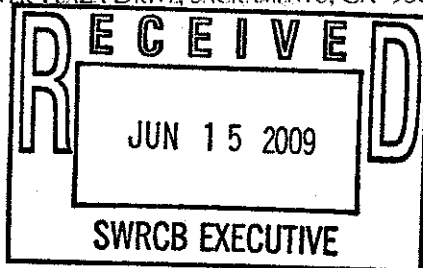




CALIFORNIA FARM BUREAU FEDERATION  
NATURAL RESOURCES AND ENVIRONMENTAL DIVISION

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June 15, 2009

*Via First-Class Mail & Email*  
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State Water Resources Control Board  
c/o Jeanine Townsend, Clerk to the Board  
P.O. Box 100  
Sacramento, CA 95812-2000

**Re: 2009 Periodic Review Staff Report Comments; and  
7/7/09 Hearing on Draft Resolution Adopting Staff Report.**

Dear Chairman Doduc and Members of the Board:

The California Farm Bureau Federation ("Farm Bureau") is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing approximately 91,000 members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

Farm Bureau appreciates the opportunity to comment on the *2009 Periodic Review Staff Report of the 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary*.

**Need for Urgent Relief for Overly Burdensome Regulation:**

At this rock-bottom juncture in the California's legendary "water waters" saga (not to mention the state's staggering fiscal meltdown and partisan gridlock that provide the backdrop for this unprecedented crisis in water), sanity in general and a read through of the multiple recommendations in the 2009 Draft Periodic Review Staff Report urging another turn of this or that screw and, again, of this, and still another screw, demand the question, "*Where does it end?*"

The present periodic review comes on the heels of the recent news of still greater water supply impacts under the June 2009 NMFS OCAP biological opinion—and, before that of the December 2008 USFWS Delta smelt OCAP biological opinion, the Eastern District's interim

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smelt order prior to that, and in the third in a sequence of below average and dry years, compounded by an unprecedented and on-going man-made or regulatory drought. Even as the urban and agricultural export contractors in the San Joaquin Valley, the Tulare Lake Region, Kern and Southern California have seen their water supply decimated by layer upon layer of new regulatory restrictions, the Delta ecosystem remains in free fall.

In one sense, the single-minded will of our state and federal regulators to aggressively pursue species preservation and a high standard of environmental quality without compromise bears testimony to our cultural identity as Americans and our capacity as a society to cling to lofty ideals and abstract principles, no matter what. Unfortunately, in zealously pursuing one ideal (species protection and environmental quality), it seems we have completely lost track of other important public goods and important needs of society (water supply, food supply, human beings, and the state's economy). This, then, invites another inevitable response, and that is, *"Something must give."*

The regulatory climate currently prevailing in our state is literally throttling our economy. It threatens our way of life and our collective prosperity as a society. An historic imbalance perhaps, in terms of past disregard for the environment, has been replaced by an almost complete lack of balance or regard for established economic uses of water and for the essential functions of critical infrastructure that have fundamentally shaped and transformed the face of California as we know over the last 150 years.

A "scorched earth" mentality seems to have replaced common sense and the public interest in our institutions and radical agendas carry the day. Meanwhile, competing interests remain locked in court battles, as conditions continue to deteriorate further.

**Balancing Competing Legitimate Economic and Reasonable Water Quality and Environmental Quality Objectives**

The State Board's basin planning function is fundamentally intended to be a balancing process that weighs environmental and water quality considerations against competing consumptive water needs and economics and whose hallmark is "reasonable protection." In terms of its expansive water rights and water quality authorities, it was someone's accurate observation in Delta Vision that the Water Board holds most, if not all, of "the keys to the city." The question today is whether the Board will use those authorities to return balance to the state's water landscape. Will the Board use its powers to enable balanced solutions that harmonize and reconcile competing economic and environment objectives? Or will it mimic the misguided policies of regulatory agencies in the area of species protection and, instead, push the state further along the divisive path of conflict and narrow unrelenting pursuit of one set of objectives to the all but complete exclusion of all others.

