

**DRAFT**

**Joint Comments of Club FED<sup>1</sup> to the  
State Water Resources Control Board's  
Workshop on Issues Pertaining to the  
Bay-Delta Water Rights Hearing**

**April 21, 1998**

Good Morning. I am Patrick Wright, and I will be presenting the collective comments of many members of Club FED on the topics identified in the March 16, 1998 "Notice of Public Workshop." I am the Regional Manager for Club FED. Club FED was established to coordinate the federal effort for resolving the environmental and water supply problems associated with the Bay-Delta Estuary and the river systems of the Central Valley.

We have previously participated in and provided comments in the Board's workshops on these issues on August 29, 1995, January 30, February 20, March 12, June 11, and November 18, 1996. Our comments today are intended to supplement our earlier comments.

The Board has asked for comments today on two subjects: the status and nature of negotiated solutions to the water rights issues associated with implementing the 1995 Water Quality Control Plan, and the procedural issues associated with conducting the water rights hearing. In addition, we are providing additional broad comments highlighting our concerns about issues arising out of the Board's draft EIR.

Some of the individual agencies involved in the Club FED effort are formal parties to the upcoming water rights proceeding, and those agencies will be supplementing our general comments during the hearing process.

**Negotiated Agreements**

We are supportive of the general approach of allowing interested parties to develop negotiated agreements for implementing the 1995 Water Quality Control Plan. We believe, however, that negotiated agreements must satisfy certain criteria before they are adopted by the State Board as part of the implementation program. We encourage the Board to consider the following criteria, which we have more fully described in a companion document to these comments. In short, we believe that effective agreements should:

- 1) **Ensure compliance with the 1995 Bay-Delta Water Quality Control Plan, at least in concert with other Agreements.**
- 2) **Restore equity to the Projects by reducing the scope of their current**

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<sup>1</sup> "Club FED" is the federal Water Policy Council and consists of 10 federal agencies, including U.S. Fish and Wildlife Service and U.S. Bureau of Reclamation in the Department of the Interior, U.S. Environmental Protection Agency, and the National Marine Fisheries Service in the Department of Commerce, which are presenting this statement.

responsibility for contributing flows and diversifying contributions to the 1995 WQCP flow objectives from among several parties outside the Delta.

- 3) Enjoy the support of a sound legal and technical foundation.
- 4) Promote water contributions from an expanded number of tributary watersheds.
- 5) Provide comprehensive resolution of the contribution issue in an entire watershed of the Sacramento River, San Joaquin River, or one of the tributaries.
- 6) Contribute releases of new, "wet" water that was not flowing to the Delta before the 1994 Accord, not unused, "paper" water that gives no new benefit to the Delta.
- 7) Be fair and equitable to all concerned.
- 8) Apply consistently through the full range of standards and water year types.
- 9) Allow for changes in the State Board's water quality objectives.
- 10) Recognize that other processes are independent of the Board's consideration of implementation plans for the WQCP.
- 11) Consider the fishery impacts in the stream at issue.

### **The San Joaquin River Agreement**

The Department of the Interior has been deeply involved in the development of the San Joaquin River Agreement over the past two years. This Agreement, which includes the Vernalis Adaptive Management Plan (VAMP), would address some of the most complicated implementation issues on the San Joaquin River and its tributaries. The two Interior agencies have signed the Statement of Support for the Agreement and, if the NEPA analysis supports implementation, then the Interior agencies will execute the Agreement and work toward full implementation. In our view, the San Joaquin River Agreement would allow immediate implementation of the San Joaquin River portion of the 1995 WQCP, on an interim basis. The San Joaquin River Agreement is intended to achieve three primary objectives:

- \* Implement protective measures for San Joaquin River fall-run chinook salmon within the framework of a carefully designed management and study program which is designed to achieve, in conjunction with other non-VAMP measures, a doubling of natural salmon production by improving smolt survival through the Delta. However, the Parties recognize that future salmon production cannot be guaranteed.
- \* Gather scientific information on the relative effects of flows in the lower San Joaquin

River, CVP and SWP export pumping rates, and operation of a fish barrier at the head of Old River on the survival and passage of salmon smolts through the Delta.

\* Provide environmental benefits in the lower San Joaquin River and Delta at a level of protection equivalent to the San Joaquin River Portion of the 1995 WQCP for the duration of this Agreement.

I should note here that a key component of the Agreement is full participation by all parties and we hope they all will soon sign on to the Statement of Support. We encourage you to provide a full public process and consideration of the San Joaquin River Agreement and to adopt an order that allows implementation upon completion of NEPA analysis.

### **Narrative Objective - Suisun Tidal Marsh**

While the Department of the Interior will provide more specific comments on the Suisun Marsh Preservation Agreement, we wish to express our mutual concern about the Board's reluctance to develop particular provisions implementing the narrative objective protecting the brackish and salt marshes of the Suisun Marsh area. These marshes constitute a valuable resource protecting many aquatic and terrestrial species, including many listed or proposed for listing under the state and federal endangered species acts. We believe that the Board should carefully consider whether proposed management actions for the managed wetlands will adversely affect the beneficial uses in the managed wetlands and tidal marshes.

In addition, we believe that the Board should move expeditiously to evaluate water quality, and then adopt specific actions to implement the narrative objective in the brackish and salt marshes, including development of scientifically-sound numeric standards. If a broad triennial review of the Bay-Delta standards is substantially delayed, we suggest that the Board consider a more focused review of the Suisun Marsh in the near future, to develop scientifically-based standards that protect and enhance all fish and wildlife resources.

### **Narrative Objective - Salmon Protection**

We are concerned that the Board's evaluation of the narrative objective for salmon protection is incomplete and does not provide support for the Board's conclusion that measures implementing the existing narrative doubling objective are not necessary. The present analysis is inadequate in that it does not provide an integrated consideration of the combined effects of the 1995 Water Quality Control Plan, related provisions of the Bay Delta Accord that were not included in the 1995 Water Quality Control Plan (which are being implemented pursuant to biological opinions under the Endangered Species Act), and other measures in the watershed, including the Central Valley Project Improvement Act. Without this integrated evaluation, we think it is premature for the Board to preclude analysis of additional measures implementing the narrative objective.

As with the Suisun Marsh narrative objective, we believe the Board should begin considering

how it could develop more specific implementation plans or provide specific numeric criteria for the narrative salmon doubling objective. This analysis should begin in the near future so that this issue may be resolved in the next triennial review.

### **Environmental Impact Evaluation**

We are concerned that the Board's present analysis does not reflect the combined effects of several recent water management developments. In particular, it does not include an analysis of the effects of joint point operations that includes full implementation of the Bay Delta Accord and implementation of the CVPIA fish measures included in the Department of the Interior's November 20, 1997 announcement. By making this comment, we are not asking the Board to reconsider its baseline analysis for the formal "no action alternative." We are instead noting that the interested public needs this more integrated analysis of the current regulatory scenario. We need to discuss how the State Board intends to address this issue.

### **Hearing Process and Schedule**

Finally, we note that the federal agencies provided comment on the Board's proposed hearing schedule in a letter to Mr. Wheeler and Mr. Caffrey dated April 17, 1998. A copy of this letter is attached for your information. We should add here that our ultimate comment on the scheduling issue depends on the outcome of this workshop. The appropriate parties will need to meet and discuss how to proceed.

We thank you for this opportunity to participate in your workshop.

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