

CVCWA

Central Valley Clean Water Association

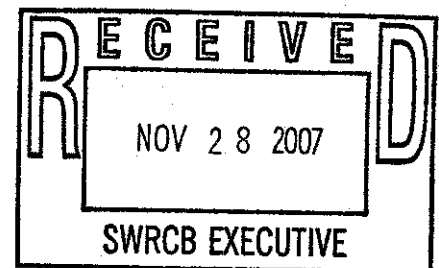
Representing Over Fifty Wastewater Agencies

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Sent via electronic mail to: commentletters@waterboards.ca.gov

November 28, 2007

Clerk to the Board
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100



Subject: 12/4/07 Board Meeting, Resolution specifying actions the Water Boards will take to protect beneficial uses of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary

The Central Valley Clean Water Association (CVCWA) hereby submits comments on the proposed resolution specifying actions the Water Boards will take to protect beneficial uses of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

CVCWA's member agencies own and operate municipal wastewater treatment facilities, providing service to most of the sewered population in the Central Valley. A primary goal of our member agencies is to provide reliable treatment of wastewater while protecting the beneficial uses of receiving waters. CVCWA member agencies operate under NPDES permits and waste discharge requirements that are developed and adopted in accordance with the requirements of the Clean Water Act and the Porter-Cologne Water Quality Control Act. These permits and requirements are established consistent with the water quality control plan (Basin Plan) for the Central Valley, the California Toxics Rule, the State Implementation Policy (SIP), the Bay-Delta plan and other statewide plans. The express purpose of the regulatory program that governs our members is to protect and maintain beneficial uses in the surface waters of the Central Valley, including the Sacramento-San Joaquin Delta.

CVCWA appreciates the urgency of the situation that exists in the Sacramento-San Joaquin Delta related to the pelagic organism decline and the need of the Water Boards to address potential water quality-based impacts in the Delta. CVCWA is supportive of the concept of establishing a well-funded regional monitoring program for the Delta to address water quality issues, similar to the program established in the San Francisco Bay area through the San Francisco Bay Institute (SFEI). CVCWA has significant concerns, however, regarding the time frame given for review of this important document and the approach being taken in many other

elements of the proposed resolution. We recommend that the State Board and Regional Boards delay adoption of this resolution pending a workshop where aspects of this resolution could be more fully discussed with stakeholders. CVCWA's concerns include, but are not limited to, the following:

1. Initiation of a public trust proceeding
2. Lack of specificity in the description of the process to develop a long-term strategy and work plan for addressing the comprehensive, consistent, and coordinated protection of beneficial uses, including the relationship of that effort to the Basin Planning process.
3. Lack of mention or description of the process to reach decisions regarding short-term or immediate actions to be taken by the Water Boards.
4. Lack of acknowledgement of longstanding, ongoing regulatory programs and requirements that provide a current level of protection of beneficial uses in the Delta.
5. Establishment of firm deadlines in the resolution that have not been properly considered
6. Elevation of issues in the resolution based on incomplete scientific investigations and unproven working hypotheses.
7. Absence of effectiveness monitoring as a component of the actions to be implemented.
8. Lack of mention or description of a process to ensure that research and testing performed by the University of California or others will be properly planned, performed and peer reviewed.

CVCWA's specific comments on the above areas are provided below:

Public Trust Proceeding

Resolved #6 states that "[t]he Water Boards will initiate a public trust proceeding to: (1) consider the protection of public trust resources and the balancing of the competing demands for water in and from the Bay-Delta; and (2) evaluate the reasonableness of the SWP's and CVP's method of diversion from the Delta." (Resolution at p. 8.) The Resolution, its findings and the staff's summary of the Resolution (i.e. "Buff Sheet") do not provide any further information regarding the Water Boards' collective intents or reasons for initiating a public trust proceeding. We can surmise from our understanding of the public trust doctrine that the State Water Board intends to reevaluate or reexamine all previous water right allocation decisions to determine if water appropriations are harming interests protected by the public trust. (See *National Audubon Society v. Superior Court of Alpine County* (1983) 33 Cal. 3d 419, 447. "Once the state has approved an appropriation, the public trust imposes a duty of continuing supervision over the taking and use of the appropriated water. In exercising its sovereign power to allocate water resources in the public interest, the state is not confined by past allocation decisions which may be incorrect in light of current knowledge or inconsistent with current needs.")

If that is the State Water Board's intent, we are uncertain as to why the Resolution refers to the "Water Boards", as water right allocation authority vests solely with the State Water Board and not the Regional Water Boards. If the Water Boards intend to expand the public trust doctrine to include a review of activities unrelated to water allocations (e.g. NPDES permits, WDRs, waivers from waste discharge requirements, etc.), the Water Boards should clearly indicate this intent and provide the authority to do so.

Regardless, CVCWA is opposed to the stated intent to initiate a public trust proceeding. Such a proceeding would most likely be a time-consuming and resource intensive effort that yields little benefit for actually improving water quality and protecting the Delta's beneficial uses.

Process to develop a long-term strategy and work plan

The resolution should clearly articulate that any process to develop a long-term strategy and work plan to coordinate and synthesize the multiple ongoing research and management activities in the Delta will directly involve affected Central Valley stakeholders, such as CVCWA, agricultural interests, wetland managers, municipal stormwater agencies and others. It should be noted that, to our knowledge, none of these parties have participated to date in the development of the proposed resolution.

Process to reach decisions regarding short-term or immediate actions

The resolution should describe the need for and the process to be used in reaching decisions regarding short-term or immediate management decisions affecting regulated entities in the Central Valley.

