



The Bay Institute
of San Francisco

BOARD OF DIRECTORS

April 26, 1994

Carla Bard

John Caffrey, Chair
State Water Resources Control Board
901 P Street
Sacramento, Ca. 95814

Arthur Brunwasser

Harrison C. Dunning
Chair

Joe Nation

Re: Public Workshop Regarding Standards for the Bay/Delta
Estuary

John T. Racanelli

Dear Mr. Caffrey,

Will Siri

The State Water Resources Control Board has called for comments and recommendations regarding water quality standards for the San Francisco Bay/Sacramento-San Joaquin Delta estuary. This letter is submitted as the comments and recommendations of The Bay Institute of San Francisco.

Felix E. Smith

Nancy C. Swadesh

We are discouraged by the Board's apparent decision to reinvent the wheel and examine once again the need for stronger water quality standards to protect the estuary. Decades of scientific evidence, contained, cited, or summarized in the extensive record of the Board's Bay/Delta Hearings and of the U.S. Environmental Protection Agency (US EPA)'s Bay/Delta rulemaking process, have confirmed that provision of adequate low salinity habitat in Suisun Bay, increased freshwater outflow to San Francisco Bay, improved restrictions on Delta export, and other measures are necessary to protect water quality in the estuary.

Executive Director

David Behar

Nevertheless, the Board has failed to provide any remedy for the degradation of water quality and loss of aquatic habitat that continues to damage the health of the estuary. The Board has had sixteen years to correct the deficiencies of the 1978 Delta Water Quality Plan, in response to substantive issues raised by federal agencies during the Board's original deliberations and in the period immediately following adoption of the Plan; seven years to correct the deficiencies of that Plan following US EPA's failure to approve the striped bass standards in 1987; and nearly three years to correct the deficiencies of the 1991 Bay/Delta Water Quality Plan following US EPA's formal disapproval in September 1991.

Rather than duplicate the exhaustive standard-setting proceedings undertaken first by the Board itself in three

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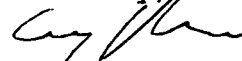
abortive attempts (the 1988 Draft Plan, the disapproved 1991 Plan, and the abandoned D-1630 draft), and later by US EPA during the course of its rulemaking activity, the Board should begin preparations for implementing the new federal standards after their adoption later this year. Such a course is appropriate for both legal and management reasons.

Under provisions of the U.S. Constitution, the federal Clean Water Act and the California Water Code, US EPA's water quality standards will replace the state's disapproved 1978 and 1991 standards when promulgated in final form. After that time, the federal standards will become the operable standards, to which the Board, and the entities it regulates, will be held accountable for achieving. The Board's responsibility will then be to amend existing water rights and order other changes in water project operations and management in order to comply with the new standards.

Considering this legal mandate to the Board, and US EPA's continuing commitment to work with input from all parties, including the Board, in fashioning its final Bay/Delta rule, the wisest course for the Board would be to devote its resources to designing a water rights proceeding, including preparation of environmental documentation, to ensure that federal water quality standards are implemented in an equitable, effective and timely manner. A workable program, within the shortest possible timeline, that incorporates all users of the estuary's waters within its framework, would be the Board's greatest contribution to solving the problems of the Bay/Delta environment while providing a greater measure of reliability to water suppliers and users.

For the Board's information, copies of the formal comments prepared by The Bay Institute regarding US EPA's proposed Bay/Delta water quality rulemaking, and the accompanying regulatory impacts analysis performed for US EPA and the U.S. Fish and Wildlife Service, are included with this letter. The comments address those issues of water quality criteria necessary to preserve beneficial uses, level of protection necessary to meet legal and biological requirements to protect the estuary, and environmental and other impacts of the proposed rulemaking, that were raised by the Board in the workshop notice. Also enclosed is a brief preliminary response to criticisms of US EPA's proposed Estuarine Habitat standard that were submitted to the federal agency by California Urban Water Agencies.

Sincerely,



Gary Bobker
Policy Analyst

enclosures:

1. Bay Institute comments on proposed US EPA Bay/Delta water quality standards
2. Bay Institute comments on US EPA/US FWS regulatory impacts analysis
3. Bay Institute response to comments by CUWA on US EPA's proposed Estuarine Habitat standard