

DEPARTMENT OF WATER RESOURCES

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March 13, 2007

Ms. Gita Kapahi, Chief
Bay Delta / Special Projects Unit
Division of Water Rights – Records Unit
State Water Resources Control Board
1001 "I" Street, 2nd Floor
Sacramento, CA 95814

Dear Ms. Kapahi,

Please find enclosed fifteen copies of the California Department of Water Resources Comments for the State Water Resources Control Board's Public Workshop to consider the Pelagic Organism Decline (POD) in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

Please contact me at (916) 653-5613 if you have questions regarding the comments.

Sincerely,

A handwritten signature in cursive script that reads "Cathy Crothers".

Cathy Crothers
Senior Staff Counsel

Comments of the
California Department of Water Resources
for the
The State Water Resources Control Board
Public Workshop Regarding Consideration of the Pelagic Organism Decline in
The San Francisco Bay/Sacramento-San Joaquin Delta Estuary

In February 2005, the Interagency Ecological Program (IEP) formally announced at a public California Bay Delta Authority meeting the observation of dramatically reduced indices of several species inhabiting the open-water of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. The species data showed a three-year period of decline from 2002 – 2004 that indicated a trend unlike what would be expected due to inter-annual variations in indices. Since the announcement of the marked Pelagic Organism Decline (POD) in the Delta, scientists of the Department of Water Resources (DWR) have been participating in studies and analyses to determine what may be causing the decline.

In 2005, the IEP formed a special POD Work Team consisting of scientists specifically assigned to investigate the POD.¹ The POD Work Team presentation at the SWRCB Workshop will explain the current state of the research and possible findings from its studies, the areas of further research, and the process of scientific peer review of this work. The POD work will be subject to review by the National Center for Environmental Analysis and Synthesis, a nationally recognized science review group located at University of California in Santa Barbara. The Work Team is scheduled to complete its studies and provide a report synthesizing the work at the end of 2007.

DWR and U.S. Bureau of Reclamation have provided much of the funding for the POD work. In 2005, DWR and Reclamation initially authorized \$1.7 million in water project funds to augment the \$13.5 million annual IEP budget. In Fiscal Year 2006-2007, DWR and Reclamation are funding \$3.6 for POD work in addition to the funding provided for other IEP programs, such as monitoring required by D-1641.² In addition, the CALFED Science Program grants have funded \$2.2 million of POD work and the CALFED Ecosystem Restoration Program funded about \$700,000 for information and data needed for POD work.

Although the IEP Work Team has not completed analyzing possible causes of the Delta organisms decline, some of the information obtained during the last few years has been considered for modifying project operations to protect Delta

¹ IEP Work Team includes scientists from the following agencies: DFG, DWR, SWRCB, NOAA Fisheries, USACOE, USBR, USEPA, USFWS, and USGS.

² In Fiscal Year 2006-2007, the total IEP budget is \$22.5 million, including the POD work. The 2006-2007 IEP baseline budget is \$12.7 million, with an additional \$6.2 million directed towards water project research facilities research.

smelt. In October 2005, the Resources Agency released the Delta Smelt Action Plan that identified actions to benefit Delta smelt. In March 2007, the Resources Agency released the Pelagic Fish Action Plan that re-evaluates the actions in the 2005 Plan in light of the latest information available. The 2007 Plan also considers actions suggested by the Delta Smelt Working Group (DSWG), the State Water Contractors, environmental organizations, and others.

In July 2006, partly because of changed circumstances regarding Delta smelt and the emerging information from the POD Work Team, Reclamation, in coordination with DWR, reinitiated consultation of the U.S. Fish and Wildlife Service (USFWS) biological opinion on delta smelt. The reconsultation will take into consideration the latest information provided by the POD Work Team, as well as by others. The reconsultation is estimated to take about 18 months. During the interim while reconsultation is ongoing, DWR and Reclamation will continue to operate under the existing biological opinions and its adaptive management provisions but using an improved water operations decision-making process. Using this process, the agencies will take actions necessary to protect Delta Smelt and other at risk fish species based on evolving science, real time data, and newly developed modeling tools.

The improved decision-making and proposed actions can be implemented under the processes provided by existing regulatory requirements. The USFWS delta smelt biological opinion for Central Valley Project (CVP) and State Water Project (SWP) establish the DSWG and an adaptive management process. In addition, the SWRCB Decision 1641 includes conditions on DWR and Reclamation Delta water rights that are consistent with the process. The process followed for implementing the recent smelt actions involves review by a Data Assessment Team (DAT) of real-time information on hydrologic conditions in the Delta, fish monitoring data, and Project operations. The DAT provides information on a weekly basis, or as needed, to the DSWG and the Water Operations Management Team (WOMT). The WOMT reviews the information and recommendations it receives from both DAT and DSWG for purposes of improving protections to listed Delta species. These groups are using the best available information to provide Delta ecosystem protections. The federal and state agencies administering the endangered species acts involving the listed species, such as USFWS and California Department of Fish and Game, are part of this process and have final regulatory authority related to fish protection. The project agencies, DWR and Reclamation, decide on operational changes based on the WOMT recommendations and requirements under the biological opinions and permits for operating the SWP and CVP.

