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7021-8-9

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March 10, 1995

Mr. John P. Caffrey, Chairman
State Water Resources Control Board
901 P Street, 3rd Floor
Sacramento, California 95814

Re: Comments On December 1994 Draft Bay/Delta Water Quality
Control Plan and Environmental Report

Dear Mr. Caffrey:

On behalf of the Amador County Water Agency, the Browns Valley Irrigation District, the Yolo County Flood Control and Water Conservation District and the Yuba County Water Agency, we submit the following comments to the December 1994 draft Bay/Delta Water Quality Control Plan and accompanying Environmental Report.

1. Program Of Implementation

In the written comments that we submitted at the State Board's June 14-15, 1994 Bay/Delta workshop, we explained in detail that upstream water projects besides the Central Valley Project ("CVP") and the State Water Project ("SWP") have not had substantial adverse impacts on Bay/Delta fish and wildlife, and that the CVP and SWP have had much greater impacts on these resources. The most-significant impacts of the CVP and SWP on these resources have been and are: (a) direct losses of fish entrained in the water that is diverted from the Delta by the CVP and SWP; (b) adverse impacts caused by changes in flow patterns and volumes in the internal Delta channels caused by CVP and SWP pumping and related operations; and (c) blocking of access to historical spawning grounds on the Sacramento, Feather and American Rivers.

In those comments, we also explained in detail how the watershed-protection and related statutes require the State Water Resources Control Board to curtail all CVP and SWP exports before reducing any diversions or uses by upstream water users.

We therefore are pleased that the December 15, 1994 Principles for Agreement on Bay-Delta Standards Between the State of California and the Federal Government expressly recognized that the State Board will act in compliance with these statutes in any water-right action that it may take to implement the water-quality objectives in the new Bay/Delta Water Quality Control Plan.

2. California Environmental Quality Act

Page I-12 of the draft Environmental Report states that Public Resources Code section 21080.5 exempts the preparation of the new Bay/Delta Water Quality Control Plan from the requirements in the California Environmental Quality Act ("CEQA") to prepare an EIR, negative declaration, or initial study. The draft Environmental Report cites title 14, California Code of Regulations, section 15251, subdivision (g), which provides that "the Water Quality Control (Basin)/208 Planning Program of the State Water Resources Control Board and the Regional Water Quality Control Boards" is a certified program meeting the requirements of Public Resources Code section 21080.5.

We are concerned that this process could lead to an improper circumvention of CEQA. In particular, while pages VIII-51 to VIII-62 of the draft Environmental Report contain cursory discussions of several different types of impacts that implementation of the new Bay/Delta water-quality objectives could have in Upstream Areas, those discussions do not contain any details about these impacts, because the details of implementing the new objectives have not yet been decided.

Even if these summary discussions are legally sufficient to satisfy the CEQA requirements for the State Board's adoption of the new Bay/Delta Water Quality Control Plan, they clearly are not sufficient to satisfy the CEQA requirements for the State Board's adoption of any comprehensive Bay/Delta water-right decision. We therefore hope that the State Board will recognize that it must retain its discretion to modify the new Bay/Delta water-quality objectives, to adopt alternative objectives, and to adopt adequate mitigation measures, if any such action is necessary to avoid or mitigate any adverse environmental impacts in Upstream Areas.

3. Proposed "SALMON PROTECTION" Objective

On page 16, the draft Bay/Delta Water Quality Control Plan contains a narrative "SALMON PROTECTION" objective. This objective simply states:

Water quality conditions shall be maintained, together with other measures in the watershed, sufficient to achieve a doubling of production of chinook salmon from the average production of 1967-1991, consistent with the provisions of State and federal law.

We have several concerns with this proposed objective.

First, it is unclear. This proposed objective could be interpreted to simply mean that the explicit water-quality objectives and other requirements in the draft Plan are intended

to double chinook salmon production. On the other hand, this proposed objective could be interpreted as containing some additional, but unspecified, independent requirements.

Second, the goal of this proposed objective is unrealistic. Much of the evidence and testimony that was submitted during the 1994 Bay/Delta workshops demonstrates that water alone almost certainly cannot double Central Valley chinook salmon populations. Other factors, like commercial and sportfishing and non-water actions reducing spawning and rearing habitats, have had substantially greater effects and must be corrected before salmon populations will substantially increase.

Third, if this proposed objective is intended to lead to minimum-flow requirements substantially greater than those specified in the draft Plan, then the proposed objective would be unreasonable, and thus in violation of the reasonableness requirements in Water Code section 13241. It would not be reasonable to require large flows of water simply because they might possibly lead to some increases in salmon populations.

Fourth, while Attachment B of the December 15, 1994 Principles For Agreement contains a general statement regarding the doubling of production of chinook salmon, this general statement is not a specific water-quality objective. It therefore is not necessary for the State Board to include the proposed salmon objective for the new Bay/Delta Water Quality Control Plan for it to be consistent with the Principles of Agreement.

Finally, if this proposed objective remains in the new Bay/Delta Water Quality Control Plan, then there will be a substantial risk that the United States Environmental Protection Agency will include it in its new Clean Water Act Bay/Delta water-quality standards. This could lead to unnecessary future legal disputes between the State Board and EPA.

In summary, this proposed new objective would be inconsistent with California law, is not required by the December 15, 1994 Principles of Agreement and could lead to unnecessary future disputes between the State Board and EPA. We therefore request that it not be included as an objective in the new Bay/Delta Water Quality Control Plan. Instead, if it is discussed at all in the new Plan, then it should be discussed just as a general goal that may be achieved if the specific water-quality objectives and the recommendations to other agencies that are described on pages 26-38 of the draft Plan all are implemented.

CONCLUSION

For the reasons discussed in this letter, we respectfully ask the State Board to: (1) continue to recognize the importance of watershed-protection and related statutes during the Bay/Delta process; (2) recognize that the California Environmental Quality Act will require detailed analyses of the potential impacts of State Board water-right actions in Upstream Areas, and appropriate changes and mitigation measures in any State Board water-right decision; and

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(3) remove the proposed chinook-salmon water-quality objective from the water-quality objectives in the new Bay/Delta Water Quality Control Plan.

Very truly yours,

A handwritten signature in cursive script that reads "Alan B. Lilly". The signature is written in black ink and is positioned above the printed name.

ALAN B. LILLY