



United States Department of the Interior

**Comments Regarding the California State Water Resources Control Board's
Consideration of an Amended Water Quality Control Plan for the San
Francisco Bay/Sacramento-San Joaquin Delta Estuary**

December 8, 2006

The United States Department of the Interior (Interior) has reviewed the Revised Draft Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Revised Draft Plan), the Revised Draft Plan Amendment Report, Appendix 1, and the Draft Response to Comments, Appendix 3 issued by the State Water Resources Control Board (SWRCB or the Board) on November 29, 2006. Interior supports and applauds the Board's decision to hold additional workshops on San Joaquin issues in the summer of 2007. However, Interior remains concerned that the Board is not sufficiently acknowledging the potential for conflicts between its objectives, and the need for flexibility. In addition, Interior remains concerned that Interior and the Board do not have a common understanding of the issues surrounding the southern Delta Salinity Objectives, as detailed in our previous comments to the Board on November 9, 2006.

With respect to the need for flexibility due to competing fishery objectives, Interior is disappointed that the Board has chosen not to acknowledge these conflicts in the programs of implementation. However, Interior is encouraged by the Board's statement in its Draft Response to Comments, Letter-Comment Number, page 13, that, "USBR and DWR may petition the [Board] for a temporary urgency change regarding the San Joaquin River Spring Flow Objective (or any other objective in the 2006 Plan) regardless of any statement in the program of implementation for the 2006 Plan." In addition, Interior is encouraged that the Board has decided to hold a workshop on San Joaquin issues, and that, "[t]his workshop will be focused on San Joaquin River flow issues, but will consider the interaction of other objectives, including the salmon doubling objective and the southern Delta salinity objectives." Draft Response to Comments, Letter-Comment Number 12-1, page 11. Interior believes that the addition of a San Joaquin workshop is positive.

However, Interior remains concerned that Interior and the Board continue to have a fundamental disagreement over the southern Delta Salinity Objectives. Interior still has not been clearly heard by the Board, or Board staff, on this issue. While Interior looks forward to the January 2007 workshop on this issue, Interior maintains that the Board has sufficient information, and has made sufficient findings in the past, to amend the program of implementation now to correspond more appropriately with Interior's partial responsibility, Interior's lack of control over salinity at the three stations below Vernalis, the issues of local degradation, and the problems which have ensued following the Board's decision to condition Interior's water rights, not on a specified dilution flow requirement, but on construction of a federal and state project (the permanent operable barriers). Interior continues to believe that the Board can adopt a phased implementation of the 0.7 EC objective in the Southern Delta. The Plan should provide that Reclamation and DWR will not cause or contribute to an exceedance of

1.0 EC year round, consistent with the numerous other causes of salinity degradation below Vernalis, with its "partial" responsibility, and consistent with the Board's findings in D-1641. The April through August 0.7 EC objective should be phased in the Plan until a date that the Board expects other programs in the Revised Draft Plan's Program of Implementation, such as discharge controls and TMDL programs, to be fully implemented.

Interior specifically takes issue with several statements made on page 65 of the Revised Draft Plan Amendment Report. The third full paragraph on that page discusses a "staged implementation" of the southern Delta EC objectives in D-1641. Interior wholeheartedly disagrees with any such characterization. In addition, the Board states in the same paragraph, that, "As of April 1, 2005, D-1641 requires through [USBR's and DWR's] water right permits and license, that DWR and USBR meet an EC objective of 0.7 EC from April through August at the interior southern Delta stations." D-1641 is not a staged implementation of the 0.7 EC southern Delta salinity objectives. To the contrary, D-1641 finds that Interior is only partially responsible for the salinity conditions below Vernalis, and provides a "hammer clause," or incentive, to construct permanent operable barriers. When the permanent operable barriers are constructed, the objective assigned to Interior during April – August reverts to 1.0 EC. That is how D-1641 reads. It is not a staged implementation of the 0.7 EC southern Delta Salinity Objectives.

In the next paragraph, the Board continues its finding that "Releases from reservoirs on tributaries to the San Joaquin for fish and wildlife protection pursuant to the flow requirements on the San Joaquin River at Vernalis currently contribute to achieving the salinity objectives in the southern Delta." Again, this statement is patently false. The truth is that these objectives compete. The more water released in the spring for fish and wildlife protection, the less available in mid-to late summer for southern Delta salinity dilution flows.

There remain a few serious issues between the Board and Interior regarding the potential for conflicts, and the issues of the southern Delta Salinity Objectives in the Revised Draft Plan. The Board has sufficient information, and has made sufficient findings in the past, to help alleviate some of these issues in a new Plan for the Bay-Delta. The Board should consider making those amendments to the current Revised Draft Plan. However, Interior is encouraged by, and looks forward to participating in the various workshops planned by the Board in the future.