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May 29, 1998

Rick Breitenbach
CalFed Bay-Delta Program
1416 Ninth Street
Suite 1155
Sacramento, CA 95814

Re: CalFed Draft EIS/EIR

Dear CalFed:

Thank you for allowing me to comment on the CalFed Bay-Delta Programmatic EIS/EIR - March 1998 Draft ("EIR").

Although I generally support the concept of the CalFed process, I have concerns about how the entire CalFed process, and each of the proposed alternatives, will impact recreational boating in the Delta, especially the south Delta. It is my opinion that each of the project alternatives could negatively impact recreational boating in the Delta and that the proposed mitigation measures are inadequate.

I have the following specific concerns with the EIR:¹

1. EIR Fails To Recognize And Discuss The Unique Recreational Environment In The South Delta and The Potential Adverse Impact On That Environment From The CalFed Process.

The South Delta provides a unique and potentially irreplaceable environment for recreational boating including water skiing, wake boarding and knee boarding. As indicated on the attached map, Grant Line, Fabian and Bell, and Victoria Canals ("canals") offer long, narrow and straight stretches of water ("conditions"). As also indicated on the map, these conditions exist almost nowhere else in the Delta or in California. These canals and their conditions are

¹ The opinions expressed in this letter should be considered as expert opinion in addition to lay opinion. My expert qualifications are attached.

ideal for water skiing (arguably the best public location in California) because they:

- offer protection against the wind due to their location and narrow width
- dissipate boat wakes more efficiently due to their location and narrow width
- are safer because it is easier to see approaching boats than just about anywhere else in the Delta due to the fact that they are long and straight.
- are safer because they are generally calmer than other locations in the Delta and California due to the wind protection and ability to dissipate boat wakes more effectively.
- are not used by larger bay or ocean going boats or high speed vessels. These vessels cause rough water and pose a safety hazard to recreational boaters because their large wakes can potentially swamp smaller vessels and are hard to maneuver.

Each of the proposed alternatives shows flow control barriers on Grant Line and Fabian and Bell canals, and alternative 3 indicates a channel facility in or near Victoria Canal. These proposed CalFed facilities and structures could eliminate all recreational boating in the canals. Given the unique and irreplaceable nature of these canals for recreational boating, and the high priority the law gives boating (see discussion below), the EIR fails to adequately recognize the potential adverse impact on boating in this area.

2. EIR Fails To Recognize That State And Federal Law Affords Boating And Navigation The Highest Protection Under The Law.

It appears that boating has received the lowest priority in the CalFed process. This is not only unfortunate because the public use of the Delta for boating purposes precedes the Delta Water Exporters facilities, but because it is also contrary to the law.

The Public Trust Doctrine has long given priority and protection to boating and navigation. The California Supreme Court held in *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 that:

As we observed in *Marks v. Whitney*, supra, 6 Cal.3d 251, "[p]ublic trust easements [were] traditionally defined in terms of navigation, commerce and fisheries. They have been held to include the right to fish, hunt, bathe, swim, to use for boating and general recreation purposes the navigable waters of the state, and to use the bottom of the navigable waters for anchoring, standing, or other purposes."

In addition, Federal Law also gives high priority to boating. The "navigation servitude" protects and preserves boating and navigation under Article I, Section 8 of the U.S. Constitution (*In re Water of Hallett Creek Stream System* (1988) 44 Cal.3d 448, 459-460).

Therefore, the CalFed process and the EIR should recognize the priority the law gives to boating and afford more protection for boating and navigation in the Delta.

3. EIR Fails To Adopt Adequate Mitigation Measures To Protect And Enhance Recreational Boating In The South Delta.

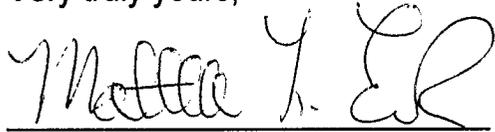
Given the potential impact the CalFed process could have on recreational boating, and given the great protection the law gives boating and navigation, the CalFed process and the EIR should adopt the following mitigation measures:

- ⇒ Maintain boating access to Grant Line, Fabian and Bell, and Victoria Canals for recreational purposes - even if flow control barriers are constructed. This could be accomplished by - locks, lifts or boat launches.
- ⇒ Include, and commit to working with, water skiing groups, boating manufacturers, resort owners and other boating interests in the CalFed process to protect and enhance recreational boating.
- ⇒ If the CalFed process adversely impacts any Delta area used for recreational boating, CalFed should commit to constructing identical facilities to be used for boating on a 1 to 1.5 ratio for each area lost and commit to working with water skiing groups and other boating interests in designing and locating these facilities

Conclusion

I am not opposed to the CalFed Process. However, "fixing" the Delta for Southern California water interests and questionably founded environmental concerns at the expense of boating is no fix. I encourage CalFed to expand its concept of "Fixing the Delta" and include boating interests in the process. I would be happy to work with CalFed to accomplish this goal.

