



January 14, 2010

Charles Hoppin, Chair  
Frances Spivy-Weber, Vice-Chair  
Arthur Baggett  
Tam Doduc  
Walter Pettit  
State Water Resources Control Board  
1001 "I" Street, etc.  
Sacramento, CA 95814

**Subject: Comments on Organization of Delta Flow Criteria Information Proceeding**

Dear Members of the State Water Resources Control Board:

The California Water Impact Network (C-WIN), the California Sportfishing Protection Alliance (CSPA), and Friends of the River (FOR) appreciate the opportunity to provide comments on the organization and execution of the upcoming Delta Flow Criteria Informational Proceeding.

As we understand the Proceeding, the Board proposes to take written testimony in mid-February, allow opportunity for submittal of clarifying questions by early March, receive oral presentations of testimony in late March, and conclude public input with submittal of written closing comments two weeks after the oral presentations conclude.

We support the suggestion made by Mr. Bill Kier that the State Board produce and publish online a spreadsheet matrix following the submittal of written testimony. The matrix should summarize the various Delta resources to be protected, and line them up with both existing regulatory criteria and those criteria proposed within this proceeding to protect them. Such a tool will prove extremely valuable in managing large amounts of information.

We believe that the informational proceeding will be best served by not having sworn testimony. SBX7 1 at Section 85086(c)(1) states that "the public process shall be in the form of an informational proceeding [akin to a Board workshop]...and shall provide an opportunity for all interested persons to participate. The flow criteria shall not be considered predecisional with regard to any subsequent board consideration of a permit, including any permit in connection with a final BDCP [Bay Delta Conservation Plan]." We believe this language means that the State Board should conduct this proceeding as an information-gathering process, focusing it on problems of scientific interpretation and tests of reasonableness in interpretation.

Following last week's pre-proceeding conference, aspects of the process remain unclear. For instance, Board and staff appeared to assume that oral presentations will largely be made by panels of scientists retained by the various parties to provide testimony. While the contributions of scientists are indeed critical to this proceeding, SBX7 1 assigns the Board a broader mandate. In addition to obtaining the best interpretations of scientists, contributions from "all interested persons" are also appropriate, as called for in the legislation. Therefore, the proceeding should and provide opportunity for all parties both to submit written testimony and to summarize that testimony orally,

Whatever procedural particulars the Board chooses, it should provide the clearest possible definition of the process.

We support Mr. Kier's suggestion that the fisheries agencies (U.S. Fish and Wildlife Service, National Marine Fisheries Service, and the California Department of Fish and Game) lead off the oral portion of the proceeding.

The Board's task in this proceeding, as stated in SBX7 1, is to "develop new flow criteria for the Delta ecosystem necessary to protect public trust resources." The Board should not attempt to engage in balancing ecosystem needs with other interests. Rather, it should restrict the proceeding's considerations to the flows needed in the Delta to recover and protect the public trust resources embedded in Delta aquatic ecosystems and fisheries.

This focus reinforces the difference of this process from the upcoming San Joaquin River flow and salinity evidentiary proceeding later this year. During the pre-proceeding conference, the Board expressed concern that it might enter into an inappropriate pre-decisional position resulting from the informational proceeding that would conflict with the evidentiary process underway to determine San Joaquin River flow and salinity requirements. We believe the answer to this seeming predicament is found in the absence of balancing within the present process mandated by SBX7 1. It is not pre-decisional for the Board to gain a better understanding of the Delta's aquatic and ecological flow needs. It would only be pre-decisional if it were attempting to balance those needs with other interests and values.

The Notice for the proceeding identifies scientific certainty as a key issue to be addressed. We believe the legislative intent on this is clear: the Legislature wants the best evaluation of necessary flow criteria that can be made today with the best available existing information. The need for certainty would be addressed and evaluated in an evidentiary hearing. The Legislature explicitly and clearly chose not to ask for that type of proceeding.

In its follow-up e-mail on January 7, Mr. Philip Crader of the Board's staff asked parties to state whether they will be presenting material jointly with other parties. As of this writing, the signatories to this letter plan to present joint testimony. We are also discussing the possibility of joint oral presentation with other parties, but have not determined our approach on this matter at this time.

Thank you for the opportunity to comment on the organization of the Delta flow criteria informational proceeding.

Respectfully submitted,



Carolee Krieger, President  
California Water Impact Network  
808 Romero Canyon Road  
Santa Barbara, CA 93108  
(805) 969-0824  
[caroleekrieger@cox.net](mailto:caroleekrieger@cox.net)



Bill Jennings, Chairman  
California Sportfishing Protection  
Alliance  
3536 Rainier Avenue  
Stockton, CA 95204  
(209) 464-5067  
[deltakeep@aol.com](mailto:deltakeep@aol.com)



Steven L. Evans  
Conservation Director  
Friends of the River  
1418 20<sup>th</sup> Street, Suite 100  
Sacramento, CA 95811  
(916) 442-3155  
[sevans@friendsoftheriver.org](mailto:sevans@friendsoftheriver.org)