

DRAFT

CV-SALTS Lower San Joaquin River Committee

Meeting Actions

Tuesday September 21, 2010—1:30 PM to 3:30 PM

Attendees:

Dennis Westcot, Co-Chair	Jeanne Chilcott, Note Taker	David Cory Co-Chair
Mark Gowdy	Karna Harrigfeld	John Herrick
Lisa Holm	Parry Klassen	Debbie Liebersbach
Ric Ortega	Nigel Quinn	Patrick Rahilly
Rudy Schnagl	Ernest Taylor	Jeff Willett

Agenda Item 1

The committee Agenda was reviewed and notes for the July 26, 2010 meeting approved

Agenda Item 2 – Housekeeping and Meeting Procedures

The committee was provided a brief summary of the CV-SALTS Executive Committee Meeting on 16 September 2010, by David Cory. Key points included:

- The Executive Committee is taking a step back to review work to date and move forward in a more cohesive manner.
- The Executive Committee anticipates taking more of a leadership role, including setting specific tasks for the subcommittees.
- All other committees will wait for direction from the Executive Committee before continuing their work or scheduling any meetings, except for the LSJR.

Meeting procedures were discussed with the following decisions:

1. Beginning this meeting, note taker responsibilities will rotate alphabetically through the committee members.
2. The note taker will use the contact list to check off attendance.
3. Notes will be brief and focus on issues, key discussion points, decisions and action items.
4. Draft notes will be sent to the next meeting's note taker for review/comment before release.
5. Jeanne Chilcott was note taker for September; David Cory will be for October.

Agenda Item 3 – Legal Advice and Procedures (Chilcott)

Water Board legal staff have recommended that legal issues be submitted to a group of attorneys with expertise in different areas (e.g. agriculture and resource allocation) in order to insure prompt response by appropriate staff. A process was proposed to insure smooth flow of information to and from legal staff. In addition, it was noted that Appendix F to the Technical Committee Report entitled "Regulation of Agricultural Drainage to the San Joaquin River" (SWRCB Order WQ 85-1) also contains an analysis of legal issues that were raised during the development of a basin plan amendment for the San Joaquin River. The appendix is still cited as a legal reference today.

Decisions:

1. The proposed process for obtaining legal advice will be utilized as follows:
 - a. Legal questions are identified in meeting minutes
 - b. Jeanne Chilcott (or water board staff) compiles questions at least monthly (end of the month unless specific committee request/need).
 - i. Wording of the questions sent for review by committee chair to insure that the essence of the issue has been captured (by email—with a week to respond)
 - c. Questions are sent to legal
 - d. Responses are posted in a designated section of the CV-SALTS website so that findings can be built upon.

Actions items:

1. Dennis Westcot will send a copy of the legal appendix from publication 85-1 to the committee members and post the document on-line.

Agenda Item 4. Administrative Record for the BPA (Vacaville Example) (Westcot)

Three handouts were provided for this item: a flowchart of the basin planning process; a Basin Plan report outline; and the index for the administrative record for Old Alamo Creek beneficial use de-designation. The discussion revolved around two key issues: 1) since the administrative record for a basin plan amendment is initiated with the CEQA scoping session, is a new scoping session needed for this effort or can the May 2009 scoping meeting be utilized; and 2) how will the Functional Equivalent Document (FED, which is equivalent to CEQA document) be developed—by committee or consultant.

Action items:

1. Request legal advice on the ability to utilize previous CEQA scoping sessions to satisfy basin planning requirements.
2. Rudy will supply project summary and notes from the May 2009 scoping meeting.

Agenda Item 5. Peer Review Procedures (Westcot/Schnagl)

The committee discussed the CalEPA, no cost, scientific peer review process with particular focus on timing (2-3 months to find independent reviewers and another 1-3 months to contract and complete review). Since the peer review comes after the staff report and amendment language is drafted, and the group must provide written response to all comments, the peer review step must be considered when developing the overall project timeline.

