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November 13, 2006

VIA HAND-DELIVERY

Song Her, Clerk of the Board
State Water Resources Control Board
Cal/EPA Headquarters
1001 "I" Street
Sacramento, California 95814

Re: Stockton East Water District/Bay Delta Plan Triennial Review 2004

Dear Ms. Her:

Enclosed please find original, fifteen copies and an electronic copy of the preliminary comments submitted on behalf of Stockton East Water District.

Should you have any questions, please feel free to call me.

Very truly yours,



KARNA E. HARRIGFELD
Attorney-at-Law

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Enclosures

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COMMENTS OF STOCKTON EAST WATER DISTRICT

CONSIDERATION OF AN AMENDED WATER QUALITY CONTROL PLAN FOR THE SAN FRANCISCO BAY/SACRAMENTO-SAN JOAQUIN DELTA ESTUARY

Stockton East Water District (SEWD) submits the following comments on the State Water Resources Control Board's (State Water Board) Consideration of an Amended Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. SEWD will address two issues: (1) San Joaquin River Flows, Vernalis: February – April 14 and May 16 – June, and (2) Emerging Issues identified by the State Water Board.

San Joaquin River Flows, Vernalis: February - April 14 and May 16 – June

The State Water Board accepted considerable testimony regarding the San Joaquin River at Airport Way Bridge, Vernalis, for February through April 14 and May 16 through June (collectively referred to as "San Joaquin River Flow Objective") in the Water Quality Objectives for Fish and Wildlife Beneficial Uses (Table 3 of the 1995 Plan). The Plan Amendment Report – Appendix 1 provides a comprehensive summary of the evidence submitted. Unfortunately, the State Water Board has effectively ignored the evidence submitted supporting revisions to the San Joaquin River Flow Objective in favor of additional study. SEWD believes based on the evidence submitted that elimination or modification of the San Joaquin River Flow Objective is required as there is no scientific or biological basis for the existing objectives.

Stockton East Water District supports modification of the San Joaquin River Flow Objective because it is not supported by any scientific or biological basis.

The San Joaquin River Flow Objective should be eliminated because there is no scientific or biological basis for the established objectives. The existing objective is a negotiated political solution via the Principles for Agreement, not an objective based on sound scientific documentation. Both the San Joaquin River Group Authority and SEWD submitted evidence supporting eliminating or, at a minimum, reducing the San Joaquin River Flow Objectives.

In developing the San Joaquin River Flow Objective, which is the San Joaquin River contribution to the Delta Outflow, the parties to the negotiated agreement arbitrarily set the San Joaquin Flow Objective at either 10%, 20% or 30% of the surrogate X2 Delta Outflow at either Collinsville or Chipps Island. No biological assessment or other scientific justification supported these figures; the parties simply picked a percentage.

Significant information since adoption of the 1995 Plan, all of which supports elimination of the San Joaquin River Flow Objective for the following reasons:

- The required San Joaquin River flows contribute little to Delta outflow. The majority of San Joaquin River flow is exported by the SWP and CVP at the pumps with 0.1% of San Joaquin River flow making up Delta Outflow at Martinez.
- Tidal flows overwhelm net flows in the Delta and more strongly affect Delta smelt movements and distribution, so only very high Vernalis flows are likely to affect Delta smelt transit times significantly. This significantly reduces the value of making San Joaquin River flows for the protection of Delta smelt.
- Recent evidence suggests that intermediate to high late winter and spring flows in the San Joaquin River attract spawning adult Delta smelt into the South Delta, potentially leading to increased entrainment.
- Evidence supports elimination of the May 16 through June flow objectives as these flows are not needed for the protection of out-migrating salmon smolts as most salmon smolts have left the San Joaquin River system by late May and the temperature levels in the San Joaquin River may be lethal at times.
(See SEWD-01, SJRG-19)

Instead of considering this evidence, the State Water Board has requested Federal, State and interested agencies to conduct specific studies to determine whether and what changes should be made to the Spring Flow Objectives, including the San Joaquin River Objective. What is completely ironic, frustrating and frankly nonsensical about this request is that there are no such similar studies done originally to justify these objectives, but instead

were established by negotiated agreement, but now, the State Water Board will not modify these objectives until adequate study has been completed.

