

SOUTH DELTA WATER AGENCY

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Item 1

Sept. 14, 2004 Workshop

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 CC, HMS, TH, CMW, BJL, DI
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September 8, 2004

Via Fax (916) 341-5620

Mrs. Debbie Irvin, Clerk to the Board
 State Water Resources Control Board
 P. O. Box 100
 Sacramento, CA 95812

Rc: Draft Staff Report for the Periodic Review of the
 1995 Water Quality Control Plan

Dear Mrs. Irvin:

South Delta Water Agency ("SDWA") submits the following comments to the Draft Staff Report for the Periodic Review of the 1995 Water Quality Control Plan.

Issue 2. Southern Delta EC. SDWA reaffirms its prior comments regarding agricultural beneficial use objectives in the South Delta. In order to actually have 0.7 EC in the first half of April, the 30-day running average should be restarted on April 1, or on whatever the first day the standard changes to 0.7 EC.

SDWA agrees with staff's recommendation to re-examine the 0.7/1.0 EC objective. As before, SDWA believes the 0.7 objective should be extended to March, September and October. In addition, SDWA believes the 1.0 EC standard is too high to support existing cropping patterns and should be lowered to the appropriate level. Neither standard should be relaxed or lessened.

With regard to the three interior South Delta compliance points in particular, staff recognizes implementation of the objectives has been delayed numerous times since 1978, over 26 years ago. Originally, the Plan anticipated revisiting these objectives if SDWA, DWR, and USBR reached an agreement to settle litigation initiated by SDWA. Staff incorrectly states the negotiations "were never completed." In actuality, USBR broke off the negotiations. Now that the 0.7/1.0 objective will finally be put into effect in April of 2005, staff recommends the objectives be re-examined to insure that protecting agricultural beneficial users does not result in

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"a waste or unreasonable use of water." Staff also wants to look into the implementation of the objectives to make sure protecting agricultural beneficial users is "timely described," "effective, feasible" and "consistent with existing requirements for salinity management in the Southern Delta." Translating this staff bias into regular English, SDWA concludes staff is struggling once again to find a way to make sure the Bureau does not have to meet its obligations or mitigate the harm it visits on the San Joaquin River and the Delta. Staff in all likelihood would like to give the Bureau another 30 to 40 years, hoping something may be done someday while continuing to ignore South Delta agricultural diverters. It is interesting to note that staff makes no recommendations to determine whether or not meeting fish flows with hundreds of thousands of acre-feet of fresh water do or do not constitute a waste or unreasonable use of water. However, such an inquiry is necessary in order to avoid protecting Southern Delta agricultural interests.

Since the 1978 Delta Plan, USBR has done absolutely nothing to address the salt problem on the San Joaquin River (except when lawsuits have forced it to take the minimum actions); a problem D-1641 recognizes the Bureau caused. Perhaps staff should be required to drink the water at Brandt Bridge until the Bureau is forced to and actually meets the 0.7 EC objective.

Staff should also understand that the SDIP program (barriers and 8,500) currently being undertaken by CalFed is not presently configured to consistently meet the 0.7 standard in the interior Delta channels. The program could be reconfigured to meet these standards and, in addition with upstream actions insure that adequate water quality is preserved in the South Delta to support agricultural beneficial uses. However, staff continues to support the notion that either barriers (as configured and operated by DWR and USBR) or "equivalent measures" to barriers can solve the problem. Unfortunately, there is absolutely no evidence that supports this position. Consequently, staff's recommendation should be that the Bureau and DWR be forced to meet the current water quality objectives in the Southern Delta rather than try to craft a way by which they may avoid them. SDWA anticipates the projects will attempt to label current operations as "equivalent measures." Time will tell.

Issue 3. San Joaquin River EC Upstream of Vernalis. SDWA objects to staff's recommendation that the Plan not be expanded to include salinity standards upstream of Vernalis. Both the Regional Board and the State Board have failed for 30 years to meet their responsibilities to protect the waters of the San Joaquin River. Most recently, the State Board directed the Regional Board to "promptly" set an upstream standard after the 1995 Plan was adopted and after D-1641 was adopted. The Regional Board has chosen to focus on a salt/boron TMDL rather than implement the standard.

An upstream standard is necessary to protect agricultural beneficial uses and to relieve New Melones from the responsibility of mitigating a problem caused by others. The standard should be easily determined. If it takes 0.7 EC to protect Delta agriculture, it takes 0.7 EC to protect agriculture bordering the San Joaquin River.