Action items:

1. Rudy Schnagl will provide web links to the CalEPA peer review process.
2. Dennis Westcot will check with Gerald Bowes to see if State Board has already prepared its annual que for peer reviews.
3. Mark Gowdy will confirm that the reviewer selection process can be started at CalEPA prior to the final draft documents if project can be clearly described.

Agenda Item 6. Review Area of Study and Phasing

Two handouts were discussed: 1) a map of the SJR watershed; and 2) a copy of the current Basin Plan description of the lower San Joaquin River as between Mendota Dam and Vernalis.

The committee recognizes that it will need to make a decision on the upstream boundary of this effort (Merced River or Mendota Dam) based in part on funding available to complete the project.

Action items:

1. Request legal advice on potential to utilize available CAA funds upstream of the Merced River.

Agenda Item 7. Update on Real Time Management (Holm/Rahilly)

Lisa Holm provided a handout discussing the general concept of utilizing real-time monitoring to maximize the use of assimilative capacity in the river and noted that they are currently working with consultants to obtain better numbers so that there are more realistic options to move the process beyond a conceptual model. The key is where can drainage be stored for metered release. A workshop on the effort is scheduled for early 2011.

Patrick Rahilly provided an update on the ongoing work that has provided an initial water balance and potential basis to allow modeling of wetlands to be included in other modeling efforts. Remote sensors have allowed the district to move toward a mass balance approach with the benefits including water conservation during rain events. Additional studies indicate that wetlands don't provide the infrastructure to hold drainage due to detrimental side effects (decreased avian use and Swamp Timothy (food source) if the fields are not drained in mid-March).

Action item:

1. Nigel will provide links to the Calfed funded wetland reports.

Agenda Item 8. Beneficial Use Review (all)

Handouts on current beneficial use definitions, current basin plan designations, and suggested changes proposed by Dennis Westcot were discussed. Issues focused around the differences between existing and potential beneficial uses; requirements to delist; and potential to designate "limited" beneficial uses.

Decisions:

1. No changes to the beneficial use definitions.
2. Beneficial uses changes identified by the LSJR Committee for consideration that are related to aquatic habitat will not be included in the project unless salinity is determined to be a limiting factor.
3. For agriculture, the LSJR Committee will build off of and attempt to be consistent with the process used by the State Board for establishment of salinity objectives at Vernalis (draft staff report anticipated end of October; workshop in December).
4. For MUN beneficial use, the LSJR Committee has several questions on the application of the Sources of Drinking Water Policy on beneficial use designations.
5. The LSJR Committee will consider whether a survey of water agencies to determine if they are supplying water for processing (industrial use) is warranted as a first step to consider removing or creating a limited use for industrial processing.

Action items:

1. Dennis Westcot will contact Jeff Stewart at NMFS to determine if salinity is a limiting factor for fish species within the San Joaquin River.
2. Jeanne Chilcott will determine if there is a standing definition for “limited” beneficial use.
3. Committee members provide any additional recommendations to Dennis.
4. Obtain legal advice on the potential for removing municipal use designation.

Item 9. Initial Review of Water Quality Criteria

Clarification was provided for the terms “criteria” and “objective”. Criteria have a purely scientific basis. Objectives are adopted through a public process that must consider economic impact.

Decisions:

1. To provide consistency, Committee members will build off of the process the State Board used to develop recommendations for an agricultural criteria document for developing salinity objectives at Vernalis.

Action Items:

1. Dennis Westcot will send two draft criteria reports on boron and salinity.
2. Committee members will review the reports with particular focus on discussions on municipal and fish and wildlife criteria.
3. Rudy Schnagl will post a link to the LSJR Crop Tolerance Study and when complete, the Kennedy-Jenks report.

