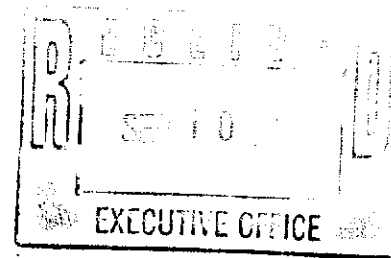


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September 9, 2004

Item 1  
Sept. 14, 2004 Workshop  
hard cc: Board  
Debbie Irvin  
  
email: Board  
CC, HMS, TH, CMW, BJL, DI  
VAW, JWK, LJM, GK, JT

Arthur G. Baggett, Jr., Chairman  
State Water Resources Control Board  
Post Office Box 100  
Sacramento, CA 95812

Re: Comments on Draft Staff Report for Periodic Review of the 1995 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary

Dear Chairman Baggett and Honorable Board Members:

This firm represents the Suisun Resource Conservation District ("SRCD"). SRCD is a conservation district created by special legislation (Public Resources Code §§ 9962 et seq.), and has the primary responsibility for regulating and improving water management practices on privately owned lands within the Suisun Marsh. SRCD actively participated in development of the 1995 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary ("1995 Plan"), and is a party to the Suisun Marsh Preservation Agreement ("SMPA") and related agreements.

This letter provides SRCD's comments on the Draft Staff Report for Periodic Review of the 1995 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary ("Staff Report").

- SRCD concurs in the recommendation contained on page 6 of the Staff Report *to not review* Western Suisun Marsh salinity objectives. Until such time as the Suisun Marsh Plan is fully developed and implemented, SRCD cannot recommend further review of these crucial salinity standards.
- SRCD concurs in the recommendations contained on page 39 of the Staff Report.
- Page 8 of the Staff Report contains a list of the parties who submitted comments for the January 2004 Bay-Delta workshop. SRCD is not listed on page 8, but SRCD did, in fact, submit timely written comments for the workshop. A copy of SRCD's comments is attached hereto for your reference.
- SRCD recommends that the Board fully analyze any impacts to Suisun Marsh water quality, including salinity standards, from revising the Delta outflow objectives. (See Issue 9.)

Arthur G. Baggett, Jr., Chairman  
State Water Resources Control Board  
September 9, 2004  
Page 2

- There is a typographical error in the Table of Contents on page 2. Under Issue 8, the interagency monitoring stations should be S-35 and S-97. The current version inadvertently substitutes S-29 for S-97.

SRCD appreciates your consideration of these comments, and please do not hesitate to contact me if you have any questions.

Very truly yours,



Nicholas A. Jacobs  
Attorney

NAJ:mm

Enclosure



Re: December 10, 2003, Notice of Workshop Regarding Review of the 1995 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary

Dear Chairman Baggett and Honorable Board Members:

I am the executive director of the Suisun Resource Conservation District ("SRCD"), SRCD is a conservation district created by special legislation (Public Resources Code §§ 9962 et seq.), and has the primary responsibility for regulating and improving water management practices on privately owned lands within the Suisun Marsh. SRCD actively participated in development of the 1995 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary ("1995 Plan"), and is a party to the Suisun Marsh Preservation Agreement ("SMPA") and related agreements.

This letter provides SRCD's comments on item 3 of the list of issues described in the above-referenced Notice of Public Workshop. Item 3 asks "should the SWRCB amend the salinity objectives on Table 3 for Fish and Wildlife uses that apply to the western Suisun Marsh, at Interagency Station Number S-97 and S-35?" For the reasons described below, SRCD strongly opposes amending the Table 3 salinity objectives for S-97 and S-35.

#### Pertinent History of the Table 3 Salinity Objectives for S-97 and S-35

As described on page 40 of the 1995 Plan, the salinity objectives "for the Suisun Marsh in this plan regulate salinity in the channels of the marsh for the purpose of providing irrigation water for the managed wetlands that will bring soil marsh salinities into the range capable of supporting the plants characteristic of a brackish marsh." S-35 and S-97 are monitoring stations that measure salinity levels in the Suisun Marsh to determine whether the water quality objectives set forth in the 1995 Plan are being met.

Responsibility for meeting the water quality objectives as measured at S-35 and S-97 rests solely with the United States Department of Interior, Bureau of Reclamation ("USBR"), and the California Department of Water Resources ("DWR"). (See SWRCB Decision 1641 ("D-1641"), p. 50, citing to D-1485, Condition 7.)

