



SENT VIA E-MAIL/FIRST-CLASS MAIL

June 28, 2012

Charles R. Hoppin, Chairman
State Water Resources Control Board
1001 I Street
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Re: Baseline of San Joaquin River Water Quality Objective Environmental Review

Dear Chairman Hoppin:

The State Water Resources Control Board (“State Water Board”) is currently reviewing the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (“Bay Delta Plan”). Pursuant to this review, the State Water Board’s staff is currently evaluating the environmental impacts of the proposed changes to the Bay Delta Plan through the development of a substitute environmental document (“SED”). The SED is being prepared pursuant to an exemption from portions of the California Environmental Quality Act (“CEQA”), as provided under California Code of Regulations section 3777. Despite this exemption, however, the environmental analysis remains “subject to the broad policy goals and substantive standards of CEQA.” (*City of Arcadia v. State Water Resources Control Board* (2006) 135 Cal.App.4th 1392, 1422.)

These broad goals and substantive standards include the requirement that the State Water Board designate a proper baseline upon which it will base the environmental analysis. (Cal. Code of Regs., § 15125.) A proper baseline must reflect the existing physical conditions and enable the environmental analysis to evaluate the impacts of the proposed project. (*Cherry Valley Pass Acres v. City of Beaumont* (2010) 190 Cal.App.4th 316 (“*Cherry Valley*”); *Neighbors for Smart*

Rail v. Exposition Metro Line Construction (2012) 205 Cal.App.4th 552.) The general baseline rule provides that the baseline is usually set at the time the notice of preparation (“NOP”) is published or at the time the environmental analysis is commenced. (Cal. Code of Regs., § 15125.) The general rule is not rigid; rather, flexibility is necessary to accommodate and account for changing conditions. (*Cherry Valley*, at 336.)

Selection of a proper baseline is important; without an appropriate baseline, an adequate analysis of an environmental impact cannot be measured. (*Cherry Valley*, at 337.) Selecting an improper baseline is likely to skew the environmental analysis; setting a baseline too late may incorporate some early project impacts into the baseline without sufficiently analyzing these impacts, while setting a baseline too early may attribute non-project-related impacts to the proposed project.

Initial documents released by the State Water Board indicate that the SED plans to use the 2009 issuance of the NOP as the baseline for the environmental analysis. Setting the baseline at the date of the original NOP is not appropriate. The original NOP was issued prematurely and has since been revised. The State Water Board revised the proposed project and re-noticed environmental review by issuing a revised NOP on April 1, 2011 (“Revised NOP”). The State Water Board must use the date of the Revised NOP, rather than the original, as the baseline for the SED document.

Setting the baseline in 2009 will violate CEQA requirements and not properly evaluate the impacts of the proposed project. The physical and regulatory conditions have changed significantly over the past several years. For example, since 2009, the San Joaquin River system has experienced several changes including, but not limited to:

- In 2009, the irrigation districts on the San Joaquin River tributaries delivered water pursuant to the Vernalis Adaptive Management Program (“VAMP”). VAMP has expired and therefore the irrigation districts no longer send flows down the San Joaquin River pursuant to VAMP.
- In 2009, the San Joaquin River Restoration Program (“SJRRP”) was not in place, but currently the SJRRP affects flows, seepage and drainage in the San Joaquin River system.
- Tributaries to the San Joaquin River have become increasingly regulated since 2009. For example, the Operations Criteria and Plan (“OCAP”) Table 2E requirements currently affect water delivery and instream flow on the Stanislaus River, but were not in place in 2009.
- New regulations controlling agriculture discharge have been adopted since 2009. (State Water Board Resolution R5-2010-0046.)
- Since 2009, legacy groundwater accretions in the San Joaquin River system have increased significantly.

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For these reasons, the San Joaquin Tributaries Authority requests the State Water Board revise the baseline designation to comply with CEQA. The SED must evaluate environmental impacts based upon the physical conditions at the time the Revised NOP was issued, at the earliest, rather than evaluate the impacts based on the 2009 NOP.

Very truly yours,

O'LAUGHLIN & PARIS LLP



VALERIE C. KINCAID

VCK/tlb

cc: San Joaquin Tributaries Authority
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