The State Board should not tie the San Joaquin Flow Objective to Delta Outflow Objectives

The San Joaquin River Flow Objective during February through April 14 and May 16 through June is improperly tied to hydrologic conditions in the Sacramento River basin. While, Table 3 – Footnote 13 states that the water year classification for the San Joaquin River flow objectives are established based on San Joaquin Valley Water Year Hydrologic Classification at the 75% exceedence level, a higher level of flow is triggered if X2 is at or west of Chipps Island. Location of X2 is highly dependent on Sacramento River flow conditions.

Two of the past four years illustrate why a change is needed. In both 2003 and 2004, the higher flow value was triggered because of Sacramento River flow moving X2 west of Chipps Island, while conditions in the San Joaquin River Basin were dry.

There is no scientific or biological justification for the flow objectives on the San Joaquin River, let alone the higher flows triggered by the placement of X2. Moreover, there is insufficient justification for the higher flow objectives on the San Joaquin River and tying it to Sacramento River hydrology. The State Water Board recognized this dilemma, but made no changes and instead recommended additional investigation of whether changes are justified to better represent hydrological conditions in the San Joaquin River Basin.

(Appendix 1, page 57) We disagree with the State Water Board recommendation. SEWD believes the lower flow value currently contained in the 1995 Plan should be the controlling flow objective during the February through June period and the reference to X2 in Footnote 13 deleted. Any additional flow necessary to meet the existing X2 objective should be borne by the Sacramento River Basin.

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We recommend Table 3 be modified as follows:

Table 3 Water Quality for Fish and Wildlife Beneficial Uses
San Joaquin River flow at Airport Way Bridge, Vernalis:

Outflow/ Water-Year Type	Wet	Above Normal	Below Normal	Dry	Critical Dry
San Joaquin River at Airport Way Bridge, Vernalis	2130 cfs	2130 cfs	1420 cfs	1420 cfs	710 cfs

Emerging Issue #3 – Central Valley Salinity

As a result of a joint State and Regional Board workshop on Central Valley Salinity issues held in January 2006, the State Water Board supports development of a Salinity Management Plan for the Central Valley and Delta to protect the beneficial uses of both surface water and groundwater. While SEWD is supportive of such a plan, SEWD does not believe that it will take 40 to 50 years to implement. Salinity issues in the Central Valley and in particular in the San Joaquin River are not new issues. There have been dozens of studies prepared over the years that illustrate the problem and offer solutions; unfortunately, the only solution that has been implemented to date regarding salinity in the San Joaquin River has been to require releases of high quality dilution water from New Melones Reservoir, which has significantly impacted water deliveries to SEWD. We suggest that the stakeholder group take a hard look at the existing studies, findings and reports to develop the plan which can and should be implemented in short order.

Finally, SEWD wants to ensure that on-going processes will not be postponed or delayed awaiting the Salinity Management Plan. In specific, the State Water Board since 1995 has directed the Central Valley Regional Water Quality Control Board to adopt salinity objectives upstream of Vernalis on the San Joaquin River. In D-1641, the State Water Board once again directed the Regional Board to adopt salinity objectives upstream of Vernalis. And, most recently, at the January 2006 workshop, the State Water Board again directed the Regional Board to adopt objectives upstream of Vernalis and return these

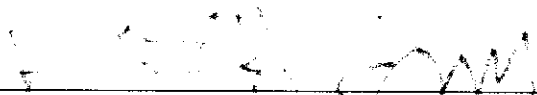
objectives to the State Water Board by November of this year. The Regional Board has failed all of these mandates by the State Water Board and is now projecting salinity objectives by September 2007. We respectfully request the State Water Board not allow development of the Salinity Management Plan to slow down in any way development and adoption of salinity objectives upstream of Vernalis.

Conclusion

We appreciate the opportunity to provide written comments on the Consideration of an Amended Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

Respectfully Submitted,

HERUM CRABTREE BROWN
A Professional Corporation



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Attorney for Stockton East Water District