Properly viewed, the Water Board must respond on not one, but two fronts: Californians have made it clear, they are committed to species protection and a high standard of environmental

quality. At the same time, however, the fact remains, our economy, our jobs, our businesses and communities, and our way of life depend on the reliable movement of water for human use. The accelerating trend of ever increasing regulation and ever diminishing water supply without allowance, accommodation, time for or means of possible adaptation, leaves farms, businesses, and people stranded. It affects or ends livelihoods and can upset years, if not generations of planning and investment in a day. In short, while it demonstrates an unflinching single-mindedness of purpose with respect to species and environment quality, it fails, completely, to take proper account of other critical needs of the state—and, ultimately, for this reason, it does not serve the broader, collective needs and interests of all Californians.

**General Areas of Concern:**

In addition to the obvious conclusion that various aspects of the current system are broken and in need of urgent repair, and regardless of the differing and sometimes conflicting perspectives and objectives of the various farm constituencies within the state, the California Farm Bureau has numerous general concerns related to the potential water supply, water rights and, as the case were, water quality implications of several Staff Report's recommendations on "Additional Issues" and, also, those issues the Board "Has Already Committed to Review."

Specifically, this comment would extend to the Water Board's on-going review of the *South Delta Salinity and San Joaquin River Flow objectives*, and also to the Water Board Staff recommendations concerning consideration and possible adjustment of the current Water Quality Control Plan's existing objectives for *Delta outflow, Delta Cross Channel operations, the I/E ratio*, as well as the recommendation concerning consideration of a set of potential new *Old and River Middle flow objectives*.

Consistent with our general comments above, in approaching these issues, we would strongly urge the Board to remain mindful of its statutory obligation to balance economic and current and probable future consumptive use needs against competing water quality and environmental quality objectives.

In terms of general guidance on an approach to this periodic review and how to strike this difficult balance, a number of desirable characteristics of an updated plan would include the following:

- *Maximum flexibility*, without compromise of core basin planning function
- *Reasonable protection*, including potential trade-offs where necessary and appropriate to achieve overall balance and mutual protection of all beneficial uses
- Appropriate *balancing of economic considerations* against competing species and environmental quality concerns
- *Forebearance from new and duplicative water standards* where such protections are separately provided under another regulatory program (e.g., real-time monitoring and triggers in current or future biological opinions for coordinated project operations)

**South Delta Salinity Standards:**

Concerning South Delta salinity, any salinity standard, whether the existing standard or some adjusted standard, must in any case ensure reasonable protection of both South Delta agriculture and other beneficial uses in the system (including beneficial use upstream and outside of the Delta itself), and it is incumbent upon both the State Board Regional Boards and any affected stakeholders to cooperatively explore all feasible means of achieving such protection.

Of particular concern at this juncture, in the wake of the recently released June 2009 NMFS OCAP biological opinion prohibiting construction of such barriers, is the prior assumption that the existing standards would be achieved with permanent barriers in the South Delta. To the extent the recent biological opinion currently represents a absolute prohibition on the construction of such barriers, this situation clearly demands the immediate attention of the Board—both short-term, in terms of any impending violations under the outstanding cease and desist order against the Bureau of Reclamation and Department of Water Resources, and long-term, in the terms of a workable and lasting solution that can ensure reasonable protection of established beneficial uses in the South Delta, without disproportionate water supply impacts on other beneficial uses or water users elsewhere in the state.

In addition, current and interim solutions and Water Board planning should anticipate and proactively address potential future changes to the system that might significantly alter or affect Delta hydrodynamics, protection of beneficial uses, or long-term compliance with South Delta water quality standards.

Finally, as in all aspects of the periodic review, thorough empirical scientific and technical data and analysis, and strict observance of established due process and procedural protections of all parties, should support and guide any and all decisions relating to the South Delta salinity standards.

**San Joaquin River Flows:**

Farm Bureau is very concerned about the potential water supply implications of the periodic review as it relates to this topic and again urges a proper balancing of all competing interests.

**Delta Outflow:**

Any thought of imposing additional or more onerous outflow requirements on upstream users and project operations should be greatly tempered by the significant and now well-known post-Corbula weakening or erasure of any previous, statistically significant relationship between Delta outflow (X2) and abundance of any of a variety of species, including the delta smelt. Indeed, current population trends relative to outflow, and the increasing incidence of associated upstream coldwater and water supply conflicts, strongly suggest a need, not for harsher outflow standards, but rather for greater flexibility in terms of an adjustment of existing outflow objectives,

including possible forecasting and cumulative monthly averaging, and potential elimination or other appropriate adjustment of the costly and ineffective Roe Island trigger.

