California Sportfishing
Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

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State Water Resources Control Board
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RE: Comments on the Draft Strategic Workplan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary

The California Sportfishing Protection Alliance (CSPA) and the California Water Impact Network (CWIN) have reviewed the State Water Resources Control Board's (State Board) Draft Strategic Workplan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Strategic Plan) and respectfully submit the following comments. California has both state and federal clean water laws, state and federal endangered species acts and a water code that specifies in great detail how water is to be allocated, reallocated and put to maximum and reasonable beneficial use. The present reality of a disintegrating Delta ecosystem, seriously polluted waterways and collapsing fisheries, coupled with over half a billion acre-feet of water rights in a state that has an average runoff of 77 million acre-feet is a searing indictment of the failures of the State and Central Valley Boards to enforce the law.

I. Background

It is the generally accepted view in the environmental and fishing communities, shared by the CSPA and CWIN, that the State Board has failed to properly carry out its constitutional and statutorily duties to both protect the public trust, and to prevent waste and unreasonable use of water in California. Over the course of many years, the State Board has chosen to act as a secondary player in the on-going saga of water supply and environmental problems in the State. As noted by the Governor's Delta Vision taskforce, the State Board "enforces its own laws and regulations poorly or not at all." As will be clear by our specific comments contained herein, our experience before the State Board is that the Board's failures to properly enforce the Water Code and environmental laws is directly responsible for the present pelagic organism crash and that it is mostly responsible for the looming failure of the California water supply system. We agree with these words of the Delta Vision task force:

> With respect to the water system, California already possesses a strong constitutional and statutory foundation for carrying out the

> recommendations of the [Governor's Delta] Vision. Yet key agencies and institutions too often lack consistent political support for certain missions, or are simply under-funded. As a result, the existing water governance structure enforces its own laws and regulations incompletely, unevenly, and on the basis of insufficient information. Measurement, reporting, and enforcement capabilities are all inadequate. In a state where the "reasonable use" of water is mandated by the Constitution itself, this is an unacceptable state of affairs.
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> Delta Vision Strategic Plan draft p. 13, lines 20-27.

In an attempt to help remedy these long-standing failures, in March of this year, CSPA and CWIN filed a complaint with the State Board's complaint division to provide sufficient information to cause the State Board to investigate the State Water Project and the federal Central Valley Project for public trust and unreasonable use and unreasonable methods of diversion violations at their respective diversion facilities in the Delta. As of the date of this letter, neither the State Board nor the project owners have answered our complaint. However, we find proposed hearings outlined in the Strategic Plan that indicates that the State Board plans to address state and federal project accountability for the environmental decline in the Bay/Delta watershed. The Strategic Plan has proposed a five-year schedule to review and modify the out-dated 1995 Water Quality Control Plan to reflect improved data about the reasons for the catastrophic decline of several beneficial uses within the Bay/Delta. If the State Board would aggressively assert its authority to obtain and evaluate evidence, it has the power to greatly alleviate the demands currently placed on the courts to handle matters more properly before the Board. Again, as the Governor's Delta Vision Task Force makes clear:

> With respect to the ecosystem, enforcement of laws and regulations is driven more by court decisions than by any comprehensive long-range plans for ecosystem recovery. This introduces great uncertainty into water management and ecosystem management alike. It also tends to force environmental management agencies into a reactive posture focused on legal compliance rather than on proactive restoration of a badly degraded ecosystem.
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> Delta Vision Strategic Plan Draft, p.13, lines 29-34.

Unfortunately, the Proposed Draft Strategic Plan produced by the State Board utterly fails to remedy the existing problems in California's water rights system. This strategic plan appears to CWIN and CSPA to be an attempt to buy time by reciting problems that are already well established: the organizations clear administrative problems, the fragmented nature of regulatory oversight affecting water resources in general in the State, the lack of qualified State Board staff, and the lack of resources from the Governor and other state officials in charge of budgets. What the Strategic Plan does not do is solve any of California's well-documented water problems. The State Board admits as much in this document:

> Many changes to the environmental regulatory landscape have occurred since publication of the Water Board's 2001 Strategic Plan. These include the trends described below, as well as particular issues related to those trends (such as the crisis in the Delta and implementation of the California Global Warming Act of 2006). Our ability to respond effectively to these and many other pressing issues is challenged by the fragmented nature of regulatory oversight affecting water resources in general in the State and of the governance structure specifically within the Water Boards.
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> May 30 Draft Strategic Plan, p.2.

II. CSPA and CWIN's Comments On The Strategic Plan

The Strategic Workplan describes a suite of activities the State Board will undertake over the next five years to address the water supply and environmental crisis in the Bay-Delta, priorities identified by the Governor and Delta Vision and the Public Trust. Unfortunately, the Workplan evidences little appreciation or understanding of the gravity or nature of the accelerating disintegration of the Delta's ecosystem and is essentially a justification for the status quo. It does little more than imply or promise progress where little exists, ignoring reasonable interim actions that would ensure the collection and development of information critical to the success of any long-term program.

The State Board seems to have decided on a business-as-usual approach while waiting for the Bay-Delta Conservation Plan (BDCP) and Delta Vision processes to be finalized. It is likely to be a long wait. BDCP represents the most complicated and ambitious habitat conservation plan ever envisioned in the nation coupled with an massive scheme to hydrologically modify the core of California's water circulation system. BDCP's anticipated time schedule is absurdly optimistic and the unprecedented effort will almost certainly be substantially delayed, if it survives at all. California's fisheries may not survive in the interim. The State Board cannot remain a conscientious objector to actions necessary to ensure the survival of species already languishing on the brink of extirpation.

The Strategic Plan ignores crucially needed emergency measures to address the current crisis in Delta fisheries. It utterly fails to answer any of the following questions:

1. How much water does the Delta need?

There is no effort outlined in the Workplan or contemplated in parallel proceedings (Delta Vision, BDCP, SDIP, etc.) to determine how much water the Delta requires to maintain a stable ecosystem or how various levels of reduced exports would affect south-of-Delta water users. Indeed, the Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (Bureau) have strenuously resisted calls by resource agencies and the environmental and fishing community to determine how much water the Delta needs before embarking on projects to increase water exports.

The State Board should schedule an interim evidentiary hearing to collect evidence on how much water is required to maintain the Delta ecosystem and what impacts potential reductions on exports would have on water users. If such information is unavailable, the State Board should order DWR and the Bureau to undertake such studies in a timely manner as a condition of their permits.

