

COMMENTS OF THE DEPARTMENT OF WATER RESOURCES
AT THE FIFTH WORKSHOP
OF THE STATE WATER RESOURCES CONTROL BOARD
ON BAY-DELTA STANDARDS¹

The Department of Water Resources has three issues today pertaining to the topics noticed for discussion in the Board's Notice of Workshop, dated July 30, 1994, to which we would like to address the Board's attention:

1. Board authority to adopt planning objectives for flow and diversion.

2. A specific request for the Board to adopt the suite of agreements for the protection of the Suisun Marsh and the Suisun Marsh area entered into by the Department, the U.S. Bureau of Reclamation, the Department of Fish and Game, and the Suisun Resource Conservation District.

3. The need for the Board to entertain a thorough and open discussion of the various parameters and factors proposed as the basis of protective standards for aquatic resources in the Bay-Delta estuary.

The first two issues may be dealt with in fairly short order. On Wednesday, August 31, I submitted ten copies of a memo I

¹ Presented by David B. Anderson, September 1, 1994

prepared pursuant to a request from the Board at the July 13 workshop for a description and explanation of the authorities which I believe enable the Board to develop and adopt a plan for flow and diversion at the same time that it prepares its water quality control plan for the estuary. Since the Department has made its views on this issue known to the Board frequently over the past six years, and twice in these workshops, and since I believe the discussion in the paper stands on its own, I do not intend to add anything further on this point. I do note that I have taken the opportunity in the paper to explain why the Department feels that a set of planning objectives for flow and diversion requires treatment outside the authorities of water quality planning statutes. I also note that we firmly believe that the Board may combine the water quality and non- water quality planning efforts into a single document under essentially an identical analytic approach. In this regard, we do not believe that the proper adoption of objectives for flow and diversion will delay, impede or complicate the Board's accomplishing its review of Bay-Delta standards or its adoption of new objectives within the time frame the Board has set for these purposes.

As the Department indicated in the first of these workshops in April, we are making a specific recommendation to the Board on the Suisun Marsh. This recommendation is identical to the one we made in Phase I of the Bay-Delta hearings in 1987 and during the Water Quality Phase preceding the Board's adoption of its Water Quality

Control Plan in May of 1991. It is also the same as the one we petitioned the Board to implement as against the SWP and CVP pending the completion of the Water Rights Phase of the hearings. I note that on these occasions, we were joined by the other three signatories to the Suisun Marsh Agreements.

We recommend that the Board adopt the Suisun Marsh Preservation Agreement, and the accompanying Monitoring Agreement and Mitigation Agreement, to satisfy the water quality objectives for the Suisun Marsh and the tidal areas of the Suisun Bay area. These agreements were negotiated and entered into with the express purpose of their becoming a substitute for Board standards in this area, and Congress specifically authorized the USBR to execute and participate in them. The SWP and CVP have expended tens of millions of dollars in planning, environmental review, and construction costs to proceed with their implementation. The agreements provide a flexible and cooperative planning and management approach by the four public agency signatories--and with the participation and review of Board staff--for dealing with the needs and the uncertainties of the beneficial uses of this very important wetland area.

The third issue the Department wishes to address is the need for the Board and the parties to engage openly in an inquiry into the diverse factors and control parameters which have been put forward as the basis for standards to protect aquatic species and habitats in the estuary. Before us are not only the proposals set

forth for analysis in the recently distributed Board staff memo, but the earlier EPA proposals, D-1630, and the Biological Opinions for Delta smelt and winter run salmon. These regulatory schemes and scenarios present different parameters, for different seasons and different durations under differing degrees of restriction, to protect fish and wildlife uses.

These differences reflect in great part the fundamental uncertainties which pervade our understanding of the Bay-Delta system, its condition, and the effectiveness of measures proposed to protect it. And yet, from these proposed parameters, the Board must choose something which both affords reasonable protection to aquatic resources--some reasonable assurance of providing material benefit--and which gives urban and agricultural users a reliable and useful water supply.

As the Board proceeds over these next few weeks to analyze and consider its planning alternatives, we think that it is essential that it take the opportunity to hold this colloquy on the proposed factors to explore and understand with the biologists what they think is important, where they agree and where they disagree. There have been and are currently a number of good scientists devoting virtually their entire professional lives to gaining a better understanding of the Bay-Delta ecosystem. It goes without saying that the work of these scientists has produced "good science". But unfortunately, good science has produced neither "scientific certainty" about the estuary's fundamental needs, nor reliable solutions for the problems that are perceived to exist.

DWR has prepared and attached a chart called "Matrix of Various Bay-Delta Standards for Fish and Wildlife Protection". This matrix sets forth the different control parameters utilized by the different parties and by the Board in the alternatives currently under review. In our earlier presentations to the Board, we emphasized that the key issue of the uncertainty surrounding biological requirements needs to be addressed candidly and directly as the Board considers alternative standards or objectives for the Bay-Delta estuary. We asked that the Board in particular carefully explore and set forth how a proposed standard would lead to the benefit expected to be produced, including intermediate causal steps.

Decisions in systems as complex and uncertain as the Bay-Delta estuary must be made notwithstanding that uncertainty. But, as we have said before, the Board's decisions must reflect, not mask, that underlying uncertainty. To be reflected, whether in the weighing and balancing processes of Board decision-making or in the ultimate decisions themselves, it must first be recognized and understood.