Very truly yours,



Matthew L. Emrick

Expert Qualifications

Boating experience: 42 years. Includes fishing, waterskiing and sailing.

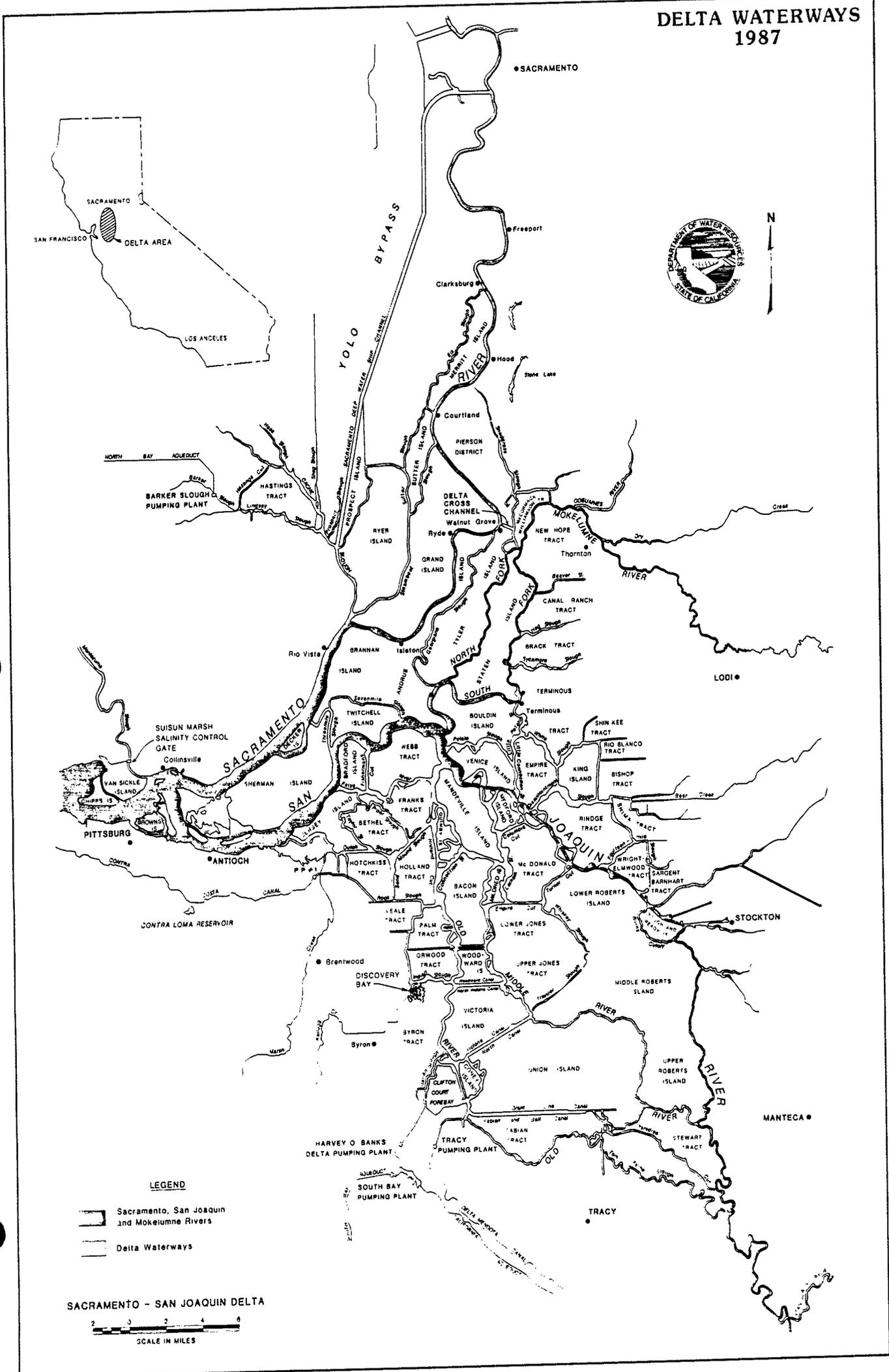
Experience in the South Delta: I have skied and boated in the South Delta for 21 years.

Experience Water Skiing: I have water skied for over 21 years and have competed on the amateur level.

Legal Experience: Hastings College of the Law, J.D. 1990. 8 years experience in water and environmental law. Currently employed as an attorney at Griffith, Masuda & Godwin in Turlock, CA specializing in water, environmental and public agency law.

Figure 2

DELTA WATERWAYS 1987



SACRAMENTO - SAN JOAQUIN DELTA

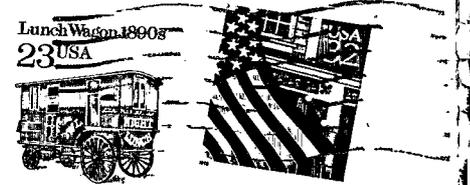
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SCALE IN MILES

· GRIFFITH, MASUDA & GODWIN

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