groundwater;

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tidal actions; diversions of water by the SWP, CVP, and local water users; channel capacity; and discharges from land-derived salts, primarily from agricultural drainage.

November Draft Bay-Delta Plan, pp. 28-29. The November Draft Bay-Delta Plan then states: "[t]he water rights of the USBR are conditioned upon implementation of the salinity objectives on the San Joaquin River at Vernalis and the water rights of DWR and USBR are conditioned upon implementation of the salinity objectives at the other three southern Delta stations (San Joaquin River at Brandt Bridge, Old River at Middle River and Old River at Tracy Road Bridge (interior southern Delta stations))". November Draft Bay-Delta Plan, p. 29. But, it necessarily makes plain that, because of the various factors affecting salinity, "[t]hese salinity objectives currently are implemented through a mix of water right actions and salinity control." November Draft Bay-Delta Plan, p. 29 (emphasis added). See *also*, 1995 Bay-Delta Plan, pp. 28, 29-33.

Indeed, the State Water Board reflected that approach for implementation in Decision 1641, by requiring the USBR to prepare a report for the Executive Director of the State Water Board if a southern Delta agricultural salinity objective were exceeded. The purpose of the report is to allow the Executive Director to "make a recommendation to the [State Water Board] as to whether enforcement action is appropriate or the noncompliance is the result of actions beyond the control of the [the USBR]." Decision 1641, p. 159-60.

Presumably, because of the State Water Board's approach for achievement of the southern Delta agricultural salinity objectives, which required water right and water quality actions by the State Water Board, and measures by other agencies, the Executive Director stated recently, in a memorandum to Lester Snow of DWR, that the Executive Director:

[W]ill not recommend that the State Water Board, and the Executive Director anticipates that the State Water Board would not, take an enforcement action . . . for an actual exceedance or a potential exceedance of the southern Delta salinity objectives that is or would be caused by actions beyond [the USBR's] reasonable control.

In the future, the November Draft Bay-Delta Plan would require a multi-faceted approach for achieving the southern Delta agricultural salinity objectives. It requires implementation of the southern Delta agricultural salinity objectives through "water

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rights and water quality measures by the State Water Board, in concert with actions taken by other agencies." *Id.* Actions to achieve the southern Delta agricultural salinity objectives could include: "dedicated water flows for dilution flows, regulation of water diversions, pollutant discharge controls, best management practices to control the amount of waste produced, and improvements in water circulation." *Id.* The November Draft Bay-Delta Plan explains:

The salinity objectives at Vernalis can be attained by releasing dilution water from New Melones and other sources, completing a drain to remove the salts generated by agricultural drainage and municipal discharges from the San Joaquin Valley, and conducting measures in the San Joaquin Valley such as the measures discussed below for controlling salinity in the interior southern Delta. The salinity objectives for the interior southern Delta can be implemented by measures that include state regulatory actions, state funding of projects and studies, regulation of water diversions, pollutant discharge controls, improvements in water circulation, and long term implementation of best management practices to control saline discharges.

*Id.* Again, this discussion of the southern Delta agricultural salinity objectives appropriately reflects: (1) the numerous factors that affect salinity at different locations in the southern Delta, (2) the numerous tools that must be employed to achieve those objectives, and (3) the limited circumstances when the State Water Board would take action against the USBR when the southern Delta agricultural salinity objectives are exceeded.

### Response To The "Flex" Proposal

Finally, the Authority expended great effort to develop a proposal that allows flexibility of the outflow and export objectives without significant adverse impacts to beneficial uses of water. Appendix 1 to the November Draft Bay-Delta Plan explains that, at this time, the State Water Board will not consider a change in either objective "due to the decline of pelagic organisms in the Delta." November Draft Bay-Delta Plan, p. 45. See also November Draft Bay-Delta Plan, p. 48. The Authority understands the desire to postpone consideration of that proposal. The Authority will advance the proposal again at the appropriate time during the various workshops the State Water Board scheduled for next year.

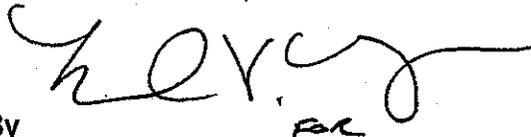
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Thank you for your consideration of these comments.

Very truly yours,

**DIEPENBROCK HARRISON**  
A Professional Corporation

A handwritten signature in black ink, appearing to read "J. Rubin". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

By

Jon D. Rubin  
Attorneys for the San Luis & Delta-Mendota  
Water Authority

cc: Daniel Nelson  
Thomas Birmingham