



**OPENING STATEMENT OF
GARY BOBKER, PROGRAM DIRECTOR
THE BAY INSTITUTE**

**REGARDING AN EMERGENCY DROUGHT-RELATED WATER RIGHTS
ACTION ON A PETITION FOR TEMPORARY URGENCY CHANGE
FILED BY THE DEPARTMENT OF WATER RESOURCES (DWR)
AND THE U.S. BUREAU OF RECLAMATION (USBR)
FOR TEMPORARY RELAXATION OF
THE FEBRUARY DELTA OUTFLOW
AND THE SAN JOAQUIN RIVER FLOW OBJECTIVES
IN RESPONSE TO CURRENT DRY CONDITIONS**

BEFORE THE STATE WATER RESOURCES CONTROL BOARD

SACRAMENTO, CA

FEBRUARY 17, 2009

Chairwoman Doduc and members of the Board,

My name is Gary Bobker. I am the program director at the Bay Institute, a non-profit conservation organization dedicated to protecting and restoring the ecosystems of San Francisco Bay, the Sacramento-San Joaquin Delta, and the estuary's tributary watershed. For nearly three decades we have been an active participant in long-standing efforts to improve regulatory protections for the estuary's endangered species and habitats, including the development, adoption and implementation of stronger Bay-Delta water quality objectives by this Board.

The Bay Institute opposes the petition for a temporary urgency change regarding the temporary relaxation of the February Delta outflow and San Joaquin River flow objectives. We also note that DWR and USBR have failed to comply with these objectives since early February, are no longer able to fully comply with the objectives for February if their petition is denied, and have increased export pumping even when out of compliance with the objectives.

Our case against the petition by DWR and USBR for temporary urgency change consists of the following principal arguments:

1. DWR and USBR have not shown an urgent need to temporarily relax the Delta outflow objectives.

The ability of current and projected levels of upstream storage controlled by DWR and USBR to maintain the coldwater pool for salmonid protection through the remainder of WY 2009 is an extremely serious concern. What DWR and USBR have not demonstrated, however, is that the water supply benefit from relaxing the Delta outflow objectives will secure sufficient conditions for salmon later in the year. In contrast to the benefits of the abundance – flow relationships (which are continuous across the range of flows for estuarine species), the benefits of maintaining the coldwater pool are binary: upstream temperature requirements are either met or not met. If sufficient temperature conditions for salmon cannot be secured without a major improvement in hydrological conditions, then the presumed benefits of relaxing the Delta outflow objectives will have been wasted at the expense of estuarine species and habitat conditions (whose exposure to risk was exacerbated by the project operators' decision to increase export pumping instead of complying with the objectives). Given the historic low levels of upstream storage, it is not self-evident that DWR and USBR will be able to maintain adequate upstream habitat conditions without major new precipitation even if the Delta outflow objectives are relaxed.

Even if DWR and USBR were able to show that there was an urgent need for the temporary relaxation based on maintenance of the coldwater pool, the petition should have included a condition prohibiting releases from upstream storage for consumptive uses while the objectives were not being met. In fact, DWR and USBR undermine their own rationale for relaxation in order to maintain the coldwater pool by stating in the petition that “without a modification of the ...X2 standards, the Projects could be forced to reduce exports even further” (p. 11), that “any water ‘saved’ by an approval of the requested changes is critical to the state’s water supply” (p. 12) and that the relaxation would “minimize any additional impacts to the Projects’ ability to deliver critical water supply needs” (p. 12). DWR and USBR have not demonstrated in the petition that further reduction in exports is not feasible in order to help comply with this objective, that critical water supply needs will not be met or defined what those needs are, and that alternatives to meeting water supply needs in areas exporting from the Delta are not available and/or being implemented.

The inadequacy of the petition’s evaluation of proposed benefits for salmonid protection from relaxing the Delta outflow objectives is analyzed in Exhibit 1, the written testimony of TBI conservation biologist Dr. Jonathan Rosenfield, who will present oral testimony summarizing that analysis. Dr. Rosenfield’s statement of qualifications is attached as Exhibit 2.

2. Relaxing the Delta outflow objectives is likely to cause unreasonable impacts to fish and wildlife and estuarine habitat beneficial uses.

The petition seriously misrepresents and/or misinterprets the status of current scientific research regarding the flow-abundance relationships on which the Delta outflow objectives. Uncertainties regarding the underlying causal mechanisms behind the statistically strong flow-abundance relationships do not change the fact that reduced outflow has been and continues to be strongly correlated to reduced abundance for a number of estuarine species. These relationships are continuous across the range of flows, undocumented assertions to the contrary notwithstanding. Several of the species whose abundance is highly correlated with outflow are at high risk of extinction, including delta smelt, currently listed under the state and federal Endangered Species Acts, and longfin smelt, a candidate species which has been recommended for listing by the California Department of Fish and Game. DWR’s and USBR’s claim that “this petition seeks to strike the proper balance between the...competing interests” (p. 17) is simply not credible given their failure to adequately factor in the known benefits of flow-based protections for some of the most endangered species in the estuary and their failure to demonstrate the efficacy of the proposed relaxation to adequately protect salmonid habitat upstream.

