



State of California – Natural Resources Agency
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EDMUND G. BROWN JR., Governor
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April 22, 2013

Felicia Marcus, Chair
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

SUBJECT: State Water Resources Control Board meeting April 9th, 2013: Comments on informational item 4 pertaining to the update of 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary

Dear Ms. Marcus:

The purpose of this letter is to provide you with comments on an informational item that was discussed at the April 9th, 2013 Board meeting of the State Water Resources Control Board (State Water Board). Informational item 4 pertained to the next steps for the *Draft Summary Report on Technical Workshops in Support of the Comprehensive (Phase 2) Review of the 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary* (Bay-Delta Plan). Dr. Brock Bernstein presented an overview of the summary report on the Bay-Delta Plan workshops that were conducted on September 5 and 6, October 1 and 2, and November 13 and 14, 2012. Dr. Peter Goodwin, Lead Scientist for the Delta Science Program (DSP), gave recommendations for next steps to update the Bay-Delta Plan. Several interested stakeholders also had comments and made recommendations on next steps at the Board meeting.

The California Department of Fish and Wildlife (CDFW) supports the State Water Board in its strategic approach to update the Bay-Delta Plan and its commitment to base its decisions on best available scientific information. In this letter, we reflect on the process that has been used to-date and make suggestions for next steps to update the Bay-Delta Plan. Our three main points are as follows:

- A. The State Water Board is using a robust, open and transparent process to gather scientific information and stakeholder input on the Bay-Delta Plan update.
- B. Objective criteria exist for evaluating best available science and scientific credibility.
- C. Sufficient scientific information currently exists for the State Water Board to update the Bay-Delta Plan for Phase 1 concurrently with the Phase 2 process.

Each of these points is discussed in greater detail in the remainder of this letter.

Conserving California's Wildlife Since 1870

A. State Water Board Process to update the Bay-Delta Plan is very robust and is producing solid scientific information

The State Water Board anticipated the Bay-Delta Plan update in its 2008 Strategic Work plan. On August 29, 2008, it initiated a periodic review of the 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary by issuing a notice of public workshop to solicit input on potential modifications to the Bay-Delta Plan.

In August 2009, the State Water Board produced a staff report on the *Periodic Review of the 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary* (State Water Board 2009). The staff report was based on a review of scientific literature and relevant information and includes a discussion of scientific issues that were recommended by staff to be addressed in the water quality planning process.

In August 2010, the State Water Board produced the *Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem*, which was the culmination of several days of expert panel deliberations on flow criteria (particularly Delta outflow) necessary to protect public trust resources. Flow criteria in the 2010 report were based on best available scientific information submitted during the multi-day proceeding which included a discussion of unimpaired flow conditions, ecological functions and the statistical relationships between flow and native species abundance.

In October 2010, the State Water Board released its first draft of a report titled *Technical Report on the Scientific Basis for Alternative San Joaquin River Flow and Southern Delta Salinity Objectives* (Technical Report). The Technical Report was prepared to provide the State Water Board with the scientific information and tools necessary to inform potential changes to the San Joaquin River (SJR) flow and southern Delta water quality objectives, which is Phase I of the Bay-Delta Plan update.

The Technical Report underwent an independent scientific peer review in the fall of 2011, including review by scientists from the Oakridge National Laboratory and University of Washington (UW). A key point made by Dr. Julian D. Olden (Olden, J.D. 2011, p. 3.) of UW is that “[t]he assumption is made [in the Technical Report] that present-day hydrographs that aim to mimic unimpaired hydrographs represent more ‘natural’ conditions that favor the life-histories of Chinook salmon and steelhead trout in the San Joaquin River basin. This assumption is both well defended in the Technical Report and by decades of scientific research conducted in California and elsewhere.” The Technical Report was subsequently revised in February 2012, and again in December 2012.