2. How Will the Board Create And Manage A Comprehensive Delta Monitoring Plan?

With the exception of salt and mercury, there is a paucity of reliable information on the concentration, fate and transport of contaminates in the Delta, despite the fact that many of these pollutants are highly toxic and bioaccumulate in fish and wildlife. These pollutants also pose a threat to human health. Water quality has been identified by the POD workgroup as one of the three likely causes of the decline of pelagic species. An understanding of the fate and transport of these pollutants is critical to both the restoration of fisheries and any future projects that contemplate a modification of the hydrologic regime. Historical environmental analyses have focused almost exclusively on salt and several drinking water contaminates. The present lack of information on the array of toxic contaminates present in the Delta precludes any legally defensible environmental analysis of future projects. CSPA has long urged both the State and Central Valley Boards to establish a comprehensive Delta-wide monitoring program similar to those conducted by the San Francisco Estuary Institute in San Francisco Bay and the Sacramento River Watershed Program in the Sacramento River.

The State Board should schedule an interim evidentiary hearing to collect evidence and recommendations on the scope of an adequate contaminate monitoring program for the Delta. The DWR, Bureau and other beneficiaries of Delta exports should be directed to timely establish the Delta monitoring program, as a condition of their permits.

3. When Will Necessary State-Of-The-Art Fish Screens Be Required On Delta Export Pumps?

New fish screens at the export pumps would drastically reduce entrainment of virtually all of the pelagic and salmonid listed pursuant to state and federal endangered species acts. The screening project was mothballed after MWD and the State Water Contractors, the beneficiaries of the SWP and CVP, stated that they would not pay for them. The State Board should conduct an interim evidentiary hearing to collect evidence and consider requiring the installation of new fish screens as a condition of the permits of Department of Water Resources and the U.S. Bureau of Reclamation.

a. New state-of-the-art fish screens were required mitigation measures in the CalFed ROD. Evaluation of the success of the INSTALLED new

fish screens was to occur BEFORE further consideration of a peripheral canal.

b. Screening of agricultural diversions accomplishes little if the CVP/SWP pumps subsequently destroy fish that bypass agricultural screens.

c. The new screens at the Contra Costa intake have only taken a couple of smelt since they were constructed (much different than the 26,000 Delta smelt killed by the project pumps between June 1 and June 24 of 2007).

d. The first units of the new screens would have been in place today had the water contractors not refused to pay for them.

e. The required state-of-the-art screen project also encompassed improved new salvage facilities, transportation methods and improved release methods and new release areas. The new screens would have significantly reduced the approach velocity of water and new screen openings would have been reduced from the present one-inch to a couple of millimeters (thereby preventing most smelt from going down the DMC to Los Angeles).

f. The mandated new fish screens would have been in front of Clifton Court Forebay, which would have eliminated most of the current predation occurring in the Forebay (Forebay predation is the largest cause of mortality for most species "taken" by the pumps).

g. A component of the new screen project would have been an accelerated and intensified effort in improving survivability of smelt. Indeed, survival rates of salvaged Delta smelt are improving. Recent results from Pit-tag (passive integrated transponder tags) monitoring show that approximately 33.3% of Delta smelt salvaged survives collection, transport and release back into the Delta (14% at the CVP). Unfortunately, most smelt that reach the present screens pass through them and are never diverted to the salvage buckets.

h. The Fish Facilities Team effort was probably the finest multidisciplinary interagency study team ever established by DFG/NOAA.

i. Had the new screens been installed, as mandated, they would also have largely eliminated Clifton Court predation and significantly improved salvage and survivability of many other species presently in precipitous decline, including salmon, steelhead, splittail, threadfin, American shad, longfin, striped bass, etc.

j. As previously noted, under CalFed, an evaluation of the success of the installed new fish screens was to occur before further consideration of

a peripheral canal. Clearly, it cannot be claimed that money is an obstacle to construction of new screens, considering the estimated costs of proposed new reservoirs and a peripheral canal.

k. To reiterate, the State Board should mandate the timely installation of state-of-the-art fish screens as mandated by the CalFed ROD as a condition of water exports out of the Bay-Delta estuary.

4. What New Conditions On Export Pumping Will Be Implemented In Light Of Increased Water Exports And Resulting Reverse Flows To Protect The Bay/Delta Ecosystem?

The average of SWP and CVP exports in the 1970s were 1.430 MAF and 2.141 MAF, respectively. Exports in the 1980s averaged 2.425 MAF (SWP) and 2.519 MAF (CVP). During the 1990s, average exports were 2.305 MAF (SWP) and 2.219 MAF (CVP). Exports dramatically increased between 2000 and 2007 to an annual average of 3.251 SWP and 2.590 MAF (CVP). Additionally, average annual exports to Contra Costa Water District and the North Bay Aqueduct significantly increased from 90 TAF and 0 TAF, respectively, in the 1970s to 120 TAF and 48 TAF in the 2000s. In other words, total average annual exports from the South Delta increased from 3.662 MAF during the decade following approval of the subject water rights to an annual average of approximately 6.008 MAF between 2000 and 2007. The dramatic increase in the level of exports, beginning in 2003 coincided with the crash in pelagic species populations. For example, exports in 2003, 2004, 2005 and 2006 were 6.323 MAF, 6.145 MAF, 6.470 MAF and 6.315 MAF, respectively.

The availability of water for these increased exports apparently came from "surplus" water made "available" by the Monterey Agreement, signed in 2000. When the State Board issued D-1641, it could not have been aware that exports would dramatically increase in the following years and could not have anticipated the environmental consequences resulting from the significant increase in exports.

The State Board should conduct an interim evidentiary hearing to investigate increased exports and reverse flows in Old and Middle Rivers and consider terms and conditions in permits to protect the Delta ecosystem from the effects of the increased export of, so called, "surplus" water.

5. What Is To Be Done About Current Salt Loading To The San Joaquin River And Delta?

The State Board assigned DWR and the Bureau the responsibility for meeting salinity objectives in the 1979 Delta Plan, D-1485 and the 1995 Delta Plan and D-1641. Salinity standards continue to be routinely violated. The San Joaquin River Salinity and Boron TMDL assigns responsibility for controlling salt delivered to the San Joaquin Valley from the Delta to the Bureau. The

Bureau's salt load reductions are to be addressed through a joint Management Agency Agreement with the Central Valley Board. Unfortunately, the Bureau is claiming sovereign immunity and, while promising some level of cooperation, refuses to accept specific enforceable load limits that will actually lead to reductions in salt loading to the San Joaquin River.

To resolve this impasse, the State Board should conduct an interim evidentiary hearing to investigate salt loading caused by delivery of Delta water to the San Joaquin Valley and consider terms and conditions in permits to control salt loading to the San Joaquin River and Delta. This will resolve any question of whether the Regional Board has the authority to issue WDRs or require the Bureau to commit to specific reductions in salt loading.

6. When Will Water Storage Levels Be Increased To Protect River Flows In The Likely Event Of Dry Water Years In The Future?

