



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Sacramento Area Office
650 Capitol Mall, Suite 8-300
Sacramento, California 95814-4706

August 29, 2005 In response refer to:
151422SWR2004SA9238:JSM

Arthur G. Baggett, Jr.
Chair, State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812

Dear Mr. Baggett:

This letter provides comments from NOAA's National Marine Fisheries Service (NMFS) concerning periodic review of the 1995 Water Quality Control Plan (WQCP) for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. NMFS has participated in past workshops regarding potential revision to the Water Quality Objectives for Fish and Wildlife beneficial uses under the authority of the Endangered Species Act of 1973, as amended [16 U.S.C. 1531 *et seq.*] and the Magnuson-Stevens Fishery Conservation Management Act. This letter addresses potential amendments to the Delta Outflow Objective of the WQCP.

NMFS is a participating agency of the Water Operations Management Team (WOMT) regarding operations of the State Water Project and Central Valley Project and their effects on Delta fish, water quality, and water supply. We participated in the development of comments regarding the potential benefits of flexing the Delta Outflow Objective that were submitted to the Board on June 3, 2005. We also have participated with WOMT in the development of additional comments regarding the objective in response to your July 18, 2005, Notice of Public Workshop. Enclosed with this letter are those comments dated August 29, 2005. Though NMFS is concerned about upstream effects on salmonids related to compliance with the Delta Outflow Objective, we agree that it would be premature to invoke flexibility in light of the recent pelagic organism decline in the Delta. We support the enclosed synopsis and recommendations developed by the WOMT.

We appreciate the opportunity to provide the Board with comments related to the 1995 WQCP revisions and look forward to future workshops and topics. Please contact Jeff McLain at (916) 930-5648, or via e-mail at Jeff.Mclain@noaa.gov if you have any questions concerning this project or require additional information.

Sincerely,

Michael E. Aceituno
Supervisor, Sacramento Area Office



Enclosure

cc: NMFS-PRD, Long Beach, CA

Water Operations Management Team *
Comments to the State Water Resources Control Board
Regarding Flexing the Outflow Objective at Port Chicago
Proposed Revision to the 1995 Bay-Delta Water Quality Control Plan
August 29, 2005

The U.S. Bureau of Reclamation (USBR), U.S. Fish and Wildlife Service (USFWS), NOAA's National Marine Fisheries Service (NMFS), Department of Water Resources (DWR) and Department of Fish and Game (DFG) meet each week for purposes of discussing and determining appropriate actions to be taken regarding State Water Project (SWP) and Central Valley Project (CVP) operations affecting Delta fish, water quality, and water supply. This group is known as the Water Operations Management Team (WOMT). In our June 3, 2005 statement, the WOMT agencies provided comments regarding the potential benefits of flexing the Delta Outflow objective at Port Chicago (Roe Island, X2) for purposes of recommending possible revisions of the 1995 Bay-Delta Water Quality Control Plan (WQCP) to the State Water Resources Control Board (SWRCB). In that statement, the WOMT agencies indicated a willingness to consider flexing X2 only when an identified upstream fish habitat protection issue can be resolved by using the flexibility without adversely affecting in-Delta species.

The recent information documenting the decline of numerous pelagic organisms in the Bay-Delta Estuary raises questions about the cause(s) and uncertainties regarding the effects of any flexing of the X2 objective at this time. The WOMT agencies acknowledge, however, the potential utility in flexing the X2 objective to balance the needs of the ecosystem both upstream and downstream of the Delta. WOMT agencies continue to be concerned about the upstream issues and remain interested in exploring a process for flexing X2 to avoid or minimize adverse effects of the X2 objective on instream salmonid habitat. Despite the potential benefits from X2 flexing, the urgency of the investigation of the pelagic organism decline requires that we take a prudent and conservative approach to proposing changes in Delta water quality objectives until the uncertainties regarding the factors that are affecting pelagic organisms are addressed.

Consequently, the WOMT agencies now recommend that the SWRCB postpone final development of the proposal for flexibility for the X2 objective until the scientists working in the Bay-Delta have a better understanding of the cause(s) of the pelagic organism decline. The WOMT agencies believe it is very important at this time to focus our resources on resolving the issues related to the pelagic organisms decline before we continue discussions of the process, considerations and "sideboards", etc. that would allow for greater flexibility in implementing the dynamic three-ways-to-win X2 objective. The WOMT agencies believe it would be advantageous, however, to recognize the potential benefits of the flex proposal and therefore we recommend that the State Water Board add a footnote

* Presented at the State Water Resources Control Board Workshop on August 31, 2005.

to Table A of the WQCP, indicating the intent to further consider flex of X2 when a better understanding of the cause(s) of the fish decline emerges from the ongoing intensified Pelagic Organism Decline investigations and if the WOMT agencies conclude it is appropriate to again pursue the flex. In addition, the Program of Implementation should include language indicating when X2 flex might be considered. Recommended changes to the WQCP are:

- To Table A, add a footnote (e): "The WOMT agencies may propose to the SWRCB a method to allow flexible implementation of X2 at Port Chicago after the agencies, using the best available science, have a better understanding of the cause of the pelagic organism decline and find that such a flex would have no significant effect on the Delta ecosystem or organisms."
- To the Program of Implementation, Section B "Implementation Measures Requiring SWRCB Water Quality and Water Rights Authority and Multi-Agency Cooperation" add a new subsection 5 stating: "In 2005 the SWRCB held two workshops to hear information about flexing the X2 outflow objective at Port Chicago. Information was presented by several parties demonstrating the benefits of a process to allow flexing of X2 to benefit fish both upstream of the Delta and in the Delta. In January 2005 State and federal biologists identified and reported an unexpected decline of open-water fish species in the Sacramento-San Joaquin Delta. A draft whitepaper discussing the findings was distributed among Interagency Ecological Program agencies, and a study plan was developed to begin intensive data analysis and technical studies into the causes of the decline. Because of the uncertainty in the cause of the pelagic organism decline, the fish agencies (DFG, USFWS, and NMFS) and the project agencies (DWR and USBR) believe it is prudent to postpone implementing a procedure for flexing X2 until the fish agencies have a better understanding of the cause of the decline and pending a finding that flexing X2 would not adversely affect fish in the Delta. One option for flexing X2 is to modify the method of implementing the objective that would help avoid upstream fish impacts while maintaining the overall seasonal compliance with X2. Another option is to include a process whereby fish agencies and project agencies would propose a flex alternative to the Executive Director of the State Water Board that would provide benefits to upstream fishery without significantly impacting the Delta ecosystem. In the future, pending conclusions based on the best available science regarding the cause(s) of the Delta organism decline, the fish agencies and project agencies may propose that the SWRCB proceed with evaluating and implementing a flex proposal."

WOMT Comments on Outflow Flexibility
SWRCB Workshop
August 29, 2005

The WOMT agencies have not responded to the specific questions listed in the Notice on the Workshop because the unknown cause(s) of the pelagic fish decline have resulted in an inability to answer the questions at this time. We believe the above proposed changes to the WQCP would provide recognition of the potential value of X2 flexing while indicating that action on flexing should not proceed until the cause of the pelagic organism decline is better understood.

Although the goal of the five agencies is to achieve consensus on decisions when considering proposals for flexing X2, the five agencies retain their authorized rights, roles and responsibilities, in their individual capacities, to seek changes to their respective water right permits, including the right to petition the SWRCB for a temporary urgency change.

Thank you for the opportunity to submit comments on the 1995 WQCP.