

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING - DIVISION OF WATER RIGHTS
DECEMBER 4, 2007**

ITEM 17

SUBJECT

CONSIDERATION OF A RESOLUTION AUTHORIZING FUNDING FROM THE STATE WATER POLLUTION CLEANUP AND ABATEMENT ACCOUNT FOR CONTRACT SUPPORT SERVICES FOR THE DEVELOPMENT OF A DELTA SMELT REFUGE

DISCUSSION

In 2005, the Interagency Ecological Program (IEP) found there to be a sharp decline in populations of pelagic organisms. This was termed the pelagic organism decline, or POD. Of these organisms, delta smelt was exhibiting some of the lowest population numbers on record. Since then, scientists and researchers have been studying the causes of this decline, and have determined that three general factors may be acting individually or in concert to cause this decline: toxic effects, exotic species effects; and water project effects. The Resources Agency summarized the findings of the IEP in its March 2007 Pelagic Fish Action Plan (PFAP).

The PFAP outlined actions that could be taken to stop or reverse the decline. One such action to mitigate for pollution effects would be the development of a delta smelt refuge population. Currently, the Department of Water Resources has committed approximately \$640,000 towards the creation of a smelt refuge. This is half of the approximately \$1.2 million needed to preserve a genetically viable population in a smelt refuge through December 2008. Additional funding will be required for the long-term maintenance of a refuge population. A wild population of delta smelt is currently available to start the refuge, but without the necessary funding these fish cannot be sustained indefinitely. Due to take limitations, no new wild delta smelt can be caught to begin such a population in the future. Currently, the delta smelt population is thought to be near extinction, and it is critical to create this refuge immediately to ensure the continued survival of the species. The State Water Board recognizes that responsibility for the continued survival of this species lies with many agencies, but that this action may help to preserve this endangered species.

The State Water Board could use funds from its Cleanup and Abatement Account (CAA) to abate the effects of waste, which is one of the identified causes of the decline of the pelagic species. The CAA funding would be provided to the California Department of Fish and Game (Fish and Game) for the specific purpose of assisting in the immediate creation of a delta smelt refuge.

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 moneys to be paid from the CAA to a public agency, such as Fish and Game, with authority to clean up or assist in abating the effects of a waste on waters of the state.

POLICY ISSUE

Should the State Water Board approve the resolution?

FISCAL IMPACT

Approving the payment of \$600,000 will leave a balance of approximately \$2,746,064 in the CAA as of October 2007.

REGIONAL WATER BOARD IMPACT

None.

STAFF RECOMMENDATION

Staff recommends that the State Water Board approve the resolution.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2007-

AUTHORIZING FUNDING FROM THE STATE WATER POLLUTION CLEANUP AND ABATEMENT ACCOUNT FOR CONTRACT SUPPORT SERVICES 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.

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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 (CAA) 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 CAA 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 a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on December 4, 2007.

Jeanine Townsend
Acting Clerk to the Board