Referring again to the matrix of proposed control parameters, we would strongly urge and support the Board's convening a workshop later this month focussed on hearing how the biologists view and rate the different factors in the matrix. We think that at least an all-day session conducted by Board staff going through the matrix in front of the Board would be of invaluable benefit and assistance to the Board in its analysis and understanding of the

alternatives and of the uncertainty of the matters out of which it must fashion a plan of protection for the estuary.²

We propose that, at this workshop, the parameters in the matrix be discussed with reference to at least the following points:

- The nature and degree of biological benefit
- The certainty of the biological benefit
- The ability to model or predict the benefit and/or cost of the parameter
- The existence of agreement or consensus of scientists on the scientific justification for the proposed parameter
- The impacts on water supply reliability
- The efficiency of water use for the proposed benefit (i.e., is there a less costly alternative)

If dealing with uncertainty is essential to the Board's arriving at standards for fish and wildlife uses that afford reasonable protection based on our best scientific understanding of the estuary, an absolutely equal concern is that regulation in the Delta provide the greatest degree of certainty and reliability to the other users of the waters of the Bay-Delta system. One of the key themes of Governor Wilson's water policy statement of April 1992 was to restore stability to Delta water supplies. Water

²Of course, this matrix represents only the factors which may be regulable to some degree through the water rights processes of the Board. It therefore does not include a consideration of the other factors of which a comprehensive Ecosystem Management Plan must consist.

supply certainty is an equally key point in the recently signed federal-state Framework Agreement.

Most recently, Interior Secretary Babbitt sounded this same theme with respect to federal endangered species regulation. On August 11, he announced a federal policy of "No Surprises" as the cornerstone for agreements reached on habitat planning for endangered species. This policy recognizes the critical need for certainty and predictability for private, state, and local decision-making. It embraces the virtue and importance of federal agencies entering into planning agreements with non-federal interests and then declares that these agreements are to be governed by the paramount rule that "A deal is a deal", that federal agencies are not to disturb but to respect the expectations and autonomy of the non-federal parties to the deal.

What the Board should now be crafting is an Ecosystem Management Plan for the estuary which will constitute a sensible and reliable "deal" with federal interests and which will allow California to resume fundamental control over its natural resources and its social, economic and environmental future. To provide certainty and reliability for water users of the State, the "deal" must include the following essential features:

- It must allocate a specific quantity of water, by water year type, to the fish and wildlife resources of the estuary so that other users plan based on the most reliable indices of water supply.
- It must have multi-year "shelf life", or freedom from new

restrictions attended, of course, with reasonable review and the possibility for minor real-time modifications.

-It must satisfy us that, as an Ecosystem Management Plan, it will produce "no jeopardy" biological opinions for the water projects in the Delta, the imposition of no quantitative take limits in the Incidental Take Statements, and the assurance that new species listings will not impose new regulatory constraints Bay-Delta water use.

In closing, the Department wishes to underscore two points. The first is that we support the Board's holding further sessions to discuss and critique the parameters that appear in the various sets of proposed alternative standards. The second is that there should be no backing off the time frame the Board is currently working under. We see the future sessions being, not an added step to, but an integral part of the Board's consideration of planning objectives for the Bay-Delta estuary.

DRAFT 9/1/94

Matrix of Various Bay Delta Standards for Fish and Wildlife Protection

| | Previous SWRCB Decisions | | ESA Biological Opinions | | EPA Proposals | | Other Alternatives | | | Consensus ? | |
|--|--------------------------|--------------|-------------------------|-------------|---------------|---------|--------------------|--------------|--------------|----------------|--------------|
| | D-1485 | Draft D-1630 | Winter-Run | Delta Smelt | Dec. '93 | Dec '94 | CUWA | SWRCB Alt. 2 | SWRCB Alt. 4 | | SWRCB Alt. 5 |
| Spring Estuarine Habitat | | | | | | | | | | | |
| • Delta Outflow • X2 | | | | X | X | X | X | X | X | X | |
| Pulsed Flow Events | | | | | | | | | | | |
| • Delta Outflow • Sacramento River • San Joaquin River • Direct Pumping Restrictions • Curtail Agricultural Diversions | | X X X | | | | | | | | X X | |
| Delta Habitat | | | | | | | | | | | |
| • Grass Channel Gate Closures • Percent Diverted Limits • Direct Pumping Restrictions • GWEST | X X | X X X | X X | X | | X X | * * | X X | X X | X X | |
| Delta Inflow | | | | | | | | | | | |
| • Sacramento River • San Joaquin River • Other Delta Tributaries | | | | X | | X | * * | X | X X | X X | |
| Salmon Spawning/Migration | | | | | | | | | | | |
| • Flows • Water Quality • Smolt Survival Indices | X | X X | | | X | | | X | X | X | |
| Striped Bass Spawning/Migration | | | | | | | | | | | |
| • Flows • Water Quality | X X | X X | | | X | | | | X | | |
| Channel Barriers | | | | | | | * | | | | |
| Fall Requirements | | | | | | | | | | | |
| • Delta Outflow • Export Limits • X-Channel Closure | | | | | | | | | X | | |
| Suisun Marsh | | | | | | | | | | | |
| • Delta Outflow • Water Quality | X X | X X | | | | | | X X | X X | X X | |
| Incidental Take Limits | | | X | X | | | | | | | |

* Signifies category 2 measures not yet developed