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14 January 2010

Charles R Hoppin, Chair
State Water Resources Control Board
1001 I Street
Sacramento, CA, 95812-2815

Att: Phillip Crader, Supervisor, Bay-Delta Flow Criteria Proceedings

Dear Chairman Hoppin

These comments expand upon and further clarify the recommendations provided by the Pacific Coast Federation of Fishermen's Associations and the Institute for Fisheries Resources at your Board's 7 January 2010 Pre-Proceeding Conference concerning how best to determine criteria for those streamflows needed for the protection of San Francisco Bay-Delta ecosystem public trust resources.

Our first two recommendations are very closely related, so we will state them, as we did at the 7 January Conference, and expand a bit upon their relationship and need for Board consideration.

- 1. The Board should request testimonies from the responsible State and federal fishery agencies independently, not from these agencies' parent agencies.**
- 2. The Board should commence the proceedings on 22 March with presentations from the responsible State and fishery agencies.**

As things now stand (i.e, as of 14 January, 2010) the U.S Fish and Wildlife Service has been instructed that it will participate in the development of a 'Department of the Interior' submittal to the Board's flow criteria development proceedings. It will not be allowed to prepare and present a free-standing regional Fish and Wildlife Service testimony.

As it now stands, the California Department of Fish and Game is to develop its contribution to these proceedings within two weeks of today and submit it up through the chain of command, presumably including the Natural Resources Agency and the California Department of Water Resources, for review and approval.

UNITE • PROTECT • RESTORE

The Institute for Fisheries Resources is a Non-Profit, Non-Governmental Organization, affiliated with the Pacific Coast Federation of Fishermen's Associations, working for sustainable fisheries.

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The control of the U.S Bureau of Reclamation's Mid-Pacific Region office over the U.S Fish and Wildlife Service's Pacific Southwest (CA and NV) Region, both directly and through the Department of the Interior, Office of the Solicitor's Pacific Southwest Regional (Sacramento) office is notorious.

In previous SWRCB Bay-Delta water quality and water rights proceedings the Bureau of Reclamation has done all in its power to control and confine the Fish and Wildlife Service science staff from providing forthright testimonies to your Board, testimonies that might otherwise prove injurious to, or problematic for the operation of the Bureau's Central Valley Project.

A specific example of Reclamation's command-and-control over the Service – one of enormous relevance to these Bay-Delta ecosystem flow needs proceedings – is the 'gaming' (read 'theft and sale') of the 800,000 acre-feet of CVP yield that Congress ear-marked in Section 3406(b)(2) of the Central Valley Project Improvement Act of 1992 for the rebuilding of Central Valley salmon stocks.

A General Accounting Office-prescribed independent science panel review of the CVPIA Anadromous Fishery Restoration Program completed in December, 2008 (http://www.cvpia-independentreview.com/FisheryReport12_12_08.pdf) found that not one drop of this 800,000 acre-feet of 'b(2)' CVP yield has ever made it through the Delta, despite Congress' clear intent that the water be used principally to assure the safe passage of juvenile chinook salmon out-migrating from the Central Valley to the Bay and ocean. Not one drop.

See the bottom of page 41 and the top of page 42 of the report, where the independent review panel reports that it was 'flabbergasted' to learn just how flagrant Reclamation's abuse of Congressional direction has been concerning this enormously important water supply intended for Central Valley salmon conservation and restoration.

The Board should make clear that it wishes testimony concerning Bay-Delta ecosystem public trust resources flow protection criteria directly from the responsible State and federal fishery agencies themselves – not testimony manipulated nor redacted by the fishery agencies' sister water development agencies.

And, it will be most useful for the rest of us stakeholders if the fishery agencies could lead off the proceedings with their recommended flow criteria in order that we may then augment their testimony with whatever we can provide in the way of additional clarifying or supplemental information.

- 3. It would be highly helpful if SWRCB staff could quickly summarize the flow criteria recommended by the various parties and post that information, in the simplest possible format, to the Proceedings website/list server as soon as possible following it 16 February receipt.**

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Our vision of this table or spreadsheet is a simple list of the parties making flow criteria recommendations, the public trust resource(s) for which they are making flow criteria recommendations, and the flow criteria recommendation they are advancing for each resource. Period. This would provide the responsible agencies and stakeholders alike a 'situation-at-a-glance' tool to guide and strengthen their preparation for the 22-24 March, 2010 oral presentations.

- 4. And, finally, it would be most helpful if SWRCB could capture the sense-of-the-Board from the 7 January session and any further discussion that the Members and staff may have had regarding the rules-of-the-road for these unusual hearings and post that information to the Proceedings website/list server.**

For example, we heard it clearly stated on 7 January that the Board will be seeking numeric criteria to the extent possible. We heard that those parties with numeric criteria to offer, e.g., the responsible fishery agencies, will be heard first. We heard that the 'baseline' condition to be used for determining flow criteria will be that necessary to maintain in/ restore Bay-Delta ecosystem public trust resources to 'good condition' - for example, to accomplish the State of California's and the CVPIA's Central Valley salmon doubling goal and the Pacific Fishery Management Council's 'Pacific Coast Salmon Plan' Sacramento River fall-run chinook salmon escapement goals for a sustainable California-Oregon ocean salmon fishery.

A roll-up of the directions for these Proceedings that the Board and staff have agreed upon, including those worked out publicly on 7 January, posted to the list just as quickly as possible, would be of enormous help.

Thank you for your consideration of our recommendations for these Proceedings.

We look forward to assisting the Board in any way that we can to assure the success of this effort.

Sincerely,



William M Kier
Senior Science Advisor
Institute for Fisheries Resources

cc: William F. Grader, Jr
Executive Director
Pacific Coast Federation of Fishermen's Associations