Next Committee Meeting:

Tuesday October 26, 2010—1:30 PM to 3:30 PM
Stanislaus County Ag Commissioner’s Office, Modesto
Note taker: David Corey

The committee was adjourned

**Legal Questions to Submit to Water Board Attorneys
September 2010**

1. Staff of the Central Valley Water Board held a CEQA scoping session in March 2009, with a project description to develop salinity objectives in the lower San Joaquin River from the Merced River to Vernalis.
 - a. If the project remains the same, does the May 2009 scoping session conducted by staff of the CVRWQCB satisfy the CEQA scoping requirements for a Basin Plan Amendment?
 - b. What occurrence or event would require a new CEQA scoping session?
2. In May 2005, staff of the Central Valley Water Board held a CEQA scoping session to develop salinity objectives in a larger reach of the lower San Joaquin River from Mendota Pool to Vernalis.
 - a. If the current project encompasses the section of river from Mendota Pool to Vernalis, will the May 2005 scoping session conducted by staff of the CVRWQCB satisfy the CEQA scoping requirements for a Basin Plan Amendment?
3. Under Resolution # 2009-0009, the SWRCB approved CAA funding for the development of water quality objectives in the Lower San Joaquin River (LSJR) for salinity. In the Resolution, the LSJR was defined as the reach from the Merced River confluence to Vernalis. The Sacramento/San Joaquin River Basins Plan however defines the Lower San Joaquin River Watershed as the area draining to the river between the Mendota Dam and Vernalis. Can the Lower San Joaquin River Committee expend CAA funds to study upstream of the reach defined in Resolution #2009-0009 (expand upstream of the Merced River to the Mendota Dam) in order to be consistent with the definition for the Lower San Joaquin River Watershed in the Basin Plan?
4. Under the State Board Sources of Drinking Water Policy, can "Potential" MUN use be removed and if so, what would be required to make such a demonstration?
5. Under the State Board Sources of Drinking Water Policy, is it possible to change a Potential MUN use to a "Limited" MUN use and if so, what would be required?
6. Is there a legal or policy definition of the term "Potential" in the designation of a beneficial use in the Basin Plan?
7. Is a Use Attainability Analysis required if the use has not been specifically designated in the Basin Plan for the water body in question?
8. Is a Use Attainability Analysis as described in the Clean Water Act regulations required if the use under consideration for change has been designated though the State Board Sources of Drinking Water Policy Resolution.
9. Can there be a seasonal requirement related to protecting the "Potential" beneficial use of cold water spawning?

10. If a beneficial use is designated as a "Potential Use", does that designation apply to upstream tributaries?

29 October 2010

Mona Shulman, Chair
Executive Committee
CV-SALTS
c/o Pacific Coast Producers
631 N Cluff Avenue
Lodi, CA 95240-0756

SUBJECT: RECONSIDERATION OF BENEFICIAL USE DESIGNATIONS

As part of its effort to prepare a Basin Plan Amendment for establishing water quality objectives, the Lower San Joaquin River (LSJR) Committee of CV-SALTS reviewed the adequacy of the present designations of beneficial use for the San Joaquin River from Friant Dam to Vernalis at its 21st September 2010 Meeting. The LSJR Committee identified five (5) designations that need further analysis to determine whether a change in designation is warranted. After discussion, it was decided that the LSJR Committee would prepare the necessary background documents on two (2) of the five (5) identified as these would be impacted by the salinity levels presently found in the San Joaquin River.

The LSJR Committee, as part of its effort to prepare a Basin Plan Amendment for setting water quality objectives for salinity and boron will prepare documents to determine the appropriateness of the designation for Municipal and Domestic Supply (MUN) and for Industrial Process Supply (PROC). Please find attached to this letter a brief explanation of the two (2) changes the LSJR Committee has committed to reviewing (Attachment 1).