Water storage in Shasta and Oroville are approaching historic lows and are projected to be at or below 1977 levels by the end of the summer. The principle cause of this shortfall is the cannibalization of north-of-Delta storage over the last several years to supply south-of-Delta storage in Semi-Tropic and Kern water banks and Diamond Valley Reservoir. Unless the approaching water year proves to be extremely wet, next years instream flows on the Feather, Sacramento and Yuba rivers are likely to approach record lows. These low flows will likely cause and contribute to reductions in spawning and rearing habitat, lethal temperatures and increases in pollutant concentration. Given the dramatic crash of pelagic species and the recent acceleration in the long-term decline in salmonid escapement, these expected low flows could trigger a catastrophic disaster to fisheries already hovering on the edge of extinction.

The State Board should immediately schedule an evidentiary hearing to receive evidence and recommendations from fishery and water agencies and the general public on possible interim emergency measures that may be implemented to reduce or mitigate this potential disaster to already depressed fisheries.

III. Specific Comments on Workplan Elements

The Workplan Elements are largely a fictionalized history coupled with a recital of current programs. With the exception of several new under-funded programs, the Elements represent a case history of how and why the Delta's ecosystem is imploding. For example:

1. **Water Quality and Contaminant Control**

The Workplan Elements pay lip service to the control of the largest sources of water quality impairment and controllable pollutant loading into the Delta and its tributaries. While recent information has, perhaps,

refined our understanding of these issues, the causes and sources of these problems and the actions necessary to reduce or eliminate them have been known for decades. The State and Regional Waterboards identified salt and selenium impairment of the San Joaquin River and Delta, organophosphorus (OP) pesticides in the Sacramento and San Joaquin Rivers and Delta, low dissolved oxygen in the Stockton Ship Channel, agricultural pollution and the problems of municipal wastewater and stormwater discharges many, many years ago. The sources and actions necessary to address and eliminate them have also been long known. The statutory authority and regulatory tools to address them have existed since the 1970s. Unfortunately, what has been absent is the political will to meaningfully attack these problems. The Workplan's Water Quality and Contaminant Control provisions that essentially eschew the Board's regulatory toolbox, minimize long-overdue regulatory enforcement and focus instead on historically ineffective stakeholder and voluntary processes continue a long-standing State and Regional Waterboard policy of denial and delay; in other words, the Workplan essentially proposes business-as-usual. The refusal to commit to meaningful measures to control pollution undermines any claim that the Workplan represents a serious commitment to protect and restore the Delta. Meanwhile, the Delta and its tributary waters continue to receive increasing loads of an array of pollutants, many already identified as "impairing" beneficial uses.

a. **NPDES Program.** The Workplan fails to acknowledge or discuss the failures of the NPDES permitting program controlling the discharge of almost two billion gallons per day into the Delta watershed (1.2 BGD in the actual Delta) from some 64 municipal wastewater treatment plants and 62 industrial dischargers. The Central Valley Board is allowing flow limits and, in many cases, the mass loading of pollutants to be increased in many, if not a majority, of permit renewals (every five years). Frequently, these renewed permits allow for increases in loading of pollutants identified as actually "impairing" a waterbody. State and federal antidegradation requirements are routinely ignored. For example, over the last two years, the Central Valley Board has allowed the increased discharge of impairing pollutants into the Delta from Stockton, Manteca, Tracy and Lodi, among others. Indeed, they even issued a new permit to the new city of Mountain House to begin discharging impairing pollutants into Old River; one of the most degraded areas of the Delta.

   It fails to acknowledge or discuss the failure of the municipal stormwater programs to reduce mass loading of toxic and impairing pollutants. Not a single municipality discharging stormwater pollutants into the Delta or its tributaries can document or quantify any reductions in the mass loading of pollutants over the last twenty years. Nor has the Central Valley Board incorporated enforceable TMDL

waste load allocations developed in TMDLs in recently issued MS-4 permits.

b. **Irrigated Lands Program.** Agricultural dischargers are the largest source of pollution to Central Valley waterways. The Workplan fails to acknowledge or discuss the failure of the Irrigated Lands Program to reduce the mass loading of toxic and impairing pollutants. The Irrigated Lands Program is implemented through waivers of Waste Discharge Requirements (WDRs). The Irrigated Lands Program is, perhaps, the single most graphic example of the failure of the State and Central Valley Boards to protect water quality.

Monitoring data collected by the Regional Board, U.C. Davis and agricultural coalitions, among others, establishes that discharges from irrigated lands represent the largest source of toxic and other pollutants to Central Valley waters. In 2007, The Central Valley Board released a landmark draft report presenting the first region-wide assessment of data collected pursuant to the Irrigated Lands Program since its inception in 2003. Data collected from some 313 sites throughout the Central Valley reveals that: 1) toxicity to aquatic life was present at 63% of the monitored sites (50% were toxic to more than one species), 2) pesticide water quality standards were exceeded at 54% of sites (many for multiple pesticides), 3) one or more metals violated criteria at 66% of the sites, 4) human health standards for bacteria were violated at 87% of monitored sites and 5) more than 80% of the locations reported exceedances of general parameters (dissolved oxygen, pH, salt, TSS). While the adequacy of monitoring (i.e., frequency and comprehensiveness of monitoring) varied dramatically from site to site, the report presents a dramatic panorama of the epidemic of pollution caused by the uncontrolled discharge of agricultural wastes.

Since conditional waivers were originally adopted in 1982, and subsequently in 2003/4 and 2006, the Central Valley Board has been unable to identify a single improvement in water quality or, indeed, a single pound reduction in the mass loading of agricultural pollutants that has been achieved by the Program (other than a reduction in application of organophosphorus pesticides as farmers switched to more potent and less expensive pyrethoids).

Under the agricultural waivers, the Central Valley Board does not know: who is actually discharging pollutants, the points of discharge, the quantities or concentrations of discharged pollutants, the actual impacts of those discharges on local receiving waters, whether any management measures (BMPs) have been applied, or whether applied BMPs are effective. The monitoring programs established by agricultural coalitions are grossly deficient and incapable of

identifying "bad actor" dischargers. Unfortunately, since the Central Valley Board does not know the actual identities of dischargers or the quantities or concentration of discharged pollutants, it must depend upon the good will of agricultural coalitions over which it has no enforcement powers other than the draconian and political difficult step of revoking a waiver covering thousands of farms spread over millions of acres (Note: Cleanup & Abatement Orders, Cease & Desist Orders and Notices of Violation can only be issued to actual dischargers).

It should be noted that the waivers essentially ignore the required elements of the state's Nonpoint Source Control Program. These mandated requirements include: 1) a description of BMPs, the process used to select or develop BMPs and the process used to ensure and verify BMP implementation; 2) specific implementation time schedules and quantifiable milestones to measure progress; 3) sufficient feedback mechanisms to ensure proper evaluation and determine whether additional BMPs are required and; 4) specific consequences for failure to achieve goals.