Upstream coldwater pool concerns and reservoir levels must likewise figure prominently in any review of the existing outflow standards.

Lastly, in addition to such enhanced flexibility without sacrifice of biological efficacy or ecological function, the Water Board should watch the BDCP's current exploration of potential innovative inflow-outflow hybrid approaches that seek greater balance between competing reservoir and coldwater and upstream objectives, and existing or possible modified outflow standards in the future, as a potential emerging issue.

**Inflow/Export Ratio & Potential Old & Middle River Standard:**

As the staff report notes, the current WQCP's existing I/E limits on exports (expressed as a function of total and SJR Delta inflow versus total combined exports of the CVP and SWP) is, in many respects, designed to achieve the same objectives as the more recent Old and Middle River ("OMR") reverse flow restrictions under the Eastern District's interim order, and now under the newly issued NMFS and USFWS biological opinions.

Some relevant questions, then, include whether there is any substantial benefit to a potential new OMR standard that is not already provided either by the existing by the I/E ratio, existing OMR restrictions under the new NMFS and USFWS biological opinions or any applicable court order, or some combination of two. If a new OMR standard in the WQCP would be merely duplicative of existing OMR restrictions in the biological opinions or under any applicable orders of the courts, then such a new standard is perhaps not necessary, so long as these surrogate standards under the ESA are met.

Some additional areas of possible relevant inquiry might include asking whether the existing I/E limits have any independent utility separate from any OMR requirement now controlling in the system and, also, undertaking an examination of any overlap, duplication, or inconsistency of purpose among the two. This inquiry should focus not only on potential biological conflicts or benefits, but also on the potential adverse water supply impacts of any change to or expansion of the existing standards.

**Delta Cross Channel Operations:**

The diurnal operations concept and salmon outmigration studies by Burau, et al. are clearly a promising area of inquiry, in terms of potential modifications to current gates operations that could possibly enhance fish protections and, at the same time, maintain or improve the intended dual water supply and water quality functions of the gates. The existing water quality functions of the gates are, of course, a critical consideration that must be carefully weighed and balanced against any proposed change in gate operations for the protection of fish.

**Suisun Marsh Gates:**

As the Staff Report notes, operations of the Suisun Marsh salinity gates can sometimes cause eastward movement of the low salinity zone ("X2"). The magnitude of this effect and, if warranted, any ways it might potentially be avoided without unduly impacting established beneficial uses, are areas of possibly useful inquiry.

**Yolo Bypass Floodplain:**

Modification of the Freemont Weir and more frequent inundation of the Yolo Bypass is being considered as a potential long-term conservation measure in the BDCP. In addition, steps toward near-term realization of this goal have been included as a requirements of the recently issued June 2009 NMFS OCAP biological opinion. While it appears that such an action could provide various potential benefits to native fish species, there are also, associated with this proposal, a variety of as yet unresolved agronomic, private property, and flood control issues.

In addition, it is not clear whether more frequent diversion of water from the Sacramento River into the Yolo Bypass via a modified Freemont Weir would not create a new point of diversion or place and purpose of use with an associated need for a change in water rights.

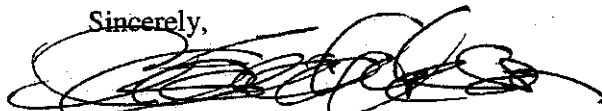
Finally, there are the water quality concerns mentioned in the text related to residual pesticides and increased mobilization and bioavailability of mercury.

Should this action proceed, all of these are issues that will need to be addressed with local stakeholders, in an eventual EIR/EIS, and in any related regulatory processes (e.g., Delta Mercury TMDL, a potential change petition, the Regional Board's irrigated lands program, through the Army Corps of Engineers or any necessary flood control-related permits and approvals, etc.).

**Closing:**

The California Farm Bureau thanks the Board for the opportunity to comment on the upcoming periodic review of the Bay-Delta Water Quality Control Plan.

Sincerely,



Justin E. Fredrickson  
Environmental Policy Analyst

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