In May 2012, the Delta Independent Science Board provided a memorandum to the State Water Board stating that the Technical Report *“makes a persuasive case that fish and wildlife need more flow and more natural spatial and temporal patterns of flow. The report’s external scientific reviewers, who endorsed these conclusions, are respected and experienced scientists with extensive expertise in salmonid biology, and they provided a thorough review of the report.”*¹

The reports described above contain scientifically well-substantiated and documented information that is foundational to the Bay-Delta Plan update. It is our opinion that these reports provide a sound scientific basis for the State Water Board to establish flow objectives to protect beneficial uses identified in the Bay-Delta Plan. In addition, the use of focused scientific and technical workshops and independent scientific peer review to generate these reports demonstrates that the State Water Board has used an open and transparent process to gather public input on the Bay-Delta Plan update. These workshops and peer review are discussed in the next section.

Bay-Delta Plan Workshops and Summary Report

Three scientific/technical workshops for the comprehensive review and update of the Bay-Delta Plan were held during the September to November 2012 time period. The proceedings of these workshops are summarized in a January 2013 report titled *Comprehensive (Phase 2) Review and Update to the Bay-Delta Plan: Draft Bay-Delta Plan Workshops Summary Report (Workshops Summary Report)*.²

The workshops were attended by a diverse group of public agencies, NGOs, stakeholders and the general public. The Workshops Summary Report describes key points of agreement, disagreement, uncertainties and questions which should be very useful to the State Water Board. We suggest, however, that disagreement does not necessarily constitute a credible scientific debate and recommend the State Water Board should carefully evaluate the information it received and ensure that only the best available, scientific information is used to inform your decision-making processes.

Each of the workshops included an invited panel and a fish agencies panel (CDFW, USFWS, NMFS and USEPA). Participants on these panels are some of the most highly regarded scientific experts on the San Francisco Bay-Delta estuary and have a strong record of peer-reviewed publications. We recommend that you consider the input of these panelists carefully as you sort through and evaluate input by various stakeholders.

¹ Delta Independent Science Board 2012, p. 2.

² ICF International. 2013. Comprehensive (Phase 2) Review and Update to the Bay-Delta Plan: Draft Bay-Delta Plan Workshops Summary Report. Prepared for State Water Resources Control Board. Sacramento, CA.

At this time we do not see a benefit to the State Water Board finalizing the Workshops Summary Report. It is more-or-less an accurate representation of the discussions that occurred during the workshops. We therefore do not include in this letter any suggested changes to that summary report.

B. Objective criteria exist for evaluating best available science and scientific credibility.

The State Water Board has the enormous task of evaluating thousands of pages of scientific and technical information that it has received from state, federal and local agencies and non-governmental organizations (NGOs). This information has been submitted as part of the public scoping process for preparation of environmental documents to support the Bay-Delta Plan update, including three informational workshops on various technical issues in late 2012 and during informational proceedings that occurred in 2010.

We believe there are objective criteria for evaluating the use of *best available science* and *scientific credibility* which will be helpful to the State Water Board. The Sacramento-San Joaquin Delta Reform Act of 2009 requires the Delta Stewardship Council to use best available science in implementing its Delta Plan.³ We believe the Delta Plan criteria for best available science is a useful framework to evaluate the weight of scientific information.⁴ The Delta Plan also includes a generalized ranking of scientific credibility which could also be useful to the State Water Board. Beginning with the most rigorous category, these criteria include:

1. Independently peer-reviewed publications including scientific journal publications and books;
2. Other scientific reports and publications;
3. Science expert opinion; and
4. Traditional knowledge.

We recommend the State Water Board give special deference to the invited panel and fish agencies panelists' expert opinions and written submittals, with particular weight given to panel members having a solid record of peer-reviewed published journal articles on the San Francisco Bay-Delta estuary. Similarly, we recommend the State Water Board give weight to peer-reviewed publications that were submitted or referenced in exhibits.

³ California Water Code § 85308(a).