CSPA and San Francisco Baykeeper appealed the Central Valley Board's July 2006 adoption of agricultural waivers to the State Board. State Board technical staff reviewed the appeal and, in a series of draft reports concluded that: 1) discharges from irrigated agricultural lands have violated water quality standards; 2) agricultural coalitions have failed to comply with conditions of the waiver; 3) the Central Valley Board cannot or will not enforce fundamental waiver conditions; 4) the monitoring and reporting program is deficient; 5) the waivers lack specific time schedules for key elements of the program; 6) waiver conditions do not ensure pollution reductions by individual farms; 7) the size of coalitions is unmanageable and should be limited to subwatersheds; 8) the waiver should address groundwater protection; 9) the waiver is not consistent with the state's nonpoint source policy and; 10) the waiver should be remanded back to the Regional Board for recommended amendments. In an astonishing disregard of the public trust and water quality, senior board management informed staff that they didn't want the waivers remanded and directed staff to prepare a final report upholding the waivers. CSPA and Baykeeper subsequently filed a lawsuit that is pending.

c. **Lack of staff resources.** The Workplan fails to discuss or acknowledge the fact that the state has deprived the Central Valley Board of sufficient resources to carry out their statutory responsibilities to control discharges of toxic and other pollutants into the state's waters. The Executive Officer of the Central Valley Board, Ms. Pamela Creedon, acknowledged in a August 2007 presentation to the State Board title *State of the Central Valley Region* that the Board

has only: a) 12% of the staff minimally necessary to regulate stormwater discharges (NPDES), b) 37% of those necessary to control municipal wastewater discharges (NPDES), c) 26% of those necessary to issue WDRs and d) 16% of those required to regulate dairies, e) 22% of the staff crucial to enforcing conditions of the controversial agricultural waivers, and f) only 11 of the 38 people necessary for the basin planning unit to update the Basin Plans that are fundamental to all Board actions. The Board's surface water ambient monitoring program has only 2 person-years (PYs), its enforcement unit is assigned only 3.5 PYs, the water quality certification unit has only 2.6 PYs to process more than 400 certifications annually. Further, the underground storage tanks unit has only 17 of 41 staff needed for several thousand cases, the timber harvest unit has only 9.2 PYs to regulate and monitor discharges from thousands of timber projects covering 45% of the state's harvested timber and the Title 27 unit has only 40% of those needed to regulate leaking landfills and surface impoundments. And finally, the Board has only 16 PYs to develop, implement and monitor TMDLs covering over 300 waterbody/pollutant combinations identified as "impaired" throughout the Central Valley.

Given these serious staffing shortages, the waterboards cannot claim to be serious about controlling the pervasive degradation of the Delta caused by increasing loads of a vast array of pollutants. Especially, as they have embraced more intractable stakeholder or voluntary programs throughout the Strategic Workplan. Stakeholder driven voluntary programs require far more staff resources and considerably longer timeframes than direct regulatory permit issuance and enforcement. The history of water quality regulation in the Central Valley is littered with failed stakeholder programs. The plain fact is that neither the State nor Regional Board can identify a successful stakeholder process that has documented quantifiable reductions in pollutant loading and improvements in water quality. However, the Boards can point to regulatory successes (for example, Grassland WDRs and the Rice Herbicide Prohibition).

d. **Total Daily Maximum Loads (TMDLs).** The factual history of TMDL development and implementation in the Central Valley undermines the claims and goals for the Workplan's elements. The Workplan's descriptions of the goals and implementation of TMDLs resemble fiction more than fact. Adopted TMDL implementation plans rarely have enforceable load and wasteload allocations. Indeed, the State and Central Valley Board have frequently employed TMDLs as "rabbit holes" in an effort to avoid the political repercussions that would likely accompany prompt direct action.

An example of such a "rabbit hole" is the Board's refusal to comply with the explicit requirements of the Bay Protection and Toxic Cleanup Program. In 1989, the California Legislature mandated a program requiring the State and Regional Boards to identify and cleanup toxic hot spots (Water Code §§ 13390 et seq.). Ten years later, in 1999, the State Board belatedly identified the Delta as a toxic hot spot for mercury, low dissolved oxygen in the Stockton Ship Channel and pesticides from agricultural return flows and dormant spray runoff. The Sacramento and San Joaquin Rivers were identified as Toxic Hot Sports because of pesticides in agricultural return flows and dormant spray runoff. Stockton and Sacramento urban waterways were identified as Toxic Hot Spots because of pesticide runoff and low dissolved oxygen. The Central Valley Board was granted variances for the pesticide cleanup plans. Following a successful lawsuit by Bill Jennings and Deltakeeper, revised pesticide cleanup plans were adopted in 2003. However, rather than comply with specific mandates to, within one year, reevaluate and revise WDRs of dischargers identified as causing or contributing to Toxic Hot Spots in order to prevent or eliminate these hot spots (Water Code § 13395), the waterboards elected to implement the program through TMDLs. Little has changed in the ten years following adoption of the cleanup program; i.e., Toxic Hot Spots continue to plague the Delta and its tributaries.

The Workplan implies that TMDLs will achieve compliance with Basin Plan water quality standards. While the "technical TMDLs" adopted by the waterboards are scientifically defensible, the crucial implementation plans are sadly lacking. To date, there have been no documented and quantified reductions in pollutant loading attributable to TMDL implementation. The only identified reductions in the mass loading of any impairing pollutant has only come about as a result of growers shifting from organophosphorus (OP) pesticides to more potent and less expensive alternatives like the pyrethoids. Unfortunately, there is no comprehensive monitoring program for pyrethoids comparable to the major monitoring effort launched by the Regional Board to identify the fate and transport of OP pesticides that began in the late 1980s and continued thru the 1990s. Pyrethoid toxicity has become pervasive throughout the Central Valley but a pyrethoid TMDL remains elusive.

The Workplan creates the misimpression that effective, enforceable TMDLs loading allocations are being incorporated into NPDES permits. The reality is that the Regional Board has failed to include TMDL wasteload allocations in a number of adopted and renewed NPDES wastewater permits. These include, Stockton, Manteca, Modesto, Tracy, Lodi and Mountain House for discharges directly into the Delta, as well as numerous permits for municipalities discharging

into tributaries of the Delta. Nor has the Regional Board incorporated enforceable wasteload allocations in adopted MS-4 permits regulating urban stormwater discharges. While wasteload allocations in MS-4 permits are implemented through management measures, EPA regulations require they must still be achievable and enforceable.

