State of California

The Resources Agency

Memorandum

10/8/08 Public Workshop
Bay Delta Periodic Review
Deadline: 10/1/08 by 12 noon

Date: October 1, 2008

To: Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000

Via electronic mail to: commentletters@waterboards.ca.gov

From: **Department of Water Resources**

Subject: Comments for the Periodic Review Workshop

The Department of Water Resources (DWR) appreciates the opportunity to provide comments for the upcoming Periodic Review Workshop (Workshop) regarding the 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (2006 Bay-Delta Plan). DWR looks forward to working with the State Board and its staff as it begins the periodic review process.

At this time, however, DWR's comments regarding the 2006 Bay-Delta Plan are fairly brief. This brevity is due to the fact that several regulatory processes are underway that are intended to address the Pelagic Organism Decline (POD) and overall condition of the Delta. Below is a brief description of the processes that DWR believes need to be completed before it can take a stronger position on whether elements of the 2006 Bay-Delta Plan need to be amended, added, or the entire plan revised.

DWR and U. S. Bureau of Reclamation (Reclamation) are in federal Endangered Species Act Section 7 consultations with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) to comply with the federal Endangered Species Act (FESA). The expected result of these consultations will be Biological Opinions that prescribe operational requirements designed to protect and restore federally listed species, such as delta smelt and several salmonid species. The FWS's Biological Opinion for delta smelt has a court-ordered deadline of December 15, 2008. The NMFS Biological Opinion is expected in March 2009.

DWR is also seeking a California Fish and Game Code Section 2081 incidental take permit for longfin smelt, which are expected to be officially listed in February, 2009. Currently, DWR is operating under the constraints of the California Fish and Game Code Section 2084 emergency take regulations for longfin smelt. While the longfin smelt are not yet federally listed, Reclamation has agreed to comply with the CESA regulations regarding longfin smelt and is currently operating in accordance with the measures designed to protect the species.

Additionally, DWR, along with Reclamation, the SWRCB, federal and state fishery agencies, and multiple other stakeholders, is participating in the Bay Delta Conservation Plan (BDCP) process. The BDCP is being developed to set out near-term and long-term approaches to meet the objectives of providing for the

conservation of covered species and their habitats, addressing the requirements of the federal and State endangered species laws, and improving water supply reliability. Specifically, the BDCP will serve as a habitat conservation plan that both satisfies the requirements of Section 10 of the FESA, and provides the basis for Reclamation to consult with FWS and with NMFS under Section 7. The BDCP will also provide the basis for compliance with State law under the Natural Communities Conservation Plan Act and CESA. Successful completion of the BDCP approval process will result in long-term take authorizations for water operations of the State Water Project and Central Valley Project, and operations of certain Mirant Delta power plants.

At this point, the BDCP anticipates achieving these objectives through a number of actions: habitat restoration and enhancement to increase the quality and quantity of habitat in the Delta; other conservation actions to help address a number of stressors on covered species; conveyance facilities to enhance operational flexibility and water supply reliability while providing greater opportunities for habitat improvements and fishery conservation; water operations and management actions to achieve conservation and water supply goals; and a comprehensive monitoring, assessment and adaptive management program guided by independent scientific input.

During the BDCP process, several major elements, including new capital improvements to the water supply conveyance system, a restoration program for important habitats within and adjacent to the Delta to improve the ecological productivity and sustainability of the Delta, and monitoring and adaptive management for the restoration program will be considered. The plan will also likely review operational improvements for the water supply system in the near-term and for the long-term once any capital improvements have been completed and are operational.

Finally, on September 28, 2006, Governor Arnold Schwarzenegger issued Executive Order 2-17-06, initiating the Delta Vision process to develop "a durable vision for sustainable management of the Delta." In December 2007, the process resulted in a final set of recommendations by the Delta Vision Blue Ribbon Task Force to a committee of State Agency Directors to chart a new course for the Delta. Among the recommendations is that the State should consider a different approach to conveying water to areas south of the Delta than the through-Delta alternative the State approved as part of the CALFED Record of Decision. On February 28, 2008, Governor Schwarzenegger, in a letter to State Senators Perata, Machado and Steinberg, stated his intention to direct DWR to proceed with the CEQA/NEPA process to evaluate at least four alternative Delta conveyance strategies in coordination with the BDCP efforts and within the context of broad habitat conservation principles to better protect at-risk fish species. Development of these alternatives is to recognize the importance of water supply reliability and other issues like seismic and flood durability, ecosystem health and resilience, water quality, schedule, and cost as suggested by the Delta Vision Task Force.