The LSJR Committee however identified three (3) additional designations that need to be reviewed but these would not likely be impacted by the salinity levels presently found in the San Joaquin River. We would request as part of the larger CV-SALTS effort to review beneficial uses designations region-wide that these three (3) changes be considered during that process. Please find attached to this letter a brief explanation of the three (3) changes the LSJR Committee has identified as needing further consideration (Attachment 2).

We would appreciate the Executive Committee concurrence that the LSJR Committee should undertake a review of the designations for MUN and PROC and that the remaining three (3) designations identified for review will be considered during the larger-scale beneficial use review by CV-SALTS.

If you have any questions regarding this request, please contact Dennis Westcot at (530) 758-8633.

Dennis W. Westcot
Co-Chair
Lower San Joaquin River
Committee of CV-SALTS

David Cory
Co-Chair
Lower San Joaquin River
Committee of CV-SALTS

cc: Daniel Cozad, Executive Director, CV-SALTS

**Beneficial Use Designations for Review by the Lower San Joaquin River
Committee
(FOR DISCUSSION ONLY)**

**Reconsider Municipal and Domestic Supply (MUN) as a Potential
Beneficial Use**

Designation Needing a Change: Municipal and Domestic Supply (MUN) is designated as a potential beneficial use of the San Joaquin River for the reaches from the Mendota Dam to Vernalis (Mendota Dam to Sack Dam, Sack Dam to Mouth of Merced River and Mouth of Merced River to Vernalis). Information presented shows the existing (E) beneficial use designation for MUN for the reach from Friant Dam to Mendota Pool should be retained however the potential beneficial use (P) designation for the remaining three Lower San Joaquin River reaches (Mendota Dam to Vernalis) may not exist or have the potential to exist.

Preliminary Information Available:

- The San Joaquin from the Mendota Dam to Vernalis is highly regulated and made up primarily of operational releases for irrigation use, groundwater accretions from poor quality groundwater and agricultural return flows of varying quality;
- River flow and quality in this reach is highly variable thus not a potential municipal or domestic supply;
- Surveys of this River reach in 1950, 1975 and again in 1985 showed that no such uses or diversions were being made of the River for municipal or domestic supply;
- There are no water right permits or applications pending for municipal or domestic supply use;
- This River reach is over appropriated at the present time and it is unlikely that any new use would be permitted in the future;
- It is likely that new flow requirements for the Delta restoration will make new or expanded water right permits on the main stream San Joaquin River impossible;
- Even though the beneficial use has been listed as “potential” for almost 40 years, no entity or plan is in the works for such a use;
- The State Water Board’s WQ 85-1 Technical Committee did a complete review of beneficial use on the San Joaquin River in 1985 from the Salt Slough inflow to Vernalis and noted that no municipal or domestic supply uses existed and such a use was unlikely and therefore should be removed from the Basin plan; and
- The California Department of Health Services, who regulate municipal and domestic water supply systems have stated in correspondence to the

Regional Board that they will not permit a municipal or domestic use of the Lower San Joaquin River under any conditions.

Impacted by Salinity: This beneficial use is impacted by salinity changes and the California Department of Health Services have established MCLs for salt in drinking water and would be impacted by the salinity levels presently found in the San Joaquin River.

Conduct a Survey to Determine if the Industrial Process Supply (PROC) Beneficial Use Exists

Designation Needing a Change: Industrial Process Supply (PROC) is designated as an existing (E) beneficial use of the San Joaquin River for the entire Lower San Joaquin River from Friant Dam to Vernalis. We recommend that a survey of the River be conducted to determine if PROC is an existing (E) beneficial use or only exists as a potential use (P).