The Central Valley Board has chosen to implement TMDL load allocations to agricultural dischargers through waivers of WDRs in the Irrigated Lands Program. The blatant failures of the Irrigated Lands Program are discussed above. Five years after adoption of the 2003 waiver, the Board cannot demonstrate that a single pound of pollutant loading has resulted from the program. Specific TMDL load allocations, incorporating the specific control elements of the state's Nonpoint Source Control Program, have yet to be assigned to the agricultural coalitions.

The Workplan seriously mischaracterizes the San Joaquin River Salinity and Boron TMDL. The SJR Salt TMDL is a poster child for the failures of the TMDL program to secure improvements in water quality. Salinity problems on the river have been recognized for over a century. The long-delayed salt TMDL is the first 100-foot TMDL in the nation's history, only protecting a short stretch of river below the San Joaquin's confluence with the Stanislaus River. Water quality violations continue to occur upstream of the confluence and downstream below Vernalis: this despite the fact that EPA regulations and the Central Valley Board's Basin Plan require that standards must apply throughout a waterbody, not simply at a single compliance point. While TMDL implementation plans must ensure attainment of water quality standards, the salt TMDL contemplates a 19% exceedance of standards in critical years and a 7% exceedance in dry years. The TMDL fails to reserve any assimilative capacity, thus depriving downstream farmers of the ability to irrigate and discharge return flows. Although the State Board has expressly directed the Central Valley Board to control salt loading from municipal and industrial dischargers, the Board is routinely allowing massive increases in salt loading in recently adopted NPDES permits. An example of the Central Valley Board's inability to meaningfully address salt is the City of Modesto's NPDES wastewater permit renewal issued in April 2008. The permit doesn't require compliance with final salt limits until July 2022 or July 2026. The SJR TMDL assigns load allocations to coalitions operating under the irrigated lands waiver but fails to incorporate the control elements of the Nonpoint Source Control Program, thus ensuring failure. The largest responsibility for reducing salt loads is assigned to the Bureau but these reductions are to be addressed through a joint Management Agency Agreement. Unfortunately, the Bureau is claiming sovereign immunity and promises vague cooperation but refuses and specific enforceable limits

that will actually reduce salt loads. Delta salinity standards continue to be violated with impunity.

Both the 1995 Water Quality Control Plan for the Delta and D-1641 (2000) directed the Central Valley Board to move the salt compliance point upstream of Vernalis. Thirteen years latter, the Central Valley Board has still not released the proposed upstream salinity objectives.

The San Joaquin River Dissolved Oxygen TMDL is yet another poster child for the failures of the Central Valley Board's TMDL program. The causes and solutions to the chronic oxygen deficits in the Stockton Ship Channel have been known since, at least, the 1970s. Following the Central Valley Board's refusal to comply with the explicit requirements contained in the Bay Protection and Toxic Cleanup Program, the Board embarked on a convoluted process to develop a TMDL. Over a span of five years, the process entailed: 1) more than ten updates, workshops or hearings by the Central Valley Board; 2) four draft plans circulated for comment, 3) a four-year stakeholder process involving more than 150 meetings of the steering and technical committees and 4) millions of dollars in special studies. Since then, no meaningful actions have been taken to address the causes of the oxygen deficit, other than a state financed project to construct a demonstration aeration experiment at the Port of Stockton.

The Central Valley Board's Mercury TMDL is under development. While the technical work has been superb, there is major disagreement over the actual water quality objective and implementation plan. The outcome remains problematic. As presently proposed, the objective is not protective of subsistence fishermen and their families, those with impaired immune systems, pregnant women or children. Most dischargers are strenuously lobbing for loopholes, i.e., "offsets" to avoid having to implement source control or treatment measures. A number of local agencies and DWR are opposing the TMDL because it may regulate wetlands, which have been found to be methylate mercury. In fact, DWR, in a strongly worded letter, claims "The proposed BPA and implementation plan could seriously curtail agencies' ability to help with the recovery of endemic and specially protected species by limiting projects that could restore wetland habitat and provide seasonal food sources for such species." Apparently, the possibility that species inhabiting such habitat might bioaccumulate mercury and pose a threat to both the protected species and human health, is of little concern. Given the increasing opposition, it is uncertain whether the proposed Mercury TMDL will lead to significant reductions in mercury concentration and methylation in Delta waterways.

e. **Once-through cooling** Evidencing a relaxed approach to resource protection, the Strategic Workplan acknowledges concern that once-through cooled electrical generating facilities in the Delta impinge and entrain significant numbers of fish and aquatic organisms and pelagic organisms and other threatened and endangered species. It then inexplicably proposes to address these imminent threats to listed species through development of a statewide policy. Presumably, the Central Valley Board will, following adoption of that policy and subject to some unspecified timeline, reissue NPDES permits for the power plants. The potential threats posed by these plants have been known for many years. The Mirant facility in Contra Costa County received an NPDES permit in 2001 that expired in April 2006. The State and Regional Boards have long had ample authority under the Water Code to require whatever studies were necessary to evaluate impacts to fisheries and to adopt measures protective of beneficial uses.

The State and Regional Board have known for decades that the Thermal Plan was inadequate. Indeed, Central Valley Board staff acknowledged as far back as the 1980s that the Delta-5 temperature standard is not protective and that biologically based temperature criteria were necessary. Despite the fact that excessive temperatures have been identified as a serious limiting factor for listed species throughout the Central Valley, no funds have yet been provided to develop biologically based temperature criteria. While we appreciate the fact that the State and Regional Boards are belatedly moving to address the once-through-cooling problem, we note that these problems have been known for a long time, should have been address years ago and will be deficient without biologically based temperature criteria.

f. **Sediment Quality Objectives** Another example of the State Board's ambivalence in protection of public trust resources is the stop and go effort in developing sediment quality objectives. Toxic or potentially toxic sediments have been identified at a number of Delta locations. In 1989, the California Legislature, as part of the Bay Protection and Toxic Cleanup Program, mandated that the State Board develop and adopt sediment quality objectives. The Board prepared a conceptual workplan in 1991 but soon abandoned efforts to develop sediment objectives. However, in 1999, the Sacramento Superior Court ordered the Board to resume development of sediment objectives, pursuant to a lawsuit brought by Bill Jennings and Deltakeeper. The State Board elected to pursue development of sediment quality objectives through a lengthy and cumbersome stakeholder process. The majority of environmental participants withdrew in protest over the direction of the project, i.e., potentially responsible parties were insisting on a degree of monitoring and evaluation that was so extensive and

expensive that it would be likely that only the very worst sites would ever be addressed. The developed approach envisions an extremely complicated three-pronged approach involving assessment of toxicity, bioaccumulation and biological assemblages. A scorecard will ultimately determine whether thresholds have been exceeded requiring cleanup. Unfortunately, the complexity of the evaluation coupled with the substantial amount of expensive monitoring and assessment necessary to reach a conclusion means that potentially serious problems in the Delta may remain unaddressed. For example, fish tissue collected by DFG and analyzed by the San Francisco Estuary Institute revealed that catfish and largemouth bass caught in Stockton's Smith Canal contained concentrations of PCBs that exceeded OEHHA levels of concern. Results from a subsequent sampling demonstrated that the sediments were toxic and bioaccumulative. However, it is questionable whether anyone will ever be required to conduct the replicate sampling necessary to compel a cleanup.

