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O'Laughlin & Paris LLP

Attorneys at Law

October 31, 2005

Tam M. Doduc, Board Chair
State Water Resources Control Board
1001 I Street
Sacramento, CA 95812

Re: Periodic Review

Dear Ms. Doduc:

At the recent CDO hearing, you stated you did not want to hear testimony from the witnesses at the CDO hearing that may pertain to matters before the SWRCB under the Periodic Review process. You wished to keep the two processes separated. We agree the two processes should be separated.

Your second statement in regards to this issue caused me to write this letter to you. You stated the Periodic Review process was closed and no late information could be submitted. You didn't want to see information submitted in the CDO that could not now be entered into the Periodic Review process. I believe your words were you didn't want to "poison" the Periodic Review process.

Attached to this letter is a response to the SJRGA's letter of September 6, 2005 to exclude CDFG's late submittals. According to Staff Counsel Barbara Leidigh, that legislative process is not closed until such time as the SWRCB makes a decision.

Accordingly, the SJRGA will be submitting supplemental documents for the SWRCB's review in Periodic Review that have been generated through the CDO hearing, DO and S & B TMDL's and 303(d) revised, hearings and workshops. This newly developed information goes to the heart of the issue—setting appropriate Salinity Standards in the Southern Delta.

Very truly yours,

O'LAUGHLIN & PARIS LLP

Tim O'Laughlin
Attorneys for SJRGA

cc: See list

**SECOND AMENDED LIST OF PARTICIPANTS TO EXCHANGE
INFORMATION**

Delta Salinity Draft CDO and WQRP Hearing, Sacramento River, San Joaquin River,
and Sacramento-San Joaquin Delta Channels, San Joaquin County

(Note: the participants whose e-mail addresses are listed below agreed to accept electronic service, pursuant to the rules specified in the Revised Notice of Public Hearing.)

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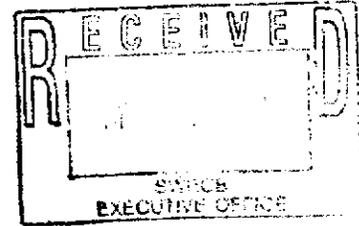


San Joaquin River Group

P.O. Box 4060, Modesto, CA 95352 • (209) 526-7405 • (209) 526-7315 - Fax

- Modesto Irrigation District
- Turlock Irrigation District
- Oakdale Irrigation District
- Merced Irrigation District
- Friant Water Users Authority
- City and County of San Francisco
- South San Joaquin Irrigation District
- San Joaquin River Exchange Contractors

September 6, 2005



Hon. Arthur G. Baggett, Jr.
Chairman
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: Periodic Review

Div Control JJK
due 9/30 GK
Coordinate w/occ
D-05-36

Dear Chairman Baggett:

On or about July 12, 2005, the SWRCB received a submittal from the California Department of Fish and Game (DFG) regarding Comments and Recommendations on the Vernalis Adaptive Management Program (VAMP) flows. It is our understanding that all material to be considered in the Periodic Review was to be submitted to the SWRCB no later than June 1, 2005. We object to this late submittal and request that it be returned to CDFG specifying the deadline for the submittal of material. This CDFG submittal should not be part of the Periodic Review record.

If the Board or Staff decides to consider this CDFG submittal in preparation of the Draft Staff Report on the Periodic Review, then the San Joaquin River Group Authority (SJRGA) requests a copy of the "model" to review, time to review the "model," and time to submit comments to the SWRCB on this "robust" new model to also be considered for the Draft Staff Report.

Needless to say, as a partner in the San Joaquin River Agreement (SJRA) we are disappointed by CDFG's unilateral submittal. The SJRA has a process in place to discuss "refinements" to the VAMP study plan. At meetings with Mr. Brodderick and Mr. Loudermilk we impressed upon them the need, as a partner in the SJRA, to follow the process set out by the SJRA to resolve differences. The DFG has not followed that process. None of the entities that signed the SJRA was aware of the DFG proposed "refinement" of the VAMP flows until it was submitted to the SWRCB.