Preliminary Information Available:

- The San Joaquin from the Friant Dam to Vernalis is highly regulated and made up primarily of operational releases for irrigation use, groundwater accretions from poor quality groundwater and agricultural return flows of varying quality;
- River flow and quality in this reach is highly variable thus not a potential constant industrial supply source;
- Surveys of this River reach in 1950, 1975 and again in 1985 showed that no such uses or diversions were being made of the River for industrial process supply although none of these surveys confirmed whether incidental use is being made as part of the agricultural harvest and processing;
- There are no water right permits or applications pending for industrial process supply use;
- This River reach is over appropriated at the present time and it is unlikely that any new use would be permitted in the future;
- It is likely that new flow requirements for the Delta restoration will make new or expanded water right permits on the main stream San Joaquin River impossible; and
- Even though the beneficial use has been listed as “existing” for almost 40 years, the two known processing plants have gone out of business and the sites have been removed or are abandoned and with no entity or plan in the works to restore these sites for such a use.

Impacted by Salinity: This beneficial use is impacted by salinity changes as each industrial process may require different water quality needs. Any new facility would be impacted by the salinity levels presently found in the San Joaquin River.

**Beneficial Use Designations Recommended to be Considered During a
Region-wide Evaluation
(FOR DISCUSSION ONLY)**

Change in Footnote (3) to Table II-1

Designation Needing a Change: Warm Water Migration (MIGR-WARM) and Warm Water Spawning (SPWN-WARM) have a footnote (3) attached to each. The footnote reads: (3) *Striped bass, sturgeon and shad*. It should be considered to remove Striped bass from this footnote.

Preliminary Information Available: Striped bass are a non-native predator that impacts salmon and other anadromous fish. The National Marine Fisheries Service has recently asked the Department of Fish and Game to begin a program of limiting the impact of this predator on native anadromous fish and therefore the Water Quality Control Plan should not be singling this species out as an indicator of MIGR-WARM and SPWN-WARM protection needed.

Impacted by Salinity: This change would be salinity neutral as Striped bass moves freely from salt water to fresh water. There is also no evidence in the literature that would indicate that Striped bass spawning or migration would be impacted by the salinity levels presently found in the San Joaquin River.

Change in Footnote (4) to Table II-1

Designation Needing a Change: Cold Water Migration (MIGR-COLD) and Cold Water Spawning (SPWN-COLD) have a footnote (4) attached to each. The footnote reads: (4) *Salmon and steelhead*. This footnote be modified to reflect current information that shows steelhead only applies to the San Joaquin River from the Mouth of the Merced River to Vernalis and that salmon applies for all of the reaches of the San Joaquin River from Friant Dam to Vernalis.

Preliminary Information Available: The (3) reaches of the San Joaquin upstream of the Merced River confluence (Friant Dam to Mendota Pool, Mendota Dam to Sack Dam and Sack Dam to Mouth of Merced River) are listed as critical habitat for steelhead and this is inconsistent with NOAA, 2005. The upstream boundary for critical habitat in the SJR is the Merced River confluence.

By listing steelhead in the footnote (4) it seems to assert that CV steelhead are present and that habitat in the San Joaquin River from Friant Dam to Merced River confluence is critical habitat. This is incorrect. With respect to Critical Habitat, there is no critical habitat designated in counties south of Merced County

(Federal Register / Vol. 70, No. 170 / Friday, September 2, 2005 / Rules and Regulations, page 52513, Response to Comment 87).

A copy of NOAA's 2005 critical habitat listing is available at <http://www.nwr.noaa.gov/Publications/FR-Notices/2005/upload/70FR52488.pdf>

Impacted by Salinity: This change would be salinity neutral as Steelhead move freely from salt water to fresh water. There is also no evidence in the literature that would indicate that Steelhead spawning or migration would be impacted by the salinity levels presently found in the San Joaquin River.

Remove Cold Water Spawning (SPWN-COLD) as a Potential Beneficial Use in Selected River Reaches

Designation Needing a Change: Cold Water Spawning (SPWN-COLD) is designated as a potential beneficial use of the San Joaquin River for the reaches from the Mendota Dam to Mouth of the Merced River (Mendota Dam to Sack Dam and Sack Dam to Mouth of Merced River). Information presented shows the potential (P) beneficial use designation for SPWN-COLD for the reach from Friant Dam to Mendota Pool should be retained and the potential beneficial use (P) designations for the remaining two reaches (Mendota Dam to Mouth of the Merced River) be removed as they do not exist and have no potential to exist.

