



Vision for the Future
Association of California
Water Agencies

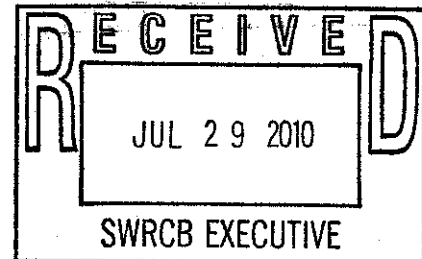
Association of California Water Agencies
910 K Street, Suite 100,
Sacramento, California 95814-3577
916.441.4545 FAX 916.325.4849

Hall of the States
400 N. Capitol St., N.W., Suite 357 South,
Washington, D.C. 20001-1512
202.434.4760 FAX 202.434.4763
www.acwa.com

July 29, 2010

Via Email (commentletters@waterboards.ca.gov)

Mr. Charlie Hoppin, Chair
State Water Resources Control Board
Cal/EPA Headquarters
1001 "I" Street, 24th Floor
Sacramento, CA. 95814-2828



Dear Chairman Hoppin and Board Members:

Subject: Draft Delta Flow Criteria Report

The Association of California Water Agencies (ACWA) appreciates the opportunity to provide you with the following comments on the draft report entitled *Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem* (report), dated July 20, 2010. ACWA represents nearly 450 public agencies that collectively provide 90 percent of the water for agricultural, business and residential use throughout California. This includes agencies located above, within and below the Delta. Our members and their customers rely on a predictable and affordable supply of water for human consumption as well as commercial and agricultural use. The potential impacts, in terms of both a reliable supply of water and additional costs, could be extremely significant, depending how the Board responds to the staff recommendations contained in the report.

ACWA acknowledges the daunting challenge the legislation created for the State Water Resources Control Board (SWRCB) and your staff. The development of new flow criteria for the Delta ecosystem is undoubtedly one of the more complicated set of issues that the SWRCB has taken up in recent years. It is unrealistic to expect your staff to complete, in a nine-month period, a thorough assessment of all the available information associated with the Delta, and formulate objective, viable recommendations for flow criteria that take into account all the factors influencing the Delta or affected by the waters of the Delta.

We recognize that the staff had to limit the scope and depth of the analysis in order to satisfy the aforementioned time constraint.¹ It is essential that the Board and other interested parties

¹ "The limited process adopted for this proceeding does not include [a] comprehensive review ... of a broad range of public interest matters including economics, power production, human health and welfare requirements, the effects of flows on non-aquatic resources (such as habitat for terrestrial species)." *DRAFT Development of*

reviewing the report consider the staff recommendations within this context. It is one of many informational reports on the Delta but, as discussed below, given the extremely limited analysis, the report and the associated flow recommendations lack regulatory credence.

1. The scope of the report and proposed flow criteria is extremely limited. The report recognizes that given the accelerated time frame in which to develop the criteria, the SWRCB's approach to developing the criteria was extremely limited. Only one public trust resource was considered – protection of aquatic resources,² and no consideration was given to any public interest concern (e.g., economy, human health and welfare, water supply reliability). This is inconsistent with the Board's normal regulatory procedure for developing regulations, "[w]hen setting flow objectives with regulatory effect, the State Water Board reviews and considers all effects of the flow objectives through a broad inquiry into all public trust and public interest concerns." Id. at page 2.
2. The report does not satisfy the SWRCB's public trust responsibilities. The SWRCB has the responsibility to determine the feasibility of protecting public trust values (e.g., fish and wildlife), while taking into account whether such protections are consistent with the public interests. The report acknowledges that "[t]he State Water Board does not make any determination regarding the feasibility of the public trust recommendations and consistency with the public interest ..." Id.
3. The report does not consider the core water policy of co-equal goals, as set forth in the 2009 Comprehensive Water Legislation. The report fully acknowledges that no consideration was given to impacts the proposed flow recommendations are likely to have on water supply, "[t]he flow criteria in this report do not consider any balancing of public trust resource protection with public interest needs for water." Id. at page 4. This is inconsistent with overarching water policy in the 2009 legislation that requires actions by state regulatory agencies which involve the Delta must take into account the co-equal goals of "providing a more reliable water supply for California and protecting, restoring and enhancing the Delta ecosystem." California Water Code §85054.
4. The report does not consider the effects of other non-flow stressors on the Delta ecosystem. While the report recognizes that other factors (stressors) are having adverse impacts on the Delta ecosystem, and that the best available science strongly encourages agencies to address all stressors in a coordinated manner³, the analysis associated with this

Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem. State Water Resources Control Board. July 20, 2010. Page 2

² "The State Water Board's flow criteria determinations are accordingly limited to protection of aquatic resources in the Delta." Id. at page 2.

³ "Best available science supports that it is important to directly address the negative effects of other stressors, including habitat, water quality, and invasive species, that contribute to higher demands for water to protect public trust resources." Id. at page 3. Also see page 4, "[t]he effects of non-flow changes in the delta ecosystem, such as nutrient composition, channelization, habitat, invasive species, and water quality, need to be addressed and integrated with flow measures." Id. Also see page 87, "... although adequate environmental flows are a

report excludes any such assessment, especially in the context of developing feasible flow criteria.⁴

In summary, while the 2009 Delta Legislative Package directed the Board to identify flow criteria in the near term, any flow criteria decision by the Board has to, in the broader sense, be consistent with the co-equal goals of providing a more reliable water supply for California and protecting, restoring and enhancing the Delta ecosystem, as required by the legislation.

As this exercise evolved amongst staff and consultants, the flow criteria developed simply optimized system operations for a single purpose without consideration for other purposes. The end result, if the proposed criteria are implemented, will, not surprisingly, have devastating consequences for water supply reliability throughout the state. The recommended flow criteria are blatantly inconsistent with the co-equal goals.

Now, having complied with this provision of the Delta legislation, we need to begin the hard work of identifying management strategies that actually do comply with core policy of California water law. Any flow criteria considered by the SWRCB needs to recognize the wide array of management tools available to address the numerous challenges in the Delta. We need to evaluate how actions taken to address the impacts of one or more stressors can affect operational decisions for other stressors. By taking such an approach we can provide protections for public trust resources while ensuring that public interests such as economic stability and water supply reliability are concurrently addressed.

In conclusion, it is essential that any flow criteria considered by the Board must address the need to provide water for the 38 million people currently residing in California (projected to grow to 50 million by the middle of the 21st century), and to protect the largest, most important agricultural region in the United States, if not the world.

Sincerely,

Sincerely,



Timothy H. Quinn
Executive Director

thq/msr/dgp

necessary element to protect public trust resources in the Delta, ecosystem, flows alone are not sufficient to provide this protection.”

⁴ “The flow criteria represent a technical assessment only of flow and operational requirements that provide fishery protection under existing conditions.” Id. at page 4. Emphasis added.