The 1995 Plan and D-1641 mandate S-35 and S-97 as water quality *compliance* stations, where DWR and USBR are responsible for maintaining salinity standards unless DWR and USBR demonstrate an alternative plan providing "equivalent or better protection" for the purposes for which the salinity standards were enacted. (See 1995 Plan, Table 3, p. 18; D-1641, p. 49, section 7.1.) Since 1995, and as described in detail in D-1641, DWR, USBR, California Department of Fish & Game ("DFG") and SRCD have worked to develop an alternative plan that would provide

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“equivalent or better protection” for the crucial purposes for which the water quality standards were enacted. In 2002, these parties teamed with the California Bay-Delta Authority and U.S. Fish and Wildlife Service to initiate the environmental scoping for preparation of a Programmatic Environmental Impact Statement/Report on the Habitat Management, Preservation, and Restoration Plan for the Suisun Marsh (Suisun Marsh Plan). The development of the Suisun Marsh Plan is aimed at preserving and enhancing managed seasonal wetlands, implementing a comprehensive levee protection/improvement program, protecting ecosystem and drinking water quality, while at the same time restoring habitat for tidal marsh-dependent sensitive species, consistent with the California Bay-Delta Program’s strategic goals and objectives. The Suisun Marsh Plan will also implement amendments to the SMPA and revise the general 404 permit from the Army Corps of Engineers necessary to perform certain habitat management activities under the SMPA.

SRCD and the other parties undertake these tasks with the goal of achieving appropriate marsh soil salinities through intensive habitat management in lieu of constructing additional salinity control facilities that could adversely impact species of concern and/or interfere with operation of the water projects operated by DWR and USBR. As you are aware, this process has faced regulatory and institutional setbacks, but SRCD and the other parties have, nonetheless, made significant progress and remain committed to following through with the Suisun Marsh Plan.

In reliance on the SMPA parties’ efforts to negotiate and implement an amendment or amendments to the SMPA that would provide “equivalent or better protection” for the Suisun Marsh soil salinities, the SWRCB has repeatedly waived the *compliance* requirement for the S-35 and S-97 salinity standards. The effect of these waivers has been to temporarily characterize S-35 and S-97 as *monitoring* stations instead of *compliance* stations. SRCD supports this approach because it facilitates the negotiations to amend the SMPA. For the reasons discussed below, however, modifying the standards on a permanent basis without implementation of the SMPA, as amended, is not warranted and would be detrimental to the brackish habitats of the Suisun Marsh.

#### **The SWRCB Should Not Amend the S-35 and S-97 Salinity Standards Unless and Until the SMPA is Appropriately Amended, Funded and Implemented**

In essence, the amendments to the SMPA, which are currently being negotiated between the parties, provide relief to DWR and the USBR from the salinity standards at S-35 and S-97 by funding habitat management programs that are implemented by SRCD and the private landowners in the Suisun Marsh. These habitat management programs are intended to achieve the soil marsh salinity goals using higher salinity irrigation water than could sustain the habitat in the absence of these management programs. SRCD believes this to be a “win-win” proposition.

As described above, significant progress has been made in efforts to amend, fund and implement the SMPA in a manner that provides equivalent or better protection for Suisun Marsh brackish habitats. Until the Suisun Marsh Plan’s comprehensive suite of SMPA

habitat management elements are finalized, funded and implemented, however, there is no "equivalent or better protection" for the Suisun Marsh soil salinities that underlie the S-35 and S-97 objectives.

Only upon implementation of the amended SMPA and related agreements/permits should the SWRCB consider revising the S-35 and S-97 salinity objectives. Such implementation must include a period of time to evaluate whether the amended SMPA programs are, in fact, providing equivalent or better protection of the Suisun Marsh. Until such time, these salinity objectives must remain unchanged, as they are crucial to the sustained health of the Suisun Marsh brackish habitats and, frankly, to the negotiations to amend the SMPA. For these reasons, SRCD respectfully requests that the SWRCB not amend the salinity objectives at S-35 and S-97.

The SRCD appreciates your consideration of these comments, and please do not hesitate to contact me if you have any questions.

Sincerely,



Steven Chappell  
Executive Director

cc: Gita Kapahi, SWRCB  
James Turner, counsel for USBR  
Cathy Crothers, counsel for DWR  
Tina Cannon, counsel for DFG  
Nicholas A. Jacobs, counsel for SRCD