

**Before the State Water Resources Control Board
Public Workshop
Temporary Modification of State Water Project and Central Valley Project
Water Right Requirements Related to Delta Flows and Water Quality In
Response to Drought Conditions
6 May 2014**

**Comments by the California Sportfishing Protection Alliance and California
Water Impact Network**

The consequences of chronic mismanagement by the state and federal water projects (Projects) cannot be characterized as an urgent emergency justifying the wholesale suspension of standards developed to address critical year situations and adopted through public process.

We note that Judge Vilardi described drought as an ongoing event and not a sudden or unexpected condition (in other words, emergency) in our successful lawsuit over Governor Schwarzenegger's 2009 drought emergency proclamation. The Federal Energy Regulatory Commission, in recent letters to its licensees, has pointed out that "drought, in of itself, does not constitute an operating emergency..."

In the last 100 years, there have been 10 multi-year droughts of large-scale extent spanning 40 years. Frequent droughts are the norm in California and the state has experienced below normal water conditions in six of the last eight years.

The Projects are under enormous pressure to maximize deliveries and minimize storage reserves because they've signed water delivery contracts that exceed their firm yield by several million acre-feet.

Project water allocations are based on a calendar year and over-lap the actual water year, which runs from October through the following September. They assume that rain will come in the fall. But if it doesn't, they continue to export through December. Consequently, during a drought sequence, end of year reservoir storage at Project facilities is always significantly lower than the previous year. This management scheme guarantees that serious shortfalls emerge after several below normal years.

However, systematic mismanagement does not justify waiving legally adopted regulations.

Since at least the 1970s, the State Water Resource Control Board's (Board) first response to drought has been to ignore or waive water quality and flow standards established through evidentiary proceedings. These standards already incorporate relaxed requirements applicable in critically dry year situations.

In the thirty-odd years CSPA has been involved in Board proceedings, we're unable to identify a single instance where the Board has taken an enforcement action against the Projects for the thousands of times they've violated Basin Plan requirements. In 1989-1991 the Board said it wouldn't take enforcement action for some 246 violations. It sent similar letters in 2009 and 2013.

To be accurate, the Board did issue a 2006 Cease & Desist Order against the Projects for violations of South Delta salinity standards. The Order required the Projects to inform the Board about what they were doing to avoid violations. Since 2007 through last December, South Delta salinity standards have been violated 858 days.

This year the Board has arbitrarily weakened critical year standards established to protect fisheries and water quality 8 times in the last 91 days (about once every 11 days). It has done so in a closed-door backroom process that by design excludes the public. It has failed to respond to protests or schedule formal hearings, as required by law. Informal workshops are not acceptable surrogates for formal evidentiary proceedings.

Nor has the Board acknowledged or complied with the federal Delta water quality standards at 40 CFR 131.37, since they were adopted in 1995.

This putinesque pattern and practice of waiving promulgated regulations and due process makes a mockery of law, subverts public involvement, and frankly should be the subject of a grand jury proceeding or criminal investigation by a district or U.S. attorney.

These serial violations of Bay-Delta standards, coupled with a failure to enforce, establish that promises, guarantees, assurances or even standards protecting the estuary are not worth the paper they're written on. This reality applies to both BDCP and the Board's ongoing Delta Plan Update.

Reducing outflow below critical year standards, relaxing salinity standards and export/inflow ratios will have a devastating impact on listed species already suffering from decades of chronic violations and mismanagement.

Decreased outflow will draw the low salinity zone upstream; reduce critical habitat for longfin and Delta smelt; subject smelt to increased entrainment and lethal water temperatures, impair food chain production; lower turbidity and increase predation; reduce migration cues for salmon and steelhead, and vastly expand the range of invasive non-native clams and noxious weeds.

The potential impacts to San Francisco Bay from low inflows not seen for many decades may be catastrophic and will likely result in population crashes and regime shifts in the estuary that will last for decades to come.

Moving salinity compliance from Emmaton to Threemile Slough will vastly increase salinity throughout the Delta and adversely impact Delta agriculture and other legal users of water.

Allowing a 1:1 export of water transfers and the San Joaquin River pulse flow, along with the shift of exports to the Tracy (Jones) pumping plant will severely reduce survival of San Joaquin salmon and steelhead by eliminating their freshwater migration corridor through the Delta from April through June.

And the potential installation of North Delta barriers will lead to reduced outflow and a reduction in freshwater inflow to and net transport from the critical Cache Slough smelt habitats in the North Delta.

Additional water transfers above and beyond the 1,500 cfs export limit will exacerbate many of the adverse impacts identified above. The amount of water saved in storage from relaxation of standards will be less than the amount of water exported. Exports are conditioned on compliance with D-1641. Prohibiting exports this year would allow standards to be met and provide additional upstream storage in case the drought continues.

CSPA/CWIN will be submitting a protest of the Board's 2 May 2014 Temporary Urgency Change Order and a paragraph-by-paragraph rebuttal of the Effects Analysis that accompanied the Project's latest petition to extend and modify the Order in the near future.

The Board is the steward of public trust resources. The estuary's anadromous and pelagic fisheries and native lower tropic food web have declined by one to two orders of magnitude (90 to 99%) since the State Water Project began exporting water in 1967. By any conceivable yardstick or grading system, the Board has earned an "F" in protecting public trust resources.

The Delta and the citizens of California deserve better.

Respectfully submitted,



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