As recognized in the Bay-Delta Strategic Workplan, the information developed in the above processes is vital and potentially complementary to the State Board's water quality control planning and implementation for the Bay-Delta. Thus, DWR reserves

much of its comments on the 2006 Bay-Delta Plan until the above processes are completed or are nearing completion.

There are, however, several elements of the 2006 Bay-Delta Plan that are not significantly dependant on the outcomes of the above processes and, as such, are ripe for comment and review. Below are DWR's proposed amendments to the 2006 Bay-Delta Plan.

1. Chloride Objectives for M&I

a. Description of 150 mg/l Chloride Objective at Rock Slough

DWR continues to advocate that compliance with the 150 mg/L chloride objective at Rock Slough should be calculated on a water year basis rather than a calendar year basis. Although DWR recognizes that both methods have merit, calculating compliance on a water year basis would remove the uncertainty associated with compliance in the fall months. This could then lead to more efficient water management decisions for the State Water Project (SWP) in the previous spring and summer. While DWR feels that a change in this methodology warrants consideration in future reviews of the 2006 Bay-Delta Plan, we also recognize that there are counter arguments for continuing the calculation on a calendar year basis. Hence, a strong argument for changing the calculation of compliance may not exist.

b. Chloride Objectives Compliance – Pumping Plant Number 1

DWR and the Reclamation have previously provided evidence that water quality degradation occurs in Rock Slough and the Contra Costa Canal due to local agricultural drainage and ground water seepage. These impacts to water quality are not affected by SWP or Central Valley Project (CVP) operations, therefore DWR and Reclamation cannot reasonably control water quality at Pumping Plant #1 (PP#1) under low-flow conditions in Rock Slough. DWR, Reclamation and Contra Costa Water District (CCWD) previously presented proposals to the State Board on alternative approaches to complying with the Chloride objectives, based on the pumping rate at PP#1 and on the Electrical Conductivity in Old River at Holland Tract. As of summer 2005, DWR, Reclamation, and CCWD had nearly reached agreement on all terms for an alternative method of compliance when other issues superceded our negotiations.

Since 2005, CCWD, with the support of DWR and the CALFED Program, has implemented several source control projects in and near Rock Slough to reduce drainage into the slough. Future monitoring of Rock Slough and its immediate vicinity should help determine the effects of these projects on achieving the objectives at PP#1. Therefore, DWR requests that the State Board revisit this objective to include a different compliance location or implementation method in any future updates of the 2006 Bay-Delta Plan, after additional monitoring data is obtained and analyzed. DWR, Reclamation, and CCWD all support the concept of an alternative method for compliance, and need only to complete final negotiations of the terms.

2. X2 Flexibility/carryover

As noted in DWR's November 9, 2006 comments on the 2006 Bay-Delta Plan, DWR and other Water Operations Management Team (WOMT) agencies believe that revisions to the 2006 Bay-Delta Plan may be necessary when ongoing real-time management practices by State and Federal agencies to protect sensitive aquatic species result in overlapping and competing water supply needs for simultaneous protection of multiple species.

Generally speaking, the support of other WOMT agencies for increasing X2 flexibility has been contingent on the use of a WOMT process to consider and balance protection of upstream fishery beneficial uses with Delta fishery beneficial uses (X2). Upstream beneficial uses may include salmonid spawning and rearing habitat protected with coldwater resources and the establishment of minimum instream river flows to avoid de-watering salmon or steelhead eggs in redds and stranding juvenile salmonids in sidechannels. The downstream X2 (Delta Outflow) objective, however, sometimes requires increased releases from upstream reservoirs that can interfere with the ability of the CVP and SWP to maintain upstream protections because cold water resources are reduced or river stages fluctuate. This need for increased reservoir releases usually occurs when it has been relatively wet and flows into the Delta have been high and then conditions turn very dry and accretions to rivers flowing into the Delta drop off. Under these conditions, it may be prudent to provide for flexibility in meeting X2 requirements to avoid the creation of undesirable upstream habitat conditions.

DWR is not recommending that the State Board change the Delta Outflow objective at Port Chicago as it is identified in Table A, footnote 14, of the 2006 Bay-Delta Plan but does recommend that a process be identified in the Plan's Program of Implementation that allows for short term, temporary deviations from operations when implementing the objective. DWR believes that the use of a WOMT process will allow for better management of both the SWP and CVP to meet upstream and Delta fishery beneficial uses in a manner that achieves equivalent overall Delta protection while reducing impacts to upstream habitat.

