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March 13, 2006

Tam M. Doduc, Board Chair  
 State Water Resources Control Board  
 1001 I Street  
 Sacramento, CA 95812

**Re: Periodic Review – Updated Proceedings.**

Dear Ms. Doduc:

The State Water Resources Control Board (“SWRCB”) closed the workshops for the Periodic Review of the 1995 San Francisco Bay/Sacramento-San Joaquin Delta Estuary Water Quality Control Plan (“1995 WQCP”) on June 3, 2005.<sup>1</sup> Since then, the San Joaquin River Group Authority (“SJRG”) has participated in administrative processes for Basin Plan amendments for dissolved oxygen (“DO”) impairment in the Stockton Deep Water Ship Channel (“DWSC”) and discharges of salt and boron into the Lower San Joaquin River (“LSJR”), the Cease and Desist Order (“CDO”) proceeding against the United State Bureau of Reclamation (“USBR”) and the California Department of Water Resources (“DWR”), and the 2006 update to the California Clean Water Act §303(d) List. The SJRG submitted a letter, dated February 27, 2006, describing these processes and why they were significant in the context of the Periodic Review.

In addition to the documents described in the February 27, 2006 letter, the Environmental Impact Report (“EIR”)/Environmental Impact Statement (“EIS”) for the South Delta Improvement Program (“SDIP”) must also be included. In addition, the SJRG has learned of a document developed by the California Resource Management

<sup>1</sup> A later workshop was noticed and held on August 31, 2005, solely for Issue Five, the Delta Outflow Objective, to address the issue of increased flexibility in meeting the outflow objective in order to void adverse upstream impacts.

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Institute<sup>2</sup> reviewing the basin planning process of the Central Valley Regional Water Quality Control Board ("CVRWQCB").

These processes must also be considered in the Periodic Review of the 1995 WQCP. As discussed in a letter from Board Executive Director Member Celesté Cantú to the SJRGA dated October 7, 2005, "additional comments pertaining to issues under consideration in the Periodic Review and submitted to the SWRCB may be considered after the June 3, 2005 date since the State Water Board's review of the 1995 Plan is a quasi-legislative proceeding and, as such, is not subject to the same rules of accepting evidence as adjudicative proceedings." Therefore, the documents discussed in this correspondence must be considered by the SWRCB in its review and development of potential amendments to the 1995 WQCP and accepted into the record.

**1. Environmental Impact Report/Environmental Impact Statement for the South Delta Improvements Program.**

The SDIP was contemplated in D-1641 and part of the permit terms and conditions for the USBR and DWR. It will significantly alter hydrologic conditions in the South Delta and therefore factor into every issue in the Periodic Review. The EIR/EIS for the SDIP was released on November 10, 2005.

The SDIP was proposed to reduce the movement of San Joaquin River watershed Central Valley fall and late fall-run juvenile Chinook salmon into the South Delta from Old River, maintain adequate water quality and quantity for agricultural diversions in the South Delta that are downstream from the head of Old River, and enable increased water delivery by the State Water Project ("SWP") and Central Valley Project ("CVP") to areas south of the Delta.

The total estimated cost of the project is \$86.5 million dollars. Public comments for the SDIP EIR/EIS were submitted by February 7, 2006 and, as of this writing, are becoming available on the SDIP website at <http://sdip.water.ca.gov/comment.cfm>. Currently, no date is set to release responses to comments.

**2. A Review of the Administrative Record for the Central Valley's Water Quality Control Plan: 1975-1994.**

In September 2003, the California Resource Management Institute issued a report titled "A Review of the Administrative Record for the Central Valley's Water Quality Control Plan: 1975-1994." ("Review") The purpose of the Review was to determine the basis for, and validity of, the water quality standards being used by the SWRCB and

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<sup>2</sup> The California Resource Management Institute is a non-profit 501(c)(3) organization focused on researching and developing the best available information relating to California's natural resources and educating the public on issues affecting California's natural resources, the industries dependent on those resources and the benefits derived by the public from those resources.

**CVRWQCB to establish effluent limitations, Total Maximum Daily Loads, and compliance conditions for waivers and storm water permits.**

The Review outlined and described the state and federal laws applicable to the adoption of water quality standards and Basin Plans. Then, it reviewed the relevance of the 1971 Interim Basin Plan, adoption process for the 1975 Basin Plan, and some of the significant water quality standards and policies contained therein. Finally, it discussed subsequent Basin Plan reviews, major updates to the Basin Plan, and amendments to specific objectives and policies. In general, the Review concluded that:

- The Administrative Record lacked any significant documentation of any scientific or technical foundation for the water quality objectives.
- The CVRWQCB acknowledged the lack of information and planned to collect further information to revise water quality objectives.
- The CVRWQCB intended to use the mandatory triennial review process to address inadequacies in the 1975 water quality objectives.
- The CVRWQCB intended to prioritize and investigate the tributaries of major water bodies to determine their appropriate beneficial uses.
- The CVRWQCB failed to consider required factors, such as the environment, water quality conditions, and economics, when adopting water quality objectives, as required by Water Code §13000.
- The CVRWQCB failed to adopt implementation programs that included actions for public and private entities and time schedules for achieving water quality objectives, as required by Water Code §13242.
- CVRWQCB staff considered water quality objectives to be goals, as opposed to regulatory restrictions.
- Substantive amendments were labeled editorial.
- Many of the water quality objectives remain unchanged since 1975, even though conditions in the Delta may have changed and scientific knowledge has advanced significantly.

The Review is significant, because the SWRCB, in its capacity as the designated state water pollution control agency for purposes of the Federal Water Pollution Control Act (Water Code § 13160), is empowered to formulate its own water quality control plans which supersede conflicting regional basin plans. (Water Code §13170.) The Basin Plan significantly influenced development of the 1995 WQCP and D-1641, especially with regard to the implementation of dissolved oxygen and salinity objectives. However, since the Basin Plan has failed to comply with Porter-Cologne and continued to

implement water quality objectives established with little or no scientific knowledge for over 30 years, its validity and applicability cannot be taken on blind faith. Consequently, the SWRCB must keep an open mind and consider other information, especially recent information, even when such information conflicts with the Basin Plan.

Very truly yours,

O'LAUGHLIN & PARIS LLP

By:



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Cc: Victoria Whitney  
Gita Kapahi  
Celesté Cantú  
Allen Short

Attachments: SDIP EIR/EIS Volume 1  
SDIP EIR/EIS Volume 2  
A Review of the Administrative Record for the Central Valley's Water  
Quality Control Plan: 1975-1994