⁴ These criteria include relevance, inclusiveness, objectivity, transparency and openness, timeliness and peer review. See Appendix A of the Final Draft Delta Plan (Delta Stewardship Council 2012).

C. Sufficient scientific information currently exists for the State Water Board to update the Bay-Delta Plan for Phase 1 concurrently with the Phase 2 process.

We support your staged-approach to the environmental review of the 2006 Bay-Delta Plan and the environmental review for potential changes to water rights and other measures to implement any revisions to the Bay-Delta Plan. We believe it prudent for the State Water Board to proceed with the Phase 1 update of the 2006 Bay-Delta Plan in parallel with Phase 2. Our perspective is that the State Water Board is using a very robust process for the Bay-Delta Plan update based upon solid scientific information. We do not agree with the suggestion by some stakeholders that the State Water Board needs to conduct more scientific and technical workshops before making a decision on Phase 1.

Some water user entities, such as San Joaquin Tributaries Authority, have claimed that the State Water Board did not provide meaningful opportunities to participate or provide input in the development of the Technical Report and Substitute Environmental Document (SED) for Phase 1. This is, of course, not true. In fact, the Technical Report for Phase 1 states as follows:

“The State Water Board released the first draft of the Technical Report on October 29, 2010. In order to receive comments and other technical information related to that draft, the State Water Board solicited public comments and held a public workshop on January 6 and 7, 2011. The purpose of the public workshop was to determine whether: 1) the information and analytical tools described in the Draft Technical Report are sufficient to inform the State Water Board’s decision-making to establish SJR flow and southern Delta salinity objectives and a program of implementation to achieve these objectives; and 2) the State Water Board should consider additional information or tools to evaluate and establish SJR flow and southern Delta salinity objectives, and a program of implementation to achieve these objectives. The State Water Board received 21 comment letters on the Draft Technical Report which are available at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/water_quality_control_planning/comments120610.shtml”.

The Phase 1 SED is based on the Technical Report. Moreover, the State Water Board, in compliance with CEQA and the Porter Cologne Act, has provided opportunity to comment on the SED and held subsequent public participation workshops on the Phase 1 SED. Therefore, it cannot be said that the State Water Board has not provided an open, transparent, and meaningful opportunity to participate and gather input on Phase 1.

We believe the weight of scientific evidence shows that a higher percentage of unimpaired flows from each of the tributaries (Stanislaus, Tuolumne, and Merced rivers)

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is necessary to protect public trust resources. A flow regime that more closely resembles a natural hydrograph along with other actions (for example, improving riparian and floodplain habitat) is necessary to protect fish and wildlife resources. We agree with one of the fundamental conclusions in the 2010 Flow Criteria report that flow and physical habitat interact in many ways, but are not interchangeable, and that the best available science indicates that current flows are insufficient to protect public trust resources.

In summary, we believe there is sufficient scientific information to move forward on the Bay-Delta Plan update. If however, you deem it necessary to convene additional workshops for Phase 2, we suggest you do so after the State Water Board issues a draft Technical Scientific Report for Phase 2.

Conclusion

CDFW believes this update of the 2006 Bay-Delta Plan will be a watershed moment that sets California on a path to a functioning Bay-Delta ecosystem while ensuring a reliable water supply. Ensuring sufficient freshwater flows that mimic the features of a natural hydrograph is essential to maintain ecosystem integrity. As such, flow objectives should be the focus of the Bay-Delta Plan update as there are no other processes that can effectively address the issue of proper allocation of the state's water resources for use within the Delta. Many species depend on these flows, especially those whose populations that are threatened or endangered. As natural flows and the patterns of those flows have been reduced or altered, ecosystem productivity and species and habitat diversity in the Delta have diminished. CDFW looks forward to being an active partner in the effort to update and implement the revised Bay-Delta Plan.

If you have any questions, please feel free to contact me at scott.cantrell@wildlife.ca.gov or call me at (916) 445-1272.

Sincerely,



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