If the State Board agrees that the use of such a process, under certain conditions, for flexibility in meeting X2 requirements would be useful, DWR will initiate discussions with the other WOMT agencies to develop a process. The process must be consensus-based such that all agencies support it, but also retain their authorized rights, roles and responsibilities under State and Federal law. The process, when developed, would be presented to the State Board for final approval. The WOMT could well propose sideboards that would constrain changes in the objective. DWR agrees that limits or "sideboards" on deviations from full X2 compliance are necessary. For example, sideboards or limits on flexing could be developed to prevent impacts to water quality, to minimize or avoid seasonal change in total Delta outflow, or to avoid unintended consequences for the management and accounting of CVPIA Sections 3406 b(2) water. An alternative developed using this process would be submitted to

the State Board on a case by case basis under a temporary urgency change petition (Water Code 1435) for final approval and implementation.

Additionally, DWR would like to bring to State Board's attention several projects that are occurring in the Bay-Delta. While the following projects do not require amendments to the current Water Quality Control Plan in order to be implemented, they are related to water quality planning and have the potential to impact water quality in the Bay-Delta. Brief descriptions of these projects are provided below.

1. Suisun Marsh

DWR suggests that two aspects of the Suisun Marsh salinity objectives be taken into consideration:

(1) It is important to note that historical gate operations (1988 – 2002) were much more frequent than recent and current operations (2006 – March 2008). Operational frequency is affected by many drivers (hydrologic conditions, weather, Delta outflow, tide, fishery considerations, etc). The gates have also been operated for scientific studies. Figure 1 shows that the gates were operated between 60 and 120 days between October and December during the early years (1988-2004), and salmon passage studies between 1998 and 2003 increased the number of operating days by up to 14 to meet study requirements. After discussions with NOAA Fisheries based on study findings, the boat lock portion of the gate is now held open at all times during Suisun March Salinity Control Gates operation to allow for continuous salmon passage opportunity. With increased understanding of the effectiveness of the gates in lowering salinity in Montezuma Slough, salinity standards have been met with less frequent gate operation since 2006. Figure 1 demonstrates that despite very low outflow in the fall of the two most recent water years, gate operation was not required at all in fall 2007 and was limited to 17 days in 2008. Assuming no significant, long-term changes in the drivers mentioned above, this level of operational frequency (10 – 20 days per year) can generally be expected to continue to meet standards in the future except perhaps during the most critical hydrologic conditions and/or other conditions that affect Delta outflow.

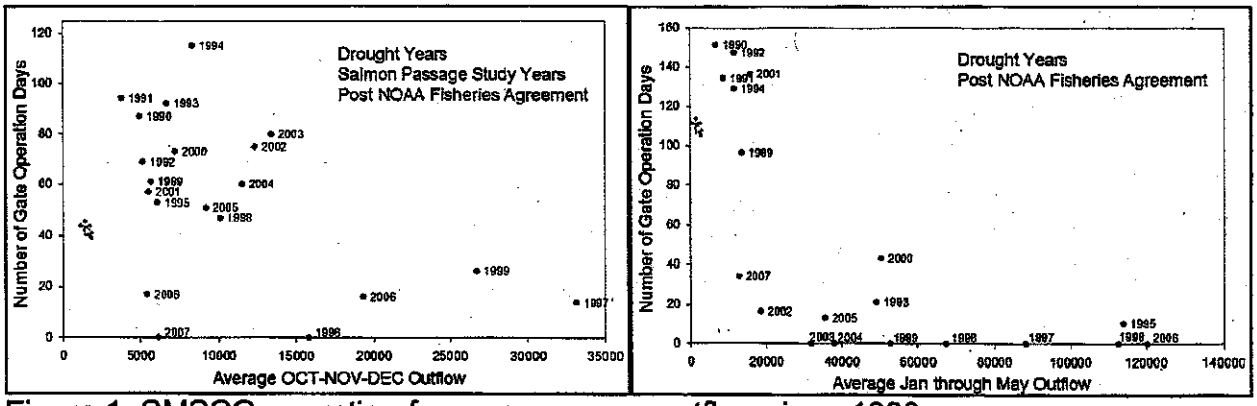


Figure 1. SMSCG operation frequency versus outflow since 1988.