g. **Invasive Species Management** The Bay-Delta estuary has been identified as the most "invaded" estuary in North America. Invasive species are one of the three major suspected causes of the pelagic species crash in the Delta. In the late 1990s, Bill Jennings and Deltakeeper petitioned the Central Valley Board to begin development of a general order addressing the increasing impacts caused by invasive species. The petition described the 212 confirmed exotics and 123 suspected exotics that had already invaded the estuary. It laid out the waterboards regulatory authority over ballast water discharges and proposed specific actions that would potentially reduce the accelerating increase in the number of invasive species establishing a foothold in the estuary. The petition was ignored. Both the State and Central Valley Boards opposed our repeated efforts to have the Delta and tributary waterways identified on the state's CWA 303(d) List of Water Quality Limited Segments as impaired by invasive or exotic species. Finally, the State Board acquiesced and included the Delta as an impaired waterbody because of exotic species on the 2006 list. The Board's belated acknowledgement of the damage caused by invasive species is appreciated. However, the proposed program and the one person-year allocated to the project (split between the three waterboards) are seriously inadequate and betray a fundamental lack of concern regarding this serious threat to the Bay-Delta ecosystem.

h. **Blue Green Algae.** The toxicity of blue green algae poses a threat to both the Delta ecosystem and human health. The spatial distribution of these algal blooms has been rapidly expanding in the Delta over recent years. This expansion is likely fueled by increases in temperatures and nutrients and reduced flow. All three of these factors may be related to a failure to control nutrient loading into the Delta or provide necessary

outflow to the Bay. Efforts to establish a monitoring and reporting program in order to better understand the fate and transport and environmental and human health effects are welcome. Unfortunately, the allocation of only one-third of a person year to this serious task is likely to prove seriously inadequate.

i. **Characterize Discharges from Delta Islands.** The discharge of some 430,000 acre-feet of return flow from approximately 680,000 acres of Delta farmland clearly represents a serious problem. "Characterization" of the pollutants in these discharges is fundamental to any serious effort to protect Delta water quality. However, the proposed project is a searing indictment of both the Central Valley Board and the irrigated lands program. Had requirements to submit Reports of Waste Discharge not been waived for agricultural dischargers, outflow from Delta islands would have been "characterized" years ago. Similarly, had the Board insisted that agricultural dischargers, coalitions and water districts comply with the same monitoring requirements it routinely demands from virtually every other segment of society, i.e., municipalities, industries, businesses (even mom-and-pop operations), discharges would have already been "characterized." Indeed, had the Board complied with its regulatory responsibility to protect the water quality and the public trust values of Delta waterways, the receiving waters would also have been fully "characterized" by now. To squander $500,000 dollars in publicly funded contract work for activities that should have been performed by dischargers is a disgrace. First, $500,000 is inadequate to accomplish the necessary work and second, only allocating a half a person-year indicates that the Board is not serious about gaining an understanding of the fate and transport of pollutants plaguing Delta waterways. While the State Board seems focused on agricultural discharges in the Delta, it inexplicably ignores the agricultural discharges from millions of acres of farmland along waterways upstream of the Delta. Pollutants from these upstream discharges gather in the Delta and likely represent a far greater pollutant mass than those coming from Delta farmers. Targeting Delta farmers while ignoring those who discharge upstream is simply hypocritical. The State Board should direct the Central Valley Board to immediately issue 13267 letters requiring all agricultural dischargers to "characterize" their discharges.

j. **Effects of Ambient Ammonia Concentrations on Delta Smelt Survival and Algal Primary Production.** While, the project to designed to identify the effects of pervasive ammonia concentrations is welcome, it is woefully under funded and likely would not have been necessary had the Central Valley Board rigorously complied with state and federal antidegradation requirements and restricted ammonia pollutant loading. This issue points to an extremely serious and

growing threat to Central Valley waterways: concentrations of pollutants that are deemed to be below water quality standards or at levels not perceived to be harmful are later revealed to be serious threats to beneficial uses. The Valley is one of the fastest growing areas of the state. Waters from north of Redding to south of Fresno gather in the Delta. Renewals of municipal wastewater NPDES permits routinely allow significant increases in pollutant mass loading; often exceeding the identified assimilative capacity of receiving waters. The Delta has experienced significant increase in the ambient concentration of a vast array of contaminants; some exceeding water quality objectives, some below the threshold. However, the potential harmful consequences of synergistic and additive interactions, bioaccumulative toxins, sublethal or chronic impacts and the cumulative effects of multiple stressors remain largely unidentified and unaddressed. Further, it is an inescapable fact that water quality standards have never been promulgated for a large number of known and potentially harmful constituents. Only be restricting the increase in pollutant loading through application of antidegradation requirements can we hope to avoid the emergence of a multitude of "new" water quality problems in the future.

k. **Selenium Screening Study for the Delta** CSPA and CWIN strongly support this under-funded study. Selenium is a bioaccumulative toxin that works its way up the food chain. The Selenium TMDLs on the San Joaquin River and Salt Slough are generally focused on concentration rather than mass loads. Significant selenium loading to the Delta continues to be a problem. This study of selenium concentration in fish tissue is especially important, given that a peripheral canal or dual conveyance system will increase residence time in the eastern Delta, thereby providing increased opportunity for selenium uptake.

2. Comprehensive Monitoring Program

CSPA has long pleaded with both the State and Central Valley Boards to establish a comprehensive Delta-wide monitoring program similar to those conducted by the San Francisco Estuary Institute in San Francisco Bay and the Sacramento River monitoring program conducted by the Sacramento River Watershed Program in the Sacramento River. In 2004, Bill Jennings and Dr. G. Fred Lee presented the State and Central Valley Boards with a report titled *Overview of Sacramento-San Joaquin River Delta Water Quality Issues* that described the Delta's water quality problems and the need for a comprehensive monitoring program. As that report has been presented to the Board, we incorporate it by reference. Unfortunately, no serious monitoring program focused on chemical contaminates has been developed. The State Board needs to expedite development of a monitoring program funded by dischargers and exporters.

