



January 14, 2010

VIA ELECTRONIC MAIL

Mr. Phillip Crader
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

Dear Mr. Crader:

We submit these recommendations on behalf the Natural Resources Defense Council (“NRDC”). NRDC has worked closely with several other environmental, fishing and conservation organizations in crafting these consensus recommendations for the State Board’s public trust flow proceeding.

Suggestions as to what topics to use to organize expert panels

We recommend grouping experts on the basis of geographic, or regional, public trust flow issues rather than attempt to artificially distinguish between discreet scientific topics. Thus, we propose panels to address the following flows and their relationship to public trust resources:

1. Inflows from the San Joaquin River
2. Inflows from the Sacramento River
3. Delta outflow issues

Grouping presentations based on specific areas of scientific topic, such as fisheries, water quality or invasive species, would substantially limit the Board’s ability to hear about and address the system comprehensively, which is what is required fundamentally to develop public trust flow criteria. Thus, we recommend that flows be analyzed in a manner that allows consideration of a wide range of uses rather than focusing on one particular resource.

Overall Approach to the Public Trust Flows Proceeding

The focus of the presentations and all of the panels should be the flow needs of the Delta ecosystem from the perspective of ensuring the basic biological health of estuary and related aquatic resources in light of the best available science.

The statute requires the Board's best judgment regarding public trust flows based on the "best available scientific information," not "perfect" data. Water Code § 85086(c). The standard for developing the public trust flow criteria is not "certainty," but reasonableness and best scientific judgment. Furthermore, we concur with the Board's assessment that this informational proceeding does not arise in the context of a competing appropriations request or water quality control plan update and does not implicate the feasibility considerations raised in *National Audubon Society v. Superior Court*, 33 Cal.3d 419 (1983). Rather, the Board's task, as defined by the Legislature, is to strictly focus the proceeding on the numeric flow criteria "necessary to protect public trust resources" including "the volume, quality, and timing of water necessary for the Delta ecosystem under different conditions." Water Code § 85086(c).

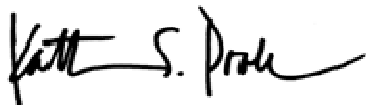
Proposal to organize into groups to summarize exhibits

We recommend that the Board defer its decision about how to organize groups for purposes of the March proceeding until after it has received the informational submittals on Feb. 16. The Board has made it clear that it prefers organizations to coordinate their submittals rather than provide the Board with repetitious information. NRDC and other environmental organizations are working closely together, and as indicated at the January 7 pre-hearing, other groups are as well. Thus, we believe it would be most efficient for the Board to get a sense of the submissions prior to attempting to organize presenters into specific groups.

NRDC anticipates that it will be substantially more productive for the Board to group presenters with others who have shared information, experts and otherwise similar or like presentations. This will allow the Board to make use of overlap between those groups and explore their views in depth without the distraction of conflict among the panel members themselves. However, as indicated above, NRDC does not believe it is necessary or efficient for the Board to try to group organizations until after it has at least preliminarily surveyed the submissions.

Thank you for the opportunity to provide our input.

Sincerely,

A handwritten signature in black ink, appearing to read "Kath S. Poole". The signature is fluid and cursive, with a long horizontal stroke at the end.

Katherine S. Poole
Senior Attorney