Failure to acknowledge existence or impact of ongoing water quality regulatory programs

The findings section of the resolution should be modified to describe and explain the regulatory plans, policies and requirements that are currently in place, and the existing benefits of that regulatory program. The resolution should also describe the relative contributions made by various sources and the impact of water diversions in comparison to these sources (refer to the attached Table 6.1 excerpted from the draft Delta mercury TMDL dated June 2006).

Establishment of Deadlines in the resolution

Examples of deadlines that appear to be established inappropriately in the resolution without proper consideration of factors impacting the ability to achieve the deadlines are the Central Valley Basin Plan amendment for a drinking water policy (2009) (Resolved # 15) and the adoption of the Phase II sediment quality objectives for the Delta (2010) (Resolved #16).

Inclusion of Issues based on incomplete science

One example is the issue of the inhibition of primary productivity by ammonia (Resolved #9), which, to date, is based on incomplete science and information regarding the occurrence of the alleged effect, food chain implications, and linkage to population level impacts on fish species of concern. The implication in the resolution that this issue may lead to regulatory controls in the short-term is inappropriate and should be eliminated.

Another example is blue-green algae (Resolved #10), where essential information is currently incomplete. Investigation of this issue must include an evaluation of the presence and amount of blue-green algae-produced toxin in Bay-Delta waterways, the effect of ambient toxin concentrations on beneficial uses, the drivers/controls for blue-green algae production, and the effectiveness of management alternatives. Again, the implication that short-term regulatory controls for this issue may be appropriate should be eliminated.

Absence of Effectiveness Monitoring and Evaluation

The resolution should be modified to include a statement that effectiveness monitoring programs will be included in the development and implementation of the programs to be included in the long-term and short-term work plan.

Absence of process to ensure proper planning, performance and review of research and testing

Given the significance of the outcomes of research and testing efforts by the University of California and others to address Delta issues, it is vital that procedures be established to ensure that studies are properly planned, performed and peer reviewed. Studies to be used in regulatory decision making should be held to the established standards of quality control that are used by USEPA and others in the development of water quality objectives and ambient water quality criteria.

While CVCWA acknowledges the importance of many of the issues put forth in the proposed resolution, we believe an effort of this magnitude must be carried out in a well-reasoned, scientifically sound, and unified manner if it is going to succeed in identifying, understanding, and resolving the causes of the recent pelagic organism decline (POD) and other significant Bay-Delta issues. CVCWA is an important stakeholder in these issues and requests to be included at the steering committee level in the development of the strategy and work plan for implementation of coordinated short- and long-term activities in the Bay-Delta.

Thank you for the opportunity to make these comments. We will also be providing oral testimony at the hearing scheduled for December 4, 2007, which may elaborate or expand on the above. If you have any questions regarding our letter, please contact us at (530) 268-1338.

Sincerely,



Debbie Webster
Executive Officer

c: Pamela Creedon, Central Valley RWQCB (via electronic mail)
Bruce H. Wolfe, San Francisco Bay RWQCB (via electronic mail)
Michele Pla, BACWA (via electronic mail)

Table 6.1: Average Annual Water Volumes for Delta Inputs and Losses

Inputs & Exports	WY2000-2003		WY1984-2003	
	Water Volume (M acre-feet/yr)	% All Water	Water Volume (M acre-feet/yr)	% All Water
Tributary Sources (% of All Inputs)				
Sacramento River	15.1	78%	16.1	69%
Yolo Bypass	1	5.2%	2.7	11%
San Joaquin River	1.8	9.3%	3	13%
Mokelumne-Cosumnes River	0.48	2.5%	0.7	3.0%
Calaveras River	0.14	0.72%	0.15	0.64%
Morrison Creek	0.064	0.33%	0.067	0.29%
French Camp Slough	0.063	0.32%	0.066	0.28%
Ulati Creek	0.030	0.15%	0.031	0.13%
Bear/Mosher Creeks	0.028	0.14%	0.029	0.12%
Marsh Creek (a)	0.006	0.03%	0.006	0.03%
Other Small Drainages to Delta (b)	0.094	0.48%	0.097	0.41%
Sum of Tributary Inputs	18.8	96.9%	22.9	97.4%
Within-Delta Sources (% of All Inputs)				
Wastewater (Municipal & Industrial) (a)	0.25	1.3%	0.25	1.1%
Atmospheric (Direct)	0.093	0.48%	0.097	0.41%
Atmospheric (Indirect)	0.15	0.77%	0.16	0.68%
Urban	0.064	0.33%	0.066	0.28%
Sum of Within-Delta Inputs	0.56	2.9%	0.57	2.4%
Exports (% of All Exports)				
Outflows to San Francisco Bay [X2]	12	63%	17	73%
State Water Project	3.2	17%	2.6	11%
Delta Mendota Canal	2.5	13%	2.4	10%
Agricultural Diversions (a)	0.99	5.2%	0.99	4.2%
Evaporation	0.30	1.6%	0.3	1.3%
Dredging (a)	0.00024	0.001%	0.00024	0.001%
Sum of Inputs	19.4 M acre-feet		23.5 M acre-feet	
Sum of Exports	19.1 M acre-feet		23.3 M acre-feet	
input - Export	0.3 M acre-feet		0.2 M acre-feet	
Exports / Inputs	98%		99%	

(a) Only WY2001-2003 flow data were available for Marsh Creek. Wastewater volume is based on 2005 discharger information. Agricultural diversion volume is based on WY1999. The water volume removed by dredging is a 10-year average. The same water volumes for these inputs and exports were used in both water budget periods.

(b) "Other Small Drainages to Delta" include the following areas shown on Figure 6.1, for which total mercury and TSS concentration data are not available: Dixon, Upper Lindsay/Cache Slough, Manteca-Escalon, Bethany Reservoir, Antioch, and Montezuma Hills areas.