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SDWA also requests staff disclose its prior communications with other parties wherein San Joaquin River and South Delta salinity standards have been discussed. The Board and the public should be fully aware of any input through nonpublic measures by which staff may have reached its recommendations.

Issue 4. Year Round Flow Objectives for Agricultural Uses. SDWA objects to staff's recommendation. Staff's comments pertain to the implementation of the 1995 Plan not to whether a flow objective may be necessary to protect beneficial uses. Staff is ignoring the steady decline in San Joaquin River flows and the resulting adverse impacts to all beneficial uses. No dam or reservoir upstream of Vernalis is required to make releases for San Joaquin River or Delta users (except New Melones). Such a situation would seem inappropriate especially in light of the recent Federal District Court ruling in the NRDC v. USBR (Friant) case.

Issue 5. Water Level Objectives. Initially, SDWA requests staff stop making incorrect references to the complaint filed in 1999. That complaint was filed to challenge the project exports which were in violation of existing export permits (e.g., DWR delivering water to the Federal Cross Valley Contractors). The complaint was filed during the Bay-Delta hearings in which SDWA had submitted substantial evidence of how exports affect water levels, including *The 1980 Report* authored by the Bureau and SDWA which specifically set forth the amount by which water levels are lowered in the various channels. When staff asked for evidence supporting SDWA's allegations (the information already being in staff's possession), SDWA chose not to proceed with the complaint but to spend its limited resources on the Bay-Delta hearings.

Water level problems in the South Delta are for the most part the result of export operations and decreased San Joaquin River flows. Things such as siltation can exacerbate the problem to a small degree, but physics tells us that raising the channel bottom will have no appreciable affect on water height.

After approximately five years of JPOD Water Level Response Plans, it has been clearly shown that the D-1641 approach is illusory. In each year of the Response Plans, local diverters have been harmed due to low water levels (and sometimes high salinity). It is important to note that the Response Plans are general to address the incremental affect of JPOD; not to address water level problems due to normal export operations. The question before staff and the Board is whether a water quality objective for levels is necessary to protect beneficial uses; not whether any party may have a basis for a lawsuit or a complaint. Staff is eager to seek out and prosecute Term 91 diverters without any complaint being filed, but seemingly allergic to making sure USBR and DWR operations under their export permits do not harm others. The need for a water level standard is obvious and should be examined.

Issue 6. Dissolved Oxygen. D-1641 states that the State Board has given dissolved oxygen a "high priority" on the State's 303(d) list. Four years after D-1641, the Regional Board has delayed adoption of a TMDL, and proposes to allow an aeration project to proceed as a

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means of possibly addressing the problem. The data suggests that decreasing nutrient loading will not solve the problem and SDWA doubts sufficient aeration can be done to elevate DO in 14 miles of river. Hence, the TMDL process does not seem to be headed for success.

D-1641 also recognized that flow at Stockton is the "largest single controllable factor that affects DO." In light of this and the extreme violations of the standard, it is time for the State Board to act. Rather than have the State Board and Regional Board kick the ball back and forth under their respective desks, a flow standard should be adopted. Of note, as part of its Basin Plan Amendment, the Regional Board recommends the State Board consider increasing flows when water right permits are before it.

Issue 9. Delta Outflow. SDWA comments that statements such as "adding flexibility" to objectives is typically synonymous with allowing violations. Delta outflow should be protected at levels determined to be necessary for beneficial uses. Concern for exports is not typically compatible with this, rather it is normally counter to it.

Issue 11. Non Pulse River Flows. SDWA references its prior comments. In addition, when the Board adopted D-1641, it knew the USBR did not allocate New Melones water to meet the objective and that it proposed using no other source. Predictably, the objective has not been met. Either certain flows are necessary to protect fisheries or they are not. The Bureau's lack of effort or planning should not be disguised as feasibility or implementation problems. It should also be noted that a decrease in flows resulting from a change to this objective will place a greater burden on New Melones to meet the salinity objective during that time of year. The Bureau's lack of planning for this objective and the Board's casual acceptance of violations should not result in a relaxation of the other objectives now that it has determined this objective won't be met.

Issue 12. Pulse Flow. SDWA references its prior comments.

Issue 13. Export Limits. SDWA adopts CDWA's prior comments.

To the extent CDWA's most recent comments do not conflict with the above, SDWA adopts and joins in those comments.

Please call me if you have any questions or comments.

Very truly yours,



JOHN HERRICK

JH/dd

cc: Dante Nomellini, Sr., Esq.