(2) In 2001, in response to requirements specified in D1641, DWR submitted a report to the Board regarding salinity objectives for four beneficial uses in the Marsh. . The report was published by the Suisun Ecological Workgroup which was comprised of four subcommittees that independently studied the respective uses. The four beneficial uses studied were Waterfowl, Fisheries, Brackish Vegetation and Wildlife. Each subcommittee reported its recommendations which focused on operational and/or salinity objectives that might best serve the respective uses. There were little to no similarities between the four sets of operations/salinity objectives for the Marsh.

As described in various correspondences with the State Board and its staff on this matter, the Suisun Marsh Planning process is tasked with recommending salinity objectives and/or operational changes that might be necessary in response to the changes in salinity regimes and concentrations that are expected to result from the planned restoration in the Marsh. The consensus resulting from the Marsh participants will be reported to the State Board. The Final Suisun Marsh Habitat Management, Preservation and Restoration Plan PEIS/EIR is expected to be released in early 2010.

2. Franks Tract Project

DWR and USBR are proposing to implement the Franks Tract Project to improve water quality and fisheries conditions in the Sacramento-San Joaquin Delta (Delta). DWR and Reclamation are evaluating installing operable gates to control the flow of water at key locations (Threemile Slough and/or West False River) to reduce sea water intrusion, and to positively influence movement of fish species of concern to areas that provide favorable habitat conditions. By protecting fish resources, this project also would improve operational reliability of the State Water Project (SWP) and Central Valley Project (CVP) because curtailments in water exports (pumping restrictions) are likely to be less frequent. Preparation of a joint environmental impact statement/environmental impact report (EIS/EIR) for the project is underway. Public scoping meetings are scheduled for October 6, 7, 8, and 9. A draft of the EIS/EIR is planned to be released in Spring 2009. For more information, please visit the project's website: http://www.water.ca.gov/frankstract/

3. Los Vaqueros Expansion

Expansion of Los Vaqueros Reservoir from 100,000 acre-feet up to 275,000 acre-feet is currently being evaluated. The expansion is intended to contribute to protection and restoration of Delta fisheries by providing water for the environment and to improve Bay Area water supply reliability and water quality. The system is planned to operate such that it would divert surplus water only when fish impacts are low and water quality is high. The stored water can be used to meet Bay Area water needs throughout the year.

The total diversion capacity under Alternative 1 (proposed alternative) would be up to 670 cfs. 500 cfs would come from existing facilities including the Old River Intake and

Pump Station (250 cfs) and Alternative Intake Project at Victoria Canal (250 cfs). The remaining capacity would come from a new 170 cfs Delta Intake and Pump Station that would be constructed along the Old River channel south of the existing intake structure.

The EIS/EIR and Feasibility Report are scheduled to be completed in 2008 and finalized in 2009.

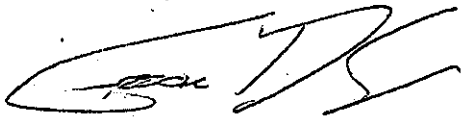
4. Southern Delta Salinity

DWR recognizes that southern Delta salinity will be addressed in a separate proceeding and looks forward to taking part in that process. However, DWR does want to bring to the State Board attention the work it is doing in regard to salinity in the Central Valley.

DWR continues to work with local, state and federal agencies to help meet water quality objectives in the lower San Joaquin River. These activities include financial assistance with the purchase of VAMP flows, collaborating with the Central Valley Regional Water Quality Control Board Central Valley Salts program that seeks to develop a salinity management plan for the Central Valley over the next three years, collaborating with federal agencies with the implementation of drainage management plans in their service area, implementing recommendations of the Interagency San Joaquin Valley Drainage Program through DWR's Ag Drainage Program by providing technical assistance with drainage issues, and administering grants monies from project funds and propositions 13, 50, 204 and Proposition 84. DWR works directly with local farmers and universities on developing drainage reduction technologies. To help manage saline discharges to the San Joaquin River, DWR also operates and maintains a network of real time water quality monitoring stations along the lower San Joaquin River and provides weekly forecasts of the assimilative capacity of the San Joaquin River at key locations. In addition, DWR is currently providing funding for research that could help to improve wetlands saline discharge into the river.

DWR appreciates the opportunity to provide comments and looks forward to working with the State Board as it begins it periodic review of the 2006 Bay-Delta Plan. If you or your staff have questions on these comments or would like additional information please contact me at (916) 653-8826 or esoderlu@water.ca.gov.

Sincerely,



Erick Soderlund
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