This January, SWP and CVP operations were modified for delta smelt protection following the decision making process described above. In December 2006 the DSWG recommended actions to the WOMT based on emerging information related to flow in Old River and Middle River and entrainment. In January 2007,

DWR and Reclamation modified the CVP and SWP operations to reduce the net upstream flows in Old River and Middle River to 4,000 cfs on a five-day average between January and February 15. The purpose of the action was to prevent entrainment of adult Delta smelt at the CVP and SWP southern Delta pumps. Only 36 adult delta smelt were detected at the facilities during this time, which is well below the level of concern and the incidental take value under the biological opinion.³

Water Project operation actions that may be implemented to protect young Delta smelt during the spring months (prior to the Vernalis Adaptive Management Plan period) include maintaining net downstream flow in Old and Middle River. Implementation of this action will depend on monitoring results of Delta smelt distribution and other environmental conditions. The DSWG will be using particle tracking model runs and real time data to determine whether to recommend the action. Another action that may be implemented this spring is modification to the temporary barrier program in the south Delta. This action calls for not installing the head of Old River barrier until June 1. Another action being evaluated is to maintain X2 west of Collinsville during May – December in wetter years. Details of these proposed actions are found in 2007 Pelagic Fish Action Plan.

Implementation of the Environmental Water Account (EWA) will continue in water year 2006-2007. The EWA is prepared to provide approximately 300 TAF of export reductions at key times to better protect fish, depending on need and hydrology. About 265 TAF (reduced by carriage water losses) of EWA water purchases are expected this year and EWA has the ability to carry over 100 TAF of Debt into next year if needed. In addition to the EWA assets, the federal fishery agencies have b(2) resources of 800 TAF for fishery actions upstream and within the Delta.

In addition, to these assets, the CALFED ROD established a Tier III of assets that can be called upon to avoid the jeopardy of ESA listed species. Before these assets can be used a scientific panel must first provide their recommendations to the fishery agencies. This scientific panel has been formed and is on call this year to provide their input if it is needed. If Tier III assets are

³ The Delta Smelt Risk Assessment Matrix in the biological opinion describes a level of concern in winter for adults based on a calculated ratio of salvage to the Mid-Water Trawl Recovery Index. The DSRAM level of concern this year is reached when 750 adults are salvaged. The incidental take statement in the opinion requires reconsultation with USFWS at a salvage level of 1900 smelt in January and 1700 smelt in February during below normal, dry or critical years; and at 3000 smelt in January and 2300 smelt in February in wet or above normal years. In March the level is 1300 in all year types. To date, the 2006-07 Water Year is classified as Below Normal. (The year type isn't "locked in" until the May 1 forecast comes out.)

determined to be needed to avoid jeopardy both DWR and USBR are prepared to take all reasonable steps to make these assets available.

In addition to updating the federal biological opinions under section 7 of the Endangered Species Act, DWR, USBR, their water contractors, other potentially regulated entities and many stakeholders are working toward development of a Bay Delta Conservation Plan (The BDCP). The BDCP is an unprecedented effort to develop a Conservation Plan for at risk fish species under the provisions of the State Natural Community Conservation Planning Act (NCCP) and the federal Habitat Conservation Planning Act (HCP). The initial planning for this effort is being funded by water and power interests in the Bay Delta Estuary. In October 2006, the key participants signed a Planning Agreement for the BDCP. A BDCP Steering Committee has been formed with representatives from the State Water Project, Central Valley Project, DWR, USBR, Mirant Delta Power, the State and Federal Fishery Agencies, and four environmental organizations. Both the State Farm Bureau and the Defenders of Wildlife recently joined the Steering Committee. The Steering Committee meets every two weeks to guide the development of this conservation Plan. Funds to the fishery agencies have been provided to help in the effort and a contractor has been retained to assist the Steering Committee. The goal is to develop a conceptual plan by the end of 2007 with details to be developed in the next year. A copy of the Planning Agreement and the notes of the Steering Committee meetings and additional information on the BDCP can be found at: <http://www.resources.ca.gov/bdcp/> .

With respect to long-term comprehensive planning of Delta issues, the Governor established in 2006 a Delta Vision Committee. The Committee is chaired by the Secretary of Resources, and consists of the Secretaries of Business, Transportation and Housing; Food and Agriculture; Cal-EPA; and the President of the California Public Utilities Commission. This February the Governor appointed an 8 member Delta Vision "Blue Ribbon" Task Force, who will recommend to the Committee future actions to achieve a sustainable Delta. In addition, a Delta Vision Stakeholder Coordinating Group has been formed to provide public participation. In the next two years, the Delta Vision process will review and analyze natural resources, infrastructure, land use, and governance issues in the Delta. By January 2008 the task force is to develop a Vision for the Delta and by December 31, 2008, develop a Strategic Plan to implement that Vision. The Governor then will submit a Delta Vision report to the Legislature with recommendations of actions developed from this process.

The SWRCB has requested information on the POD to consider whether it should update the current Bay-Delta Water Quality Control Plan. DWR believes the SWRCB should not propose changes to the WQCP until the POD investigations have been synthesized in a final report and the consultations of the biological opinions have concluded. In addition, the results of the Delta Vision process may influence proposals for changes to the WQCP. During the interim,

through existing regulatory programs, DWR and Reclamation, in coordination with the fishery actions, are taking actions to protect organisms in the Delta based on real-time monitoring of fish and hydrologic conditions. Therefore, instead of embarking on a process to modify the WQCP because of the issues related to the POD, DWR recommends that the SWRCB and its staff work with the various planning groups, such as the BDCP and Delta Vision, to provide information that will help develop strategies and actions to create a sustainable Delta.