

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2007-0078**

**AUTHORIZING FUNDING FROM THE STATE WATER POLLUTION CLEANUP AND
ABATEMENT ACCOUNT FOR THE DEVELOPMENT OF A DELTA SMELT REFUGE**

WHEREAS:

1. The Interagency Ecological Program (IEP) is an estuary monitoring and research program conducted by ten member agencies, including three State (Department of Water Resources, Department of Fish and Game, and State Water Resources Control Board), six federal (Fish and Wildlife Service, Bureau of Reclamation, US Geological Survey, Army Corps of Engineers, National Marine Fisheries Service, and Environmental Protection Agency), and one non-governmental organization (the San Francisco Estuary Institute).
2. The Resources Agency March 2007 Pelagic Fish Action Plan (PFAP) summarized findings of the IEP and concluded that delta smelt populations are declining at a rapid rate, raising serious concerns that the species could become extinct in the very near future. Other delta pelagic species, such as the longfin smelt, are also experiencing record low abundance and are at risk of future extinction as well.
3. The IEP and PFAP identified three general factors that may be acting individually or in concert to cause this decline: toxic effects, exotic species effects; and water project effects. Toxic effects from pesticides have been observed in the Delta in the past, but other point and nonpoint sources may also be causing toxic effects. Some of the exotic species probably were introduced through discharges of ballast water.
4. The State Water Resources Control Board (State Water Board) recognizes that the responsibility for the continued survival of the species lies with many responsible parties; however the State Water Board is committed to assuring the continued survival of delta smelt, and the possible extinction of delta smelt requires immediate action to preserve this endangered species.
5. The PFAP identifies the development of a delta smelt refuge population as a hedge against the extinction of the species.
6. The Department of Water Resources has pledged to provide the Fish Conservation and Culture Laboratory (FCCL) at Byron with \$640,000 to partially fund a delta smelt refuge.
7. The creation of a delta smelt refuge may be considered as an abatement of the effects of the discharge of wastes, thought to be a partial cause of the decline of this species.
8. The California Department of Fish and Game (Fish and Game) has authority to abate the effects of waste on waters of the State. They have requested \$600,000 to fund the refuge being established at the FCCL. These additional funds will allow for the immediate creation of a refuge and provide funding through December 2008. This will give IEP member agencies and others sufficient time to secure long-term funding for a refuge.

9. The State Water Board fully supports the development of a refuge and encourages State, federal, and local agencies, among others, to work cooperatively to establish and fund a refuge beyond December 2008 to ensure the continued survival of delta smelt and other pelagic organisms.
10. The requested allocation is consistent with the purposes of Water Code section 13442. Water Code section 13442 provides that the State Water Board may order monies to be paid from the Cleanup and Abatement Account to a public agency, such as Fish and Game, with authority to clean up or assist in abating the effects of a waste.
11. The State Water Board will continue to consider all factors contributing to the decline in pelagic organisms, and take appropriate short and long term actions to stop and reverse the decline.

THEREFORE BE IT RESOLVED THAT:

The State Water Board authorizes funding in the amount of \$600,000 from the Cleanup and Abatement Account to be provided to Fish and Game to cover expenses necessary to establish and maintain the delta smelt refuge at Byron, and authorizes the Executive Director to negotiate, execute, and amend a grant agreement for this work.

CERTIFICATION

The undersigned Acting Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on December 4, 2007.

AYE: Tam M. Doduc
Gary Wolff, P.E., Ph.D.
Arthur G. Baggett, Jr.
Charles R. Hoppin
Frances Spivy-Weber

NO: None

ABSTAIN: None



Jeanine Townsend
Acting Clerk to the Board