Preliminary Information Available:

- The San Joaquin from the Sack Dam to Mouth of the Merced River is predominately dry as a result of water regulation and made up primarily of operational releases for irrigation use, groundwater accretions from poor quality groundwater and agricultural return flows of varying quality;
- The San Joaquin from the Mendota Dam to Sack Dam is highly regulated and used mostly for transport of irrigation water to downstream districts thus flow and quality in this reach is highly variable and not suited for cold water spawning;
- The same reaches of the River are not designated as COLD water habitat thus listing for potential for COLD water spawning is not possible;
- The present San Joaquin River Restoration Program Habitat Management Plan for these reaches shows them as WARM water habitats and therefore they would not be suitable for cold water spawning (SPWN-COLD); and
- The National Marine Fisheries Service and California Department of Fish and Game management plans for these two reaches is as a warm water habitat and fishery thus cold water spawning would be inappropriate in the future as shown by the potential designation.

Impacted by Salinity: It is unclear whether salinity levels presently found in the San Joaquin River would impact the present designation for cold water spawning (SPWN-COLD).

29 October 2010

Mona Shulman, Chair
Executive Committee
CV-SALTS
c/o Pacific Coast Producers
631 N. Cluff Avenue
Lodi, CA 95240-0756

SUBJECT: NEED FOR WATER QUALITY CRITERIA INFORMATION

As part of its effort to prepare a Basin Plan Amendment for establishing water quality objectives, the Lower San Joaquin River (LSJR) Committee of CV-SALTS reviewed the adequacy of two draft reports on water quality criteria for boron and salinity at its 26 October 2010 meeting. These reports were prepared by staff of the Regional Board in the late 1990s however were never subjected to public review or peer review. These reports, along with the Crop Tolerance study conducted by Regional Board staff (never completed) will be needed to form the scientific criteria for recommending water quality objectives.

These reports need to be updated into a form that can with stand public and peer review. They are not in that form at the present time. Although these reports were developed for the establishment of water quality objectives on the Lower San Joaquin River, the information within them will be useful to all the efforts within the Central Valley and thus the entire CV-SALTS effort.

The LSJR Committee has conducted a review of the two documents and determined that additional work to update them and include a broader range of information is needed. It seems prudent that the effort to update these be done under the broader CV-SALTS effort rather than only in the LSJR Committee. This effort could be directly managed by the CV-SALTS Technical Committee with a defined completion date to enable the LSJR Committee to complete its work in a timely manner.

We would appreciate the Executive Committee concurrence that the Technical Committee should undertake and manage a review of scientific water quality criteria for boron and salinity for selected beneficial uses. The uses most critical to the LSJR Committee would be fish and other aquatic life uses, wildlife uses including waterfowl, non-irrigation agricultural uses such as stock watering and animal drinking water, human health and drinking water uses both municipal and domestic, and industrial uses including both processing and service supplies as well as power generation.

Fortunately many of the references that were used in the original draft staff reports are still available and we can arrange with the Regional Board staff to make copies of those available to who ever conducts the update study. In addition, LSJR Committee members would be available to help prepare the scope of work, work statements and other information that would be needed by the Technical Committee to initiate, manage and conduct this study.

The remaining open end of the criteria needs is for irrigated agriculture. The present Crop Tolerance study that was conducted by Regional Board staff is not completed. The LSJR Committee members will be reviewing this document and at a future meeting determine what

additional work is needed to complete this study. We will consult with you and the Technical Committee on how best to complete this study.

If you have any questions regarding this request, please contact Dennis Westcot at (530) 758-8633.

Dennis W. Westcot
Co-Chair
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cc: Daniel Cozad, Executive Director, CV-SALTS