With the possible exception of salt and mercury, there is a serious lack of reliable information on the concentration, fate and transport of contaminates in the Delta, despite the fact that many of these pollutants are highly toxic and bioaccumulate in fish and wildlife. A comprehensive monitoring program is critical to improving water quality, restoring fisheries or evaluating the potential impacts of future projects that contemplate a modification of the Delta's hydrology. Water quality and water quantity are irrevocably connected and can be characterized as flip sides of the same coin. Alterations of flow inevitably alter assimilative capacity . Changes in assimilative capacity directly affect habitat and water quality.

3. <u>San Joaquin River Flow and Southern Delta Salinity</u>

Art Baggett's recent waiving of the agricultural water quality standards contained in D-1641, without hearings or evidence, indicates that the State Board is not interested in enforcing Southern Delta Salinity standards against the state and federal water projects in the South Delta. While allegedly done to address the Governor's drought emergency, this outrage occurs – again - approximately 2 years after a failed attempt by a State Board enforcement team to enforce the law (D-1641) against the state and federal water projects. As the prosecution team in that case wrote in their 2006 letter to the Board: "Government should be held accountable for environmental protection to the same extent as private parties and should be held to the same enforcement standards." Of course, that noble sentiment, and the law behind it, went out the window when the State Board ignored its own order and enforcement standards to politically please the Governor and the water projects.

For the aforesaid reasons, we ask the State Board to convene a hearing on the waiver of the agricultural water quality standards and in the meantime reinstate the permanent standards. As the Cease and Desist hearing record indicates, the projects can meet the standards by releasing water from reservoirs on the San Joaquin side of the Delta and by limiting pumping at the state and federal export projects.

An appropriate hearing on this issue would consider and adopt a land retirement program for drainage impaired agricultural lands in the two projects area of water use. Table 1 portrays a rough estimate of the potential water savings associated with the retirement of lands within the San Luis Unit, Delta-Mendota Canal Unit, and the San Joaquin River Exchange Contractors of the Central Valley Project that are expected to require drainage service. The purpose of this analysis is to estimate an amount of CVP water that could be obtained from the retirement of drainage-impacted lands in the 3 units of the CVP. The water savings would then be dedicated to increase north of Delta storage to offset instream fishery flows required to prevent fish and habitat extinction in the

Bay/Delta watershed. The reduction in project use power needs would also reduce power demands.

The total land with drainage problems is 376,751 acres in the water districts identified below in Table 1, but other problem areas also exist outside of the SLU and DMC areas, as identified in Table 2 below. The analysis below shows that land retirement could save 793,056 AF in total CVP contracted water, which would have been an actual reduction in demand of 568,373 AF in 2002. Permanent land retirement and dedication of water to other CVP project purposes would result in significant benefits from reduced pollution from drainage water, reduced CVP project power usage, increased ability to meet various water quality standards, increased water storage, increased M&I water supplies, and more water for environmental needs.

Table 1 from the Draft Trinity River Fishery Restoration Supplemental Environmental Impact Report (Trinity County 2004, as amended 1/24/05 and 2/16/05)

	Acres	Acres Requiring Drainage Service	% of District Requiring Drainage Service	Max CVP Contract Amount (AF)	Max CVP Contract Water Savings (AF)	2002 CVP Contract Deliveries (AF)	2002 CVP Water Savings (AF)
Broadview Water District	9,515	9,515	100.00%	27,000	27,000	18,588	18,588
Panoche Water District	39,292	27,000	68.72%	94,000	64,593	66,743	45,863
Westlands Water District	***604,000***	***298,000***	***49.34%***	***1,154,198***	***569,455***	***776,631***	***383,172***
Eagle Field	1,438	1,435	99.82%	4,550	4,542	2,869	2,864
Mercy Springs	3,589	2,417	67.35%	2,842	1,914	4,679	3,151
Oro Loma	1,095	,1095	100%	4,600	4,600	3,173	3,173
Widren	881	881	100%	2,990	2,990	2,094	2,094
Firebaugh	23,457	23,457	100%	85,000	85,000	85,000	85,000
Cent. Cal ID	149,825	4,951	3.30%	532,400	17,569	532,400	17,569

Charleston Drainage District (portion of San Luis WD with drainage problems)	4,314	3,000	69.54%	8,130	5,654	Not avail	Not avail
Pacheco Water District	5,175	5,000	96.62%	10,080	9,739	7,137	6,896
Total	842,581	376,751	NA	1,925,790	793,056	1,499,314	568,370

Table 1 above was derived by obtaining acreage information for each district through Chris Eacock at the Bureau of Reclamation (USBR) in Fresno. The number of acres requiring drainage by 2050 was taken from estimates in the San Luis Drainage Feature Evaluation, Plan Formulation Report, USBR, December 2002 (pages 2-5 and 2-6). The maximum water savings associated with the retirement of these lands was calculated by multiplying the maximum contract amounts for each district by the percent of that district requiring drainage. Contract amounts were taken from a list of CVP contracts provided by Reclamation. Each district's total contract amount was calculated by adding all of its water contracts if more than one contract exists.

According to information we have received from the Environmental Working Group, water and crop subsidies to Westlands in 2002 amounted to over $100 million. If approximately half of Westlands, as well as those impacted lands in other drainage-problem districts such as Broadview, Widren, Mercy Springs, Panoche, Pacheco and others were retired, it would free up hundreds of thousands of acre-feet of water, as well as significantly reduce water and crop subsidies by tens of millions of dollars a year. Full analysis of such an alternative would provide meaningful disclosure to decision makers and the public about the true costs of delivering water to these problem lands.

Table 2

	Total Irrigated croplands in 2002(acres)	Drainage Impaired acreage in 2000 (acres)	% of County Requiring Drainage Service	Estimated Contract Amounts (AF)	Estimated Water Savings (AF)
Tulare County	**652,385**	**291,000**	**44.60%**	**1,304,770**	**581,927**
Kern County	**811,672**	**313,000**	**38.56%**	**1,623,344**	**625,961**

Total	**1,464,057**	**604,000**	**N/A**	**2,928,114**	**1,207,888**

Table 2 above portrays a very preliminary estimate of water savings in Tulare and Kern County within the SWP service area. The acres of irrigated croplands was taken from the USDA farm census statistics report in 2002. The acreage of drainage-impaired acres is derived from a report by CA Dept of Water Resources, the 2000 San Joaquin Valley Drainage Monitoring Program. The acreages identified are for lands with high groundwater within 20 feet of the surface. The contract amounts were figured by estimating 2 acre-feet per acre irrigated, most likely an underestimated amount. Further investigation is needed to verify and refine these numbers, but clearly there is adequate justification to remove these lands from irrigation due to continuing drainage problems and salinization of land, in violation of Cal. Constitution, Article 10, Sec. 2 and Water Code Section 100- Wasteful and Unreasonable Use of Water.

