

The Bay Institute

Protecting and Restoring San Francisco Bay from the Sierra to the Sea

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Post-It* Fax Note 7871		Date 9/9/04	# of pages 3
To DEBBIE IRVIN		From GARY BOBKER	
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By fax, email and mail

September 8, 2004

Arthur G. Baggett, Jr., Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Item 1

Sept. 14, 2004 Workshop

hard cc: Board

Debbie Irvin

email: Board

CC, HMS, TH, CMW, BJL, DI
VAW, JWK, LJM, GK, JT

RE: DRAFT STAFF REPORT ON PERIODIC REVIEW OF THE 1995 WATER QUALITY CONTROL PLAN FOR THE SAN FRANCISCO BAY/SACRAMENTO-SAN JOAQUIN DELTA ESTUARY (WQCP)

Dear Mr. Baggett,

This letter is submitted as preliminary comments of the Bay Institute on the draft staff report on periodic review of the 1995 WQCP. Unfortunately, due to vacation scheduling conflicts, we have not been able to thoroughly review the document, but based on a brief review we offer the following recommendations.

Issue 7: Salmon Protection

The 1995 WQCP narrative salmon protection objective explicitly recognizes that "other measures in the watershed" are necessary to achieve this objective. The SWRCB, however, has never thoroughly reviewed what other measures may be necessary to ensure compliance. In addition to reviewing the objective for the Delta, therefore, the SWRCB should also review information on measures within its authority and that of the CVRWQCB in order to determine whether the SWRCB should consider i) requiring instream flows or other measures in tributaries of the Delta in order to assist in achieving this objective, in a subsequent proceeding, and ii) directing the CVRWQCB to adopt and implement water quality and temperature objectives in tributaries of the Delta sufficient to achieve a doubling of natural production of chinook salmon from the average production of 1967 - 1991.

Issues 9 -10: Delta Outflow/Rio Vista Flows

There is no evidence to suggest that adding flexibility to these objectives will improve protection of aquatic resources within the Bay-Delta estuary, and it is possible that flexibility may actually weaken the existing level of protection. However, there is a legitimate concern that current operations to comply with

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these objectives may result in adverse fishery impacts in the Lower American River. While we are not opposed to considering flexibility issues – indeed, we supported doing so on a short-term basis – the level of protection provided by these core habitat protections for the estuary should not be compromised by implementation factors that the SWRCB can resolve through its water rights authority and other powers. Therefore, it is incumbent on the SWRCB to also consider how operational decisions, current water rights permit conditions, the scope of water rights permit holders required to comply with these objectives, and other implementation factors may be implicated in these recent fisheries concerns, and whether operational changes, new water rights permit conditions, extension of existing water right permit terms to other permit holders, and other implementation requirements may more appropriately and efficiently address any potential fisheries impacts than adding flexibility to the objectives.

Issue 11: Vernalis Flows (Feb. 1 – April 14/May 16- June)

The staff report states that USBR's difficulties in meeting these objectives may continue "if USBR's operations and/or the water quality objectives are not modified." In reviewing these objectives, the SWRCB must therefore consider how operational decisions, current water rights permit conditions, the scope of water rights permit holders required to comply with these objectives, and other implementation factors have contributed to USBR's difficulties. The objectives, and the level of protection they provide for beneficial uses, should not be reduced if operational changes, new water rights permit conditions, extension of existing water right permit terms to other permit holders, and other implementation requirements within the authority of the SWRCB would result in compliance with the objectives.

In addition, the SWRCB should not only consider how modifications to the flow objectives would affect Delta outflow objectives – a critical concern – but also whether and how export limits should be modified in conjunction with changes to the Vernalis flow objectives.

Issue 12: Vernalis Flows (April 15 – May 15)

Any modifications to this objective in order to conform with the flows contained in the San Joaquin River Agreement (SJRA) and the Vernalis Adaptive Management Plan (VAMP) must be accompanied by modifications to the export limits during the same period to conform with the more stringent criteria in the SJRA and VAMP.

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Issue 13: Export Limits

In conjunction with Issue 12, the SWRCB should specifically consider adoption of the more stringent export limits contained in the SJRA and VAMP.

Thank you for the opportunity to provide these comments. After additional review of the draft report, we may offer additional recommendations at the September 14 workshop. Please feel free to contact me at (415) 506-0150 if you have any questions.

Sincerely,



Gary Bobker
Program Director