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State Water Resources Control Board
Attn: Phil Crader, Senior Environmental Scientist
1001 I Street
P.O. Box 2000
Sacramento, CA 95812-2000

Re: Flow Criteria Proceeding

Dear Members of the State Water Resources Control Board:

The San Luis & Delta-Mendota Water Authority and State Water Contractors, on their own behalf and on behalf of member agencies participating in this proceeding,¹ (collectively referred to herein as the "State and Federal Contractors") submit this statement pursuant to the January 7, 2010, electronic mailing from Mr. Philip Crader, titled, "Informational Proceeding to Develop Flow Criteria for the Delta Ecosystem - Organization of Groups and Panels."

The State and Federal Contractors generally support the approach the State Water Resources Control Board ("State Water Board") is taking to fulfill its responsibilities under section 85086(c)(1) of Senate Bill No. 1 of the 2009-2010 Seventh Extraordinary Session (Stats. 2009 (7th Ex. Sess.) ch 5, § 39) (SB 1). With the hope of ensuring the process remains focused and the product useful, the State and Federal Contractors present the following points and recommendations.

The State Water Board's End Product for the Flow Criteria Proceeding

The State and Federal Contractors support the State Water Board establishing qualitative (narrative) flow criteria for the Delta ecosystem that can guide planning processes. The State Water Board could use this process to develop a conceptual model that would present and consider the existing state of science on the numerous factors that the State Water Board believes must be considered when identifying the

¹ Those member agencies are Westlands Water District, Santa Clara Valley Water District, Kern County Water Agency, and Metropolitan Water District of Southern California.

flow needs for public trust resources pursuant to the Public Trust Doctrine, including the volume, quality, and timing of water necessary for the Delta ecosystem.

The "Pelagic Organism Decline Progress Report: 2007 Synthesis of Results" provides guidance. (See http://science.calwater.ca.gov/pdf/workshops/POD/2007_IEP-POD_synthesis_report_031408.pdf). There, as the State Water Board is aware, a "Pelagic Organism Decline work team", developed by the Interagency Ecological Program for the San Francisco Estuary, synthesized the results of a very complicated issue. They presented the results of their evaluation of the potential causes of the Pelagic Organism Decline. Although substantively flawed, the Progress Report in essence presents the analytical framework to consider the existing science and scientific hypotheses related to the decline of pelagic organisms. It does not attempt to provide the answer.

Similar to the report above, the goal of the flow criteria proceeding should be to provide a framework. To do otherwise and attempt to present numeric flow criteria, the State Water Board would run a significant risk of (1) frustrating the purpose for development of flow criteria -- assisting in the development of the Delta Plan and the Bay Delta Conservation Plan, and (2) establishing a process that requires significantly more time than either the Legislature provided or the State Water Board has currently set aside (or likely has available). Simply put, any attempt to establish numeric flow criteria would cause an exceedingly complex issue to become even more complicated. The State Water Board would have to consider and decide issues like: what time period would the numeric criteria address, and, if they were addressing some time in the future, how would the State Water Board incorporate potential changes to the Delta (physical, climatological, etc.). Also, the State Water Board would have to explicitly balance between all competing demands (including all of the different fish and wildlife species).

In sum, the State and Federal Contractors believe an approach focused on producing qualitative (narrative) flow criteria can be accomplished within the time provided by the Legislature to the State Water Board, would be useful to guide development of the Delta Plan, the Bay Delta Conservation Plan, as well as other plans, and would reduce the risk that the end product prepared by the State Water Board would be misused.

Submittal and Disclosure of Information

To ensure transparency in the process and avoid duplication of information, the State Water Board should post on its website all information and data that it currently

possesses and may consider when developing the flow criteria. The Board should also, as soon as possible, identify those experts which it is inviting and those who accept the invitation to attend.

