



**VIA US Mail and Electronic Mail**

July 10, 2008

Tam Doduc, Chair  
State Water Resources Control Board  
1001 I St.  
P.O Box 2815  
Sacramento, CA 95812-2815

Re: **SJR Flow Workshop**  
September 17, 2008

Dear Madam Chair:

The San Joaquin River Group Authority has received the July 2, 2008 notice that the SWRCB intends to conduct a workshop on September 17, 2008 concerning the Department of Fish and Game escapement model, a review of the Vernalis Adaptive Management Plan, and other information related to San Joaquin River flows. While we appreciate the advance notice, and will take the opportunity to clear our schedules and those of our consultants such that we can attend and provide meaningful information, the July 2 notice does not provide enough information to enable us to properly prepare.

The July 2, 2008 notification states simply that the SWRCB will conduct a "workshop." However, it does not indicate if this workshop will be considered a "rulemaking" or "informational" proceeding under Title 23, Section 649, of the California Code of Regulations, or an "adjudicative" proceeding under Title 23, Section 648, of the California Code of Regulations. Given the differing rules regarding the submission of evidence and cross-examination of witnesses that apply to the differing types of SWRCB processes, it is important that the parties know, as soon as is practicable, which type of process the SWRCB anticipates utilizing.

In the June 2008 Draft Strategic Workplan, the SWRCB references the September 17, 2008 workshop and states that the information submitted may justify and be part of changes to water rights. (*See* Draft Strategic Workplan, p. 68). Given the intended use of information submitted on September 17, 2008, the SJRGA contends that the workshop must be considered an adjudicative proceeding. If not, the workshop will likely be superfluous, as the SWRCB will not be able to rely upon the information received unless it is subject to cross-examination and the rules of evidence in any later SWRCB hearing which is adjudicative. If the SWRCB nevertheless determines that the September 17, 2008 workshop is an informational or rulemaking proceeding, the SJRGA will, in accordance with Section 649.5, submit a series of written questions that the SWRCB Board members, staff or legal counsel will need to have answered in order to make the workshop successful.

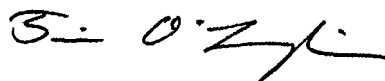
Regardless of the type of proceeding the SWRCB decides to use, the SJRGA will be submitting information on the following issues:

1. San Joaquin River Fall Run Chinook Salmon
2. Dissolved Oxygen in the Stockton DWSC
3. San Joaquin River Flows and the POD
4. Salt and Boron Objectives and TMDL
5. Head of Old River Barrier
6. San Joaquin River Restoration Settlement
7. Water Temperature
8. Water Rights Priority/Illegal Diversions

The SJRGA objects to the SWRCB receiving any information or evidence concerning the DFG salmon escapement model at the September 17, 2008 workshop. It has been over four years since data from this model was introduced to the SWRCB as part of the Periodic Review process. To date, the model has not undergone a public peer review process, has not been available to the public and, we understand, has undergone massive changes. Outside of DFG, no party has any knowledge or understanding of the inputs, assumptions or logic that runs the model. As such, its submission at the September 17, 2008 workshop is extremely prejudicial and reliance upon such model for any changes to either the Bay-Delta Plan or water rights implementing the pulse flow objective will be arbitrary and capricious.

Very truly yours,  
O'LAUGHLIN & PARIS LLP

By:



TIM O'LAUGHLIN

cc: Art Baggett  
Gary Wolff  
Charlie Hoppin  
Frances Spivy-Weber  
Les Grober, SWRCB  
Victoria Whitney, SWRCB  
Steve Thompson, USFWS  
Donald Koch, CDF&G  
Joe Grindstaff, CalFed  
Lester Snow, DWR  
Jerry Johns, DWR  
William Philmore  
Dan Nelson, SLDMWA  
Tom Birmingham, SLDMWA  
Phil Isenberg, DV Task Force