UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

VIA ELECTRONIC SUBMISSION AND MAIL March 19, 2009

Anne Short
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, California 95812-2000

RE: "Comment Letter - South Delta Salinity and San Joaquin River Flow NOP"

Dear Ms. Short:

We have received the State Water Resources Control Board's (Board's) February 13, 2009, scoping notice and notice of a March 30 Workshop to discuss the update and implementation of the Bay-Delta Water Quality Control Plan (WQCP). The Board's intention is to conduct a staged review of the WQCP, first examining the issues of South Delta Salinity and San Joaquin River Flows. Our brief comments below for the most part respect that staged approach, although we do flag some other issues that are particularly timely.

Even the most casual observer of Bay-Delta issues recognizes that we are experiencing a major crisis in water resources management. The rapid decline of pelagic species first documented in the early 2000's has been followed by a more recent collapse of the salmonid populations throughout the estuary. As a result, the commercial and recreational fishing industries are facing a second year of fishing bans and other restrictions. Delta water exporters are also confronting challenges as a third year of natural drought combined with increased environmental protection measures imposes limits on the system's ability to deliver water to consumptive users. Overlaying these immediate problems is the increased realization that climate change and the related rise in sea levels will be forcing major changes in how California protects and uses the Delta - its ecological functions, water resources, and levee system.

Given these challenges, EPA believes that a comprehensive evaluation of the WQCP is very timely. In the parlance of the Clean Water Act (and state counterpart legislation), EPA believes that there is a significant question as to whether the designated uses of the Bay-Delta are being protected, and whether the current regulatory provisions of the WQCP can provide adequate protection of designated uses as California moves into a new century of Bay-Delta resource management.

In initiating its comprehensive review of the WQCP, EPA believes the Board should consider at least the following issues:

1. **Drinking Water Uses of the Delta**. The Delta supplies some or all of the drinking water for two-thirds of Californians, yet there are still no standards in place to explicitly protect that drinking water use. The State and Regional Boards have recognized this problem, and have initiated the development of the Central Valley Drinking Water Policy. Any comprehensive review of the WQCP should accelerate the Drinking Water Policy and incorporate it into appropriate revisions to the WQCP.

2. **Restoration of the San Joaquin River.** Although the exact language is unknown, it is likely that Congress will enact significant legislation this year that directs the restoration of the San Joaquin River. The legislation and related stakeholder discussions are focusing on the San Joaquin River upstream of the confluence with the Merced River, but any restoration effort of this magnitude will have major ramifications for Delta management. EPA believes the Board's analysis should, at a minimum, consider (a) how the regulatory provisions in the Delta will complement the fishery restoration program, and (b) whether and how the restoration of a functional San Joaquin River will affect Delta drinking water and aquatic ecosystem values.

3. **Replacing VAMP**. The Vernalis Adaptive Management Program, as it has been incorporated in the WQCP and related implementation plans over the past decade or so, has generated crucial information on the interplay between San Joaquin flows and fishery health. Nevertheless, both experiment design factors and the overall advance of the scientific debate suggest that it is time to develop a replacement for the VAMP. EPA believes that the Board staff is uniquely situated to work with the stakeholder groups to identify the best next steps on the VAMP, and that the Board should incorporate those next steps into the WQCP review.

4. **San Joaquin Tributaries**. Allocating responsibility for meeting WQCP provisions is solely within the Board's discretion. At the same time, however, EPA believes that there is a legitimate question as to whether protecting designated uses in the lower San Joaquin and Delta and protecting salmonids in the tributaries can be better achieved by taking a more integrated view of San Joaquin River tributary water management. This issue should be evaluated as the Board reviews the San Joaquin River flows issue in its forthcoming review.

5. **Reviewing the Delta Outflow Standard (X2)**. The Board has recently received and acted on a Petition for Temporary Urgency Changes to Delta Outflow Criteria (commonly known as the X2 criteria) submitted by the U.S. Bureau of Reclamation and the Department of Water Resources. A significant portion of that petition was a broader concern about the biological underpinnings of the X2 criteria. EPA believes that the proper forum for a broad review of a significant standard is the triennial (or periodic) review, not a temporary change petition. That said, EPA believes that there has been substantial new biological information concerning Delta outflow developed over the last 15 years (since the adoption of the X2 criteria by the Board in the 1995 WQCP). We believe that this triennial review is the right time to reevaluate and confirm or revise this important standard. The review should include not only the existing spring outflow regime, but also consider fall X2 requirements to protect designated uses.

6. **Integrated Consideration of Upstream Regulatory Measures.** EPA commends the State and Regional Boards for their substantial efforts to coordinate State Board and Regional

Board activities affecting the Bay-Delta watershed. We believe that your intent to coordinate this process with the Central Valley Board's process for developing and implementing upstream salinity/boron objectives offers the best basis for making sound water quality regulatory decisions in a complicated basin.

EPA looks forward to working with the Board in this triennial review of the WQCP. If you have any questions about our comments, or have thoughts about how we might be of assistance in the Board's review, please call me at (415) 972-3472.

Very truly yours,

Karen Schwinn
Associate Director
Water Division