The petition also fails to address how relaxing the February Delta outflow objectives will modify the Delta outflow objectives in subsequent months. Each month’s requirements during the February – June period are based on antecedent conditions. If outflow is

reduced for the entire period as a result of this relaxation, impacts to flow-dependent species will be larger and more easily quantified.

Apart from the abundance-flow relationships underlying the Delta outflow objectives, there is also strong evidence that reducing outflows redistributes estuarine fish populations to less desirable locations and increases the risk of entrainment at the state and federal export facilities in the south Delta.

The adverse impacts to estuarine species and habitat conditions that will likely result from relaxing the Delta outflow objectives and the flaws in the petition's evaluation of those impacts are analyzed in Exhibit 1, and we will present oral testimony summarizing that analysis.

3. DWR and USBR have not shown an urgent need to temporarily relax the San Joaquin River flow objectives.

The sole basis for requesting this relaxation in the petition is that the higher San Joaquin River flow objectives are triggered by compliance with the higher Delta outflow (i.e., Chippis Island) objectives. The petition does not provide any rationale for why relaxation of the outflow objective should automatically result in relaxation of the San Joaquin River flow objective, nor does it identify how relaxing the San Joaquin River flow objectives will contribute to maintaining the coldwater pool in upstream storage facilities in either the Sacramento or San Joaquin Basins. Even if DWR and USBR had shown an urgent need to temporarily relax the Delta outflow objectives, the petition would still need to show an urgent need to relax the San Joaquin River flow objectives on its own merits.

4. Relaxing the San Joaquin River flow objectives is likely to cause unreasonable impacts to fish and wildlife and estuarine habitat beneficial uses.

DWR and USBR simply do not address the effect of reducing San Joaquin inflows on estuarine species and habitat conditions. In fact, San Joaquin River inflows during the late winter and early spring strongly influence conditions for outmigrating juvenile fall-run Chinook salmon, and the numbers of adult fall-run returning to spawn are strongly related to earlier San Joaquin flow levels during this period. In addition, reduced inflows are likely to promote redistribution of estuarine fish populations to less desirable locations and increase the risk of entrainment at the south Delta pumping facilities for both resident and migratory species.

The adverse impacts to estuarine species and habitat conditions that will likely result from relaxing the San Joaquin River flow objectives are analyzed in Exhibit 1, and we will present oral testimony summarizing that analysis.

5. Increased pumping at the state and federal export facilities in the South Delta when the outflow and river flow objectives are relaxed is likely to cause – and has caused in the past week - unreasonable impacts to fish and wildlife and estuarine habitat beneficial uses.

DWR and USBR do not address the impacts of increasing export pumping during the proposed relaxation of objectives, nor does their petition include any constraints on export pumping during this period. There is no question that increasing exports during the proposed relaxation will exacerbate the less desirable distribution patterns and higher risk of entrainment for both resident and migratory fish populations that would result from decreasing outflows and San Joaquin inflows. In fact, by our rough calculations during the first half of February the projects exported nearly 20,000 acre-feet over minimum export levels. This calculation assumes a minimum level of 1000 cfs pumping at each project facility, which probably exceeds the actual minimum rate needed for critical domestic health and safety purposes and facility maintenance. This increased pumping resulted in take of both adult and juvenile delta smelt. Even if DWR and USBR had shown an urgent need to relax the objectives, the projects could and should have used the increased runoff entering the Delta to partially or even wholly comply with the Delta outflow objectives – whose benefits are continuous as outflows increase – without drawing down upstream storage. Exporting this water instead only exacerbated conditions for estuarine species at high risk of extinction without contributing one drop of water to maintaining the coldwater pool in the Sacramento Basin.

The adverse impacts to estuarine species and habitat conditions from increasing export pumping when the objectives are relaxed are analyzed in Exhibit 1, and we will present oral testimony summarizing that analysis. The amount of water exported above minimum levels when the projects were out of compliance with the Delta outflow objectives, and the amount of runoff that could have been used instead to partially or wholly comply with those objectives, is documented in Exhibit 3.

6. In order to demonstrate an urgent need for the temporary relaxations and avoid or mitigate for adverse impacts to fish and wildlife and estuarine habitat, DWR and USBR would need to include the following analyses and conditions in their petition:

- An analysis of the probability that adequate upstream salmonid habitat conditions will be maintained with and without relaxing the objectives
- An analysis of alternatives to relaxing the objectives (including export reduction and alternative sources) in order to provide adequate upstream habitat conditions
- A prohibition on releases from storage for consumptive uses if the objectives were relaxed
- A prohibition on export pumping above minimum maintenance, health and safety levels if and when the objectives were relaxed