State of California - The Resources Agency
ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF FISH AND GAME
OFFICE OF THE GENERAL COUNSEL
1416 Ninth Street
Sacramento, CA 95814
http://www.dfg.ca.gov
(916) 654-3821

12/13/06 BdMtg Item 12
Bay Delta
Deadline: 12/8/06 12pm

November 17, 2006

Ms. Tam M. Doduc, Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Department of Fish and Game clarification regarding its position on the proposed flexing of the Delta Outflow Objective presented to the Board during the hearing on the draft 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary

Dear Chair Doduc:

I appeared before the Board during the November 13, 2006, hearing on the Water Quality Control Plan. I am submitting this letter in order to clarify an issue which was raised with reference to the Department during that hearing. It concerns both potential flexing of the Delta Outflow Objective, commonly referred to as "X2," and potential flexing of the flow objective for the Sacramento River at Rio Vista in the fall months.

On June 3, 2005, the CALFED Bay Delta Program Water Operations Management Agencies (WOMT) sent a joint letter to the State Water Board regarding a suggested revision to the 1995 Water Quality Control Plan (1995 WQCP) to consider "implementing the Delta Outflow objective at Port Chicago in a flexible manner to provide equivalent overall fishery protection benefits." (WOMT Comments on X2 Delta Outflow at p. 2.) The WOMT agencies are: the Department; the Department of Water Resources; the U.S. Fish and Wildlife Service (USFWS); the NOAA National Marine Fisheries Service (NMFS); and, the U.S. Department of the Interior, Bureau of Reclamation. Most importantly, the joint WOMT proposal suggested a "flexing" of X2 which would incorporate all of the following considerations: It would be 1) limited to the objective at Port Chicago;[1] 2) *only* for the purpose of balancing overall benefits/impacts between downstream and upstream fish; 3) requested through a process which guaranteed that Department, USFWS and NMFS were already in agreement that such flexing would benefit fish; and, 4) only allowed to create assets used later for ecosystem and fishery benefits.

[1] At a January 18, 2005 workshop, the Department objected to adding flexibility to the Sacramento River at Rio Vista flow objective. The objective is minimally protective for upstream migrating adult salmon and already specifies a substantially lower flow objective in October – December following critically dry years.

As the WOMT letter states in part:

> "If full consensus of WOMT agencies is that upstream ecosystem concerns must be addressed, then formulate and implement alternative project operations to balance fish needs and determine how water that is saved would be used later for delta ecosystem and upstream fishery beneficial uses."

(WOMT June 3, 2005 letter at p. 3.)

Thereafter, with the precipitous decline of pelagic organisms in the Bay Delta Estuary, the WOMT agencies sent a follow up letter advising "the WOMT agencies now recommend that the SWRCB postpone final development of the proposal for flexibility for the X2 objective until the scientists working in the Bay-Delta have a better understanding of the pelagic organism decline." (WOMT letter to the State Water Board (August 29, 2005) at p. 1.) Instead, the WOMT suggested the State Water Board add "a footnote to Table A of the WQCP, indicating the intent to further consider flex of X2 when a better understanding of the cause(s) of the fish decline emerges from the ongoing intensified Pelagic Organism Decline investigations and if the WOMT agencies conclude it is appropriate to again pursue the flex." (WOMT August 29, 2005 letter at p. 2.)

Because some of the "WOMT" agencies approached the State Water Board during the November 13, 2006 to suggest various flexing proposals, the Department would like to clarify that such flexing proposals do not necessarily have the support of the Department and therefore are not being made after WOMT consensus. Moreover, it is unclear if such proposals were drafted to be clearly consistent with the principles articulated above.

In conclusion, the Department reiterates its intention to oppose any proposal for flexing the flow objective at Rio Vista. If the State Water Board were to consider a flexing proposal related to X2 on a case by case basis under a temporary urgency change petition, the only concept that could be supported by the Department is one that is wholly consistent with the principles outlined in the WOMT letter of June 3, 2005.

Thank you for your consideration.

Sincerely,

TINA R. CANNON
Staff Counsel