

CSPA Exhibit #3

October 11, 2005

***TESTIMONY OF DAN B. ODENWELLER
CALIFORNIA SPORTFISHING PROTECTION ALLIANCE***

Dan Bowman Odenweller

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A) Please state your name and address for the record.

Ladies and Gentlemen, thank you for the opportunity to appear before you today, my name is Dan Bowman Odenweller, and I reside at 2643 Tamarisk Avenue, Stockton, California, 95207-1344.

B) Please briefly review your background and qualifications for the record.

Attached is a short resume, outlining my background and qualifications, for the record. I have both a Bachelor's and a Master's Degree from C.S.U. at Long Beach, and retired in the Fall of 2001 from the California Department of Fish and Game, after 33 years of employment. During that tenure, I served as an expert witness for a number of hearings before this Board, including the hearings that led to D-1485 (Delta Hearings), and in the hearings for the Mokelumne and Yuba river water rights decisions.

After retirement from State service in the fall of 2001, I was employed on a limited term basis for three years by the National Marine Fisheries Service. There I worked on fish passage issues in the Central Valley, on the ESA - OCAP Biological Opinion, and I wrote the first drafts of the Essential Fish Habitat - Biological Opinion for the CVP and SWP Operations in the Central Valley (OCAP). Funding for the position expired in the fall of 2004, and I retired again

I am presently acting in a volunteer capacity as a Fisheries Biologist, for the California Sportfishing Protection Alliance. I appeared in a similar capacity for Deltakeeper (a Chapter of BayKeeper), during the Triennial Review workshop for D-1485 earlier this year.

C) Would you please summarize your testimony for the record.

Thank you, I will try to keep my remarks brief, but I have six major points:

- 1) In my capacity as the Supervisor of the Contract Services Unit for the California Department of Fish and Game's Delta Studies Project, I oversaw and had developed a study plan to document the impacts of constructing tidal barriers in the south Delta.

These studies, which commenced in the late 1980's, were intended to assess the presence of, and the impacts (if any), of the construction and operation of tidal barriers in the south Delta. The activities ranged from the impact of changes in water surface elevations on the listed plants known to exist in and above the location of the tidal barriers, to predation on fishes, associated with the barriers. Anecdotal information from anglers identifies the South Delta Temporary Barrier sites as gathering points for predatory fish, including striped bass. This is based on angler success while fishing in the Delta. The planned studies, if completed as planned, would shed more light on this issue.

The purpose of these studies was to provide the information needed to support the preparation of a "full disclosure" document, as required by both the NEPA and by CEQA. I do not believe all of the studies were ever completed, although they would appropriately be referenced in the Draft EIR/EIS on the South Delta Improvement Project, which has yet to be made available to public review (as of 10/09/2005). Unfortunately, without this document, we are unable to define the project, and assess its effects on the biota of the South Delta.

- 2) The existing water quality standard is not a standard, and should be modified to separate the actual “standard” from the “method of compliance.”

The Board, has equated a water quality standard (EC of 0.7 mmhos/cm), with a method of compliance (South Delta Permanent “or Operable” Barriers). In doing so, it has arguably become liable for the achievement of the standard. This latter point is of considerable significance, as the ability of the proposed solution to accomplish the goal is in serious doubt.

I would recommend that the Board revise the objective, and require compliance with the objective (EC of 0.7 mmhos/cm), leaving the method of compliance to the CVP and the SWP.

3) The South Delta Permanent Barriers, prescribed by the SWRCB, may in fact exacerbate existing water quality problems in the south Delta. We are currently at somewhat of a disadvantage on this matter, as the Draft EIS/EIR for the South Delta Improvement Project (SDIP) has yet to be released, despite numerous promises that it was forthcoming.

CVRWQCB staff has expressed concern over the potential increase in the methylation of mercury into the food chain associated with the SDIP and its operation. This concern is contained in the draft TMDL for Mercury, just out for review.

The Delta in an area which is “under Public Health Advisories” regarding the consumption of fish, due to mercury contamination (among other reasons including PCB’s, pesticides, and heavy metals). The public health advisories are summarized in the CDFG Angling Regulations.

We have also identified a concern associated with the operation of the South Delta Temporary Barriers project, which would become a permanent condition with the construction of the SDIP.

4) Generalized fish kills occur annually in South Delta during the late summer and fall.

Threadfin shad, carp, catfish and bullhead constitute a large fraction of the losses, at least from cursory inspection of the areas affected. These lost fish are carried to the CVP and SWP fish salvage facilities by the export flows, and often require increased staffing to deal with the large numbers of dead fish.

The causal mechanism has not been identified, although many of the fish show evidence of bacterial and viral pathogens. A summary of one such event was documented by Dr. G. Fred Lee, and was presented to the SWRCB. The summary is part of the record for the D-1641 workshops, and can be found as Delta Keeper Exhibit DK - EXH – 3 at:

http://www.waterrights.ca.gov/BAYDELTA/exhibits_list.htm#deltakeeper

- 5) The south Delta has been subjected to a major decline in the Pelagic Organisms Guild, despite efforts to manage this problem through both the IEP, and the CalFed process.

The effort to increase exports by removing the protection of the U.S. Army Corps of Engineers limitation of 6680 cfs (SWP-three day running average) places the fish and wildlife beneficial uses at further risk. The result would fail to honor the basic premise of the Delta Accord (and of CalFed), namely that “We will all get better together.”

- 6) The lack of flows from the San Joaquin River is a causal mechanism limiting the south Delta beneficial uses including fish and wildlife maintenance , agriculture and water associated recreation.

Improved instream flows, of San Joaquin Basin origin, would greatly assist in meeting the challenge of meeting the water quality standard (an EC of 0.7 mmhos/cm), and would improve both the upstream and the downstream migration conditions for anadromous fish. This recommendation is consistent with the one expressed in the CDFG Exhibit 10 to the SWRCB D-1641 Triennial Review that was dated June 30, 2005. The following table is extracted from that report:

Table 3. CDFG's Recommended Vernalis Flows to Protect Fall-run Chinook Salmon¹⁴

CDFG Recommended Vernalis Flow Targets		
Water Year Type	Flow Level (daily average cfs)	Window Duration (days) ¹⁵
Wet	20,000	90
Above Normal	15,000	75
Below Normal	10,000	60
Dry	7,000	45
Critical	5,000	30

¹⁴ The Department submits these Vernalis flow recommendations to the Board within the following caveats:

1. DFG is proceeding with further internal review of it's preliminary recommendations;
2. DFG will be proceeding with external stakeholder (including VAMP partners) and scientific peer review activities to refine the utility of the Model as another tool in defining a revised set of Vernalis flow objectives which provide adequate protection; and,
3. DFG encourages the Board to give serious consideration to the process necessary to revise the Vernalis flow objectives, and the refinement of VAMP as an implementation strategy, over the next 3 years.

¹⁵ Window Duration assumes a May 1 central time period date for all window lengths regardless of window duration.

Based on the current status of the south Delta, I believe a Cease and Desist Order is not only appropriate, but mandated. Further, I believe the action of Board staff, waiving the implementation of the standard should be overturned.

We believe the following quote taken from the October 6, 2005 edition of the Oakland Tribune, which summarizes the need for caution in taking such actions.

“ Gerald Johns, Deputy Director of Water and Planning and Management for the Water Resources Department he said. "It's way too early to jump to conclusions.... This is more like 'CSI Delta'," Johns added.”

We agree with the need to stop and ensure that the actions being proposed do not exacerbate the very problems we are trying to solve.