To maintain the integrity of the process, the State Water Board should keep confidential, at least until after close of the proceeding, clarifying questions on the written testimony or exhibits which its staff develops and which are provided by the parties. If the State Water Board adopts that approach, a revised notice should be issued specifically stating that the questions will not be posted on the Board's website and directing the participants not to serve their questions on other participants. Also, the State Water Board should require that all written testimony identify scientific uncertainties associated with any conclusions drawn or recommendations made therein.

To ensure a complete record, the participants should be afforded an opportunity to submit supplemental information after the initial submission deadline but before the proceeding (on or about March 11, 2010). As contrasted to the clarifying questions, any supplemental information submitted to the State Water Board should be posted on the State Water Board's website.

To allow participants to test the veracity of statements made by and among the panelists, the State Water Board should afford proceeding participants the opportunity to submit supplemental questions. The State Water Board should require participants to submit supplemental questions on or before March 25, 2010, and the State Water Board, if it decides to ask any of the supplemental questions, should reconvene the panelists on or about April 1, 2010 to hear responses to the questions.

Finally, testimony should be provided under oath. Sworn testimony does not preclude the expression of opinion but would simply caution against and should prevent unsupported statements.

Scientific Panels

To facilitate the organization, presentation, and consideration of large amounts of information in a relatively short amount of time, the State Water Board should define panels by scientific topic. The State Water Board should direct panelists not to use the proceeding to summarize testimony. The State Water Board should encourage panelists to use the proceeding to answer questions and respond to information presented by participants.

The assignment of scientific topics into panels may best be finalized after the participants make their initial information submissions to the State Water Board. However, as soon as possible and before the February 16, 2010, deadline for submitting information, the State Water Board should provide the participants with its initial, general views on panel topics to help focus the information submitted. At the time the parties are required to submit clarifying question(s) and supplemental data (two weeks after the February 16 submittals are posted on the Board's website), the parties should be allowed to make final recommendations on panel topics. Thereafter, the State Water Board should add specificity to and finalize the description of the panels.

The State and Federal Contractors initial proposal would define the scope of four panels as follows:

Panel 1: Role of Flows in the Delta

This panel would provide an historic and scientific overview of the Delta flows, more from a general perspective, as subsequent panels will discuss specific issues related to anadromous and pelagic species. Possible areas of discussion would include changes to the Delta system over time, the relationship of flows to past and projected future changes in habitat conditions or hydrodynamics, and the role of flows as masking the impacts of other factors such as toxics. The tension between providing, for example, in-Delta flow conditions for pelagic species and maintaining cold water conditions upstream for salmonids could also be covered by this panel, as could any modeling that can be used to understand the effects of proposed flows on other water facilities and uses.

Panel 2: Anadromous Species

This panel would deal with those life stages of anadromous fish that rely on in-Delta flows for transport and other purposes. The presentations would focus on what flow related factors affect survival of those species as they use the Delta as a corridor for migration to and from the ocean, and, for fry, as a potential rearing area.

Panel 3: Pelagic Fish

This panel would focus on food, toxics, and other habitat based issues to the extent they are related to Delta outflow, whether measured as a flow number or by reference to X2 (spring/fall).

Panel 4: Hydrodynamics and Other Factors Affecting Fish in the Interior Delta

This panel would focus on the impact of hydrodynamic patterns (i.e., Old and Middle River flows) in the Delta, including levees, operation of water facilities (Delta Cross Channel), etc.

Consistent with the proposal above, the State and Federal Contractors intend to submit a supplemental letter to the State Water Board adding specificity to the panel descriptions, once the State Water Board sets the panels, and after the February 16, 2010 deadline to submit materials.

The State and Federal Contractors appreciate the opportunity to submit this letter and thank the State Water Board for its consideration of their suggestions as the State Water Board further defines the proceeding.

A handwritten signature in black ink, appearing to read 'Terry Erlewine', with a stylized flourish at the end.

Terry Erlewine, General Manager
State Water Contractors

A handwritten signature in blue ink, appearing to read 'Daniel Nelson', with a stylized flourish at the end.

Daniel Nelson, Executive Director
San Luis & Delta Mendota Water Authority