

Memorandum

Date: March 9, 2010

To: Division of Water Rights
State Water Resources Control Board
Attention: Phillip Crader
P.O. Box 2000
Sacramento, CA 95812-2000

Via electronic mail to: Bay-Delta@waterboards.ca.gov

From: Department of Water Resources

Subject: Written Questions for the Delta Flow Criteria Informational Proceeding

The Department of Water Resources (DWR) has reviewed the written summaries, exhibits and written testimony submitted for the Delta Flow Criteria Informational Proceeding. Based on that review, DWR submits the below questions for the State Water Resources Control Board's (State Water Board) consideration and possible use in the upcoming proceeding.

According to Section 85086, subdivision (c)(1), the purpose of this proceeding is to inform the planning decisions for the Delta Plan and the Bay Delta Conservation Plan (BDCP). To do this, the State Water Board is tasked with developing new flow criteria for the Delta ecosystem necessary to protect public trust resources. Arguably, to provide some sort of benefit to the planning decisions for the Delta Plan and BDCP, the information the State Water Board will ultimately provide must be relevant to what those plans are intended to accomplish. As such, a general understanding of the goals of each plan is needed in order to determine what will constitute relevant information.

The Delta Plan's overall goal is to further the coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. Section 85302 further explains the Delta Plan's goal. It states, in pertinent part, the following:

- (c) The Delta Plan shall include measures that promote all of the following characteristics of a healthy Delta ecosystem:
 - (1) Viable populations of native resident and migratory species.
 - (2) Functional corridors for migratory species.
 - (3) Diverse and biologically appropriate habitats and ecosystem processes.
 - (4) Reduced threats and stresses on the Delta ecosystem.
 - (5) Conditions conducive to meeting or exceeding the goals in existing species recovery plans and state and federal goals with respect to doubling salmon populations.

- (d) The Delta Plan shall include measures to promote a more reliable water supply that address all of the following:
- (1) Meeting the needs for reasonable and beneficial uses of water.
 - (2) Sustaining the economic vitality of the state.
 - (3) Improving water quality to protect human health and the environment.

It is readily apparent that flow criteria will have direct and indirect effects on most, if not all, of the measures identified above. As such, the above measures must be considered during the development of the flow criteria if such criteria are going to be relevant, and potentially implementable, to the formation of the Delta Plan. This includes meeting the needs for reasonable and beneficial uses of water.

The BDCP is similar to the Delta Plan in that its primary goal is to evaluate habitat, physical and operational alternatives necessary to restore the Delta ecosystem while providing water supply reliability. However, the BDCP, for the most part, will only control the operations and activities of the State Water Project and Central Valley Project. Thus, to be relevant to the planning decisions for the BDCP, any numerical flow criteria developed for the proceeding must be within the operational constraints of the SWP and/or CVP, or must detail the responsibility the Projects have to help meet a particular numerical criterion.

It is from the above context that DWR offers the below questions. Importantly, since many of the non-governmental organizations stated their agreement with The Bay Institute's (TBI) recommendations, most of the questions provided below are directed at TBI's testimony.

1. The organizations that recommended increased outflows and inflows did not provide any information or analysis of where the "new" water would come from. What information do they have that demonstrates these increased flows are either feasible or reasonable? Have they attempted to quantify the water supply impacts to other beneficial uses of water?
2. Given that the U.S. Fish & Wildlife Service (USFWS) is currently revising its recovery criteria for Delta fishes, why does TBI believe that species abundance levels from USFWS's 1995 plan are relevant for setting flow targets?
3. Given all of the changes to the ecosystem since 1987, including arguably the most extreme ecological change to the system—the invasion of the *Corbula* clam, what justification does TBI (and other organizations recommending pre-1987 flows for pre-1987 abundances) have for using fish abundances levels before then as the basis for flow targets? Is this a "fair" or feasible target for public trust resources?
4. Related to the previous question, given the fact that the relationship between abundance and outflow is deteriorating, what justification does TBI (and other organizations recommending increased outflow) provide to demonstrate that species will respond as they did historically? If "other stressors" are preventing the desired response, shouldn't they be addressed first?

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5. Is it possible to achieve the various floodplain inundation targets (for example, TBI's Exhibit 3, Table 3) given our limited ability to forecast water year type in advance?

DWR looks forward to participating the upcoming proceeding. If you have any questions please contact me at 916-653-8826.

Sincerely,

A handwritten signature in black ink, appearing to read "Erick Soderlund", with a stylized flourish at the end.

Erick Soderlund, Staff Counsel
Department of Water Resources