4. <u>Comprehensive Review of the Bay Delta Plan, Water Rights and Other Requirements to Protect Fish and Wildlife Beneficial Uses and the Public Trust</u>

The State Board adopted the Bay Delta Plan in 1995 and waited until 2003 to initiate a review that took almost three years until adoption in 2006. We note that a triennial review should be conducted every three years. In the interval, the Delta became increasingly polluted, salmon and pelagic fish populations crashed while exports significantly increased. Despite a collapsing estuary, the State Board limited itself to largely cosmetic modifications to the 1995 Plan and postponed addressing critical threats to the Delta until the future. It now appears that these urgent issues that include the enforcement of Delta water quality standards, consideration of the reasonableness of current Delta diversions, examination of whether application of water to impaired lands is a beneficial use and interim actions to protect fisheries, water quality and the public trust must wait until the State Board considers, in what will assuredly be the granddaddy of all evidentiary proceedings, the proposals resulting from the BDCP and Delta Vision processes. In other words, the State Board appears to be saying that it does not anticipate consideration of the CSPA/CWIN public trust, unreasonable use and method of diversion petition until it addresses the peripheral canal/isolated conveyance projects. This is an unreasonable and unacceptable abdication of the State Board's public trust responsibilities.

5. <u>Activities to Ensure that the SWP's and CBP's Methods of Diversion are Reasonable, Beneficial and Protect the Public Trust</u>

Water Code section 13550 provides a means for administrative enforcement of the reasonable use mandate. The State Board can seek

enforcement through a number of statutory provisions. Among those statutory provisions is the reserved jurisdiction clause in water rights permits issued by the State Board. (Water Code Section 1394). It retains for the State Board the power to revoke permits if a permittee should violate a permit term or condition. (23 C.C.R. 764.6)

The State Board's most expansive powers to enforce the law derive from Water Code Section 275, empowering the Board to take those actions necessary to eliminate water waste and to promote reasonable use. The State Board's decision as to whether to take action pursuant to Water Code Section 275 or to conduct investigations pursuant to Water Code Section 183 or 1051 is entirely up to the Board. The Draft Strategic Plan intends to allow other agencies and stakeholders in the Bay Delta Conservation Plan and Delta Vision to exercise these statutory functions and leaves the State Board as a minor player whose only function is to evaluate and rubber-stamp whatever decision these processes produce. Such a plan is a sham and is not what the people of California deserve from the State Board. The reasonableness proceeding should be one of the first actions taken by the Water Board in the next year to provide the parameters for BDCP and Delta Vision, not the other way around. That was the purpose of the CSPA and CWIN reasonable use complaint.

6. <u>Water Right Investigation, Enforcement and Other Activities to Ensure Flows</u>

Federal law (the CVPIA) waives federal sovereign immunity from state enforcement in regard to the CVP. Below is language from Section 3406(b) of the Central Valley Project Improvement Act (Public Law 102-575): (b) FISH AND WILDLIFE RESTORATION ACTIVITIES. "The Secretary, immediately upon the enactment of this title, shall operate the Central Valley Project to meet all obligations under state and federal law, including but not limited to the federal Endangered Species Act, 16 U.S.C. s 1531, et seq., and all decisions of the California State Water Resources Control Board establishing conditions on applicable licenses and permits for the project."

The United States Congress made it very clear that the State Board can regulate the United States Bureau of Reclamation just like any other water rights permit holder in its operation of the Central Valley project. There is no excuse for the State Board to fail to examine the reasonableness of the method of diversion of the CVP and SWP, nor is there any immunity from California and federal law for these projects. The Strategic Plan should be amended to hold such an enforcement proceeding early in the proposed five-year process to change the project water rights in response to the continuing environmental crash in the Bay/Delta.

In order to determine what water flow is necessary to remedy inadequate flow in the San Joaquin River, the State Board should examine the Bureau

of Reclamation's permits at Friant Dam. Bureau permits presently allow the diversion of massive amounts of San Joaquin River water at Friant Dam away from the lower river and the Bay/Delta and send the water into the Kern/Friant canal for use by water users outside the San Joaquin watershed. The State Board should also investigate the damage done to the lower reaches of the Tuolumne River and the Bay/Delta from the present exports diverted around the Bay/Delta by the City of San Francisco.

7. <u>Water Use Efficiency</u>

CSPA and CWIN believe that the current Draft Strategic Plan is part of a long-standing and continuing attempt by the State Board to increase exports from the Bay/Delta watershed while appearing to investigate and modify the water rights of in-watershed users. The State Board is continually contravening basic rules of water law. Watershed of Origin statutes and the corresponding first in time, first in right seniorities held by upstream water users are being reversed in favor of export water suppliers. The focus of water use efficiency should be on the major water users no matter where they are geographically in California. The Governor recently proposed a 20% cut in per capita water use statewide by 2020. The fact that the State Board Strategic Plan focuses solely on water supply, at the expense of any meaningful analysis of export demands, highlights the flaws of the draft. Even the destructive CalFed process recognized that the environmental damage caused by dams, diversions, and export uses played a significant role the damage done to California's aquatic environment.

This Strategic Plan should be re-drafted to concentrate on water demand as well as water supply. In most urban settings in California, more than 60% of water use is for outside uses, including water for lawns, pools, car washing, and other non-food or environmental uses. All of this information can be found, if the State Board cares to address it, in the Governor's own water plan. It appears that the Water Board has never considered the possible remedies to the ever increasing export water demands contained in DWR's Bulletin 160-05. Could it be that the State Board is moving so slowly to allow Bulletin 160-05 to quietly expire before it can be used to reduce demands on water diversions from the Bay-Delta? After all, if the 3 million ac/ft of conservation water identified in the State Water Plan for urban areas is purposefully left out of this plan, maybe the notion of water efficiency and conservation will disappear completely, allowing exporters another opportunity to circumvent state and federal law in the Bay-Delta.

IV. Conclusion

The State Board in this Draft Strategic Plan is again failing to use its ample legal authority to protect California's environment and economy and is again failing to enforce

the California Constitution and statutes, including Article 10, Section 2. The State Board is evidently unwilling to investigate damage done by permit holders under applicable Water Code sections regarding water rights and water quality, and thus is neglecting its duties as the state water quality regulator under the federal Clean Water Act and the California Porter-Cologne Act. The State Board has an "affirmative duty" to regulate the conditions of water rights and water quality to prevent the destruction of the public trust. There is very little in this Draft Strategic Plan that will lead to compliance with the law. Unfortunately, this plan does not contain the requisite analysis or strategy to improve the California environment, nor convince permitted water diverters that the future of California water enforcement will be anything more than "business as usual." CSPA and CWIN urge the State Board to amend this proposed plan to meaningfully enforce California law for the protection of the environment.

Respectfully Submitted,

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