



San Joaquin River Group

- Modesto Irrigation District
- Turlock Irrigation District
- South San Joaquin Irrigation District
- San Joaquin River Exchange Contractors

P.O. Box 4060
Modesto, CA 95352
(209)526-7405
(209)526-7315-Fax

- Merced Irrigation District
- Oakdale Irrigation District
- Friant Water Users Authority
- City and County of San Francisco

State Water Resources Control Board
c/o Jeanine Townsend
1001 I Street, 24th Floor
Sacramento, CA 95812-2815

February 17, 2009

Re: Policy Statement

Dear Members of the Board:

The San Joaquin River Group Authority supports the proposed Emergency Petition. Specifically the SJRGA supports the proposed third modification that:

Waives the requirement to meet the higher San Joaquin River Flow objective when X2 is required to be at or west of Chipps Island.

The SJRGA has in the D-1641 process, most recently in your 2006 Periodic Review of the San Joaquin River-Sacramento River Bay-Delta Basin Plan, and again this past September in response to your request for Bay-Delta Basin Plan issues, informed the SWRCB that the February-June Flow Requirement (X2) for Vernalis was unworkable, unattainable and did not match the objective with the beneficial use to be protected.

Rather than re-submit the voluminous material we have previously submitted to you on this issue, we have enclosed citations to those previously submitted documents. We are assuming since San Joaquin's River Flow Objectives are part of the SWRCB's February 13, 2009 Notice of Preparation that we will have the opportunity to discuss and delve into this issue in greater detail in that process.

There are three main problems with the current February-June flow Objective:

1. It is a Sacramento River Basin driven Objective. It has no connection or relationship to hydrology in the San Joaquin River Basin. If there is to be a SJR flow objective for X2 then it needs to be tied to SJR Basin hydrology.
2. Stored water is being released by the USBR from New Melones to meet the Objective. The Objective is Delta Outflow at or west of Chipps Island. To the

degree stored water is released by the USBR to meet the Objective, such water is not available for Diversion in the Delta.

Judge Robie in the State Water Resources Control Board cases stated:

“A downstream riparian user may not claim any benefit from the storage of water by an upstream appropriator”.¹

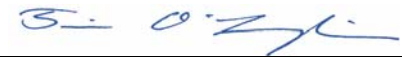
There is no mechanism in the current Bay-Delta to protect such flows from illegal diversion to ensure the flows reach or meet the intended beneficial use.

3. Finally, we have presented extensive modeling, which to date has not been rebutted, that SJR flows do not contribute to Delta-OUTFLOW. SJR flows contribute to Delta inflow, but not to flow leaving the Delta and going to the Bay. Given the current hydraulics in the South Delta almost 100% of San Joaquin River flow at Vernalis is diverted by the export facilities, or is consumed by In-Delta agricultural diversions. So why is it that SJR flows are sequestered to meet a beneficial use they can not obtain?

Thank you for your time and consideration of our Policy Statement. We look forward to working with you and your staff on this issue in the coming year as part of your Bain Plan Review.

Very truly yours,
O’LAUGHLIN & PARIS LLP

By:



TIM O’LAUGHLIN

cc: SJRG

¹ State Water Resources Control Board Cases (2006) 136 Cal.App.4th 674, 738