Nowhere in the SJRA, the VAMP, the D-1641 proceedings or elsewhere did DFG ever state that 75% of the smolts would have to be protected by the VAMP. Nowhere in the reports submitted to the SWRCB, as required by D-1641, has the DFG commented on the level of protection afforded by VAMP or the need to revise VAMP to change the

Hon. Arthur G. Baggett, Jr.
September 6, 2005
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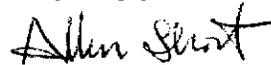
level of protection. Indeed the SJRGA reports submitted to the SWRCB indicate that data are inconclusive at this time and more work is needed. The VAMP is scheduled as a 10-year study and it is only partially complete.

Rather than submit an unsupported and non-peer reviewed model, DFG should submit to the SWRCB and SJRGA hard data that it has collected which can be used to collaboratively design a model based on the "best available science." For instance, DFG has been collecting scale samples on the San Joaquin River and its tributaries since 1970 yet has not analyzed the scale samples to determine the age of fish returning in each individual year. Lack of age data (obtained from scale reading) for San Joaquin Basin adult returns prevents accurate assignment of fish to actual cohorts. Without this age data, cohort strength is estimated and cannot accurately be compared to outmigration conditions. In addition, DFG has not proved any confidence intervals surrounding their escapement estimates, nor indicated the type of escapement estimation method, (i.e., Peterson, Schaeffer, or Jolly-Seber) used in individual tributaries for each year, which does not allow us to know the level of uncertainty associated with both the escapement estimates themselves and the modeling results based upon these estimates.

The SJRGA has requested to have the scales analyzed by an independent lab since DFG does not have the funding or staff to conduct the analysis. The SJRGA has also requested data that DFG used to develop its escapement estimates in order to determine how their estimates were derived and to develop confidence intervals. Our request was denied. So, one must ask why is DFG developing models based on guess work when it has the means to analyze and develop actual cohort data and confidence intervals for salmon escapement and refuses to do so?

We would request that you return all DFG comments submitted after your June 1, 2005 deadline. The rules and timelines established by the SWRCB should be followed by all parties to ensure a fair and neutral process.

Very truly yours,



Allen Short
Coordinator

cc: Victoria Whitney
Gita Kapahi
SJRGA
SJRA signatories



State Water Resources Control Board

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606-A



Alan C. Lloyd, Ph.D.
Agency Secretary

Executive Office
Tam M. Doduc, Board Chair
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Arnold Schwarzenegger
Governor

OCT - 7 2005

Allen Short, Coordinator
San Joaquin River Group
P.O. Box 4060
Modesto, CA 95352

Dear Mr. Short:

LATE COMMENTS FROM THE DEPARTMENT OF FISH AND GAME REGARDING POTENTIAL CHANGES TO THE SAN JOAQUIN RIVER FLOW OBJECTIVES

This letter responds to your letter dated September 6, 2005, objecting to the late submittal to the State Water Resources Control Board (State Water Board) by the Department of Fish and Game (DFG) of information related to potential changes to the 1995 San Francisco Bay/Sacramento-San Joaquin Delta Water Quality Control Plan (1995 Plan). The State Water Board requested that all comments on this matter, except those related to the Delta outflow objectives, be submitted by June 3, 2005. However, the State Water Board received additional comments from DFG (dated June 30, 2005) on July 12, 2005, related to the San Joaquin River flow objectives. You request that the late submittal be returned to DFG and not be included as part of the record.

The State Water Board's review of the 1995 Plan is a quasi-legislative proceeding and, as such, is not subject to the same rules on accepting evidence as adjudicative proceedings. Accordingly, the State Water Board will not return DFG's comments or exclude them from the record. However, since the information was submitted late, it may not receive as much attention as it would have had it been submitted timely. Regarding your request for a copy of DFG's model, you should submit a public records act request to DFG for this information.

If you have any questions concerning this matter, please contact Barbara Leidigh, Staff Counsel IV, at (916) 341-5190 or Gita Kapahi, Chief of the Special Projects Unit, at (916) 341-5289.

Sincerely,

Celeste Cantú
Executive Director

cc: See next page.

SC 11/22

C:SSRB