

# Memorandum

Date: March 19, 2009

To: Ms. Ann Short  
State Water Resources Control Board  
Post Office Box 2000  
Sacramento, California 95812-2000

From: Department of Water Resources

Subject: Scoping Comments in Response to Notice of Preparation for Environmental Documentation for the Update and Implementation of the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary: Southern Delta Salinity and San Joaquin River Flows

The Department of Water Resources (DWR) appreciates the opportunity to provide scoping comments for the above-referenced Notice of Preparation (NOP). The proposed project includes reviewing and updating the water quality objectives and the program of implementation in the Water Quality Control Plan for the San Francisco/Sacramento-San Joaquin Delta Estuary (Bay-Delta) (Bay-Delta Plan), and potentially changing water rights to be consistent with the program of implementation. The environmental documentation will identify and evaluate the significant environmental impacts associated with potential changes to the Bay-Delta Plan and potential changes to water rights and other measures implementing the Plan. At this time, the focus will be on southern Delta salinity and San Joaquin River flow objectives and their implementation.

DWR's mission is to manage the water resources of California, in cooperation with other agencies, to benefit the State's people, and to protect, restore, and enhance the natural and human environments. To accomplish this mission, DWR's major goals include developing and assessing strategies for managing the State's water resources, operating and maintaining the State Water Project to achieve maximum flexibility, safety and reliability, and protecting and improving the water resources and dependent ecosystems of statewide significance, including the Bay-Delta. As such, DWR has a significant interest in any potential changes to the Bay-Delta Plan, its program of implementation, and water rights.

In general, DWR believes that the time is ripe to review and potentially modify southern Delta salinity objectives and/or how the objectives are implemented. To accomplish implementation in the near future, DWR supports a staged approach as identified in the Overview of the California Environmental Quality Act and Basin Planning Processes provided with the NOP. A staged approach that provides for continued participation in Bay-Delta related processes, such as the Bay-Delta Conservation Plan, and addresses issues outside the purview of those processes will: 1) allow for the timely completion of stages of the overall review and update of the Bay-Delta Plan, and 2) will contribute to a comprehensive approach for improving water quality and the sustainable use of water from the Delta.

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Below are DWR's scoping comments that will hopefully assist the State Water Resources Control Board's (State Water Board) preparation of the necessary environmental documentation.

## **Southern Delta Salinity**

### **1. Project Definition**

As appropriately noted in the NOP, reviewing and updating the water quality objectives and the program of implementation in the Bay-Delta Plan, and changing water rights is a significant undertaking that is broad in scope. In recognition of the broad scope of the effort, the State Water Board states that it intends to stage the environmental review of the Bay-Delta Plan and anticipates preparing substitute environmental documentation to support any changes to the Bay-Delta Plan and one or more Environmental Impact Reports (EIR) to support any changes to the water rights to implement any changes to the Plan. The State Water Board also states that, in the alternative, it may choose to prepare one EIR to inform both water quality planning and water rights implementation, but, at this time, has not decided on what approach it is going to take.

As stated above, DWR believes that it is an appropriate time to review and potentially modify the southern Delta salinity objectives and their program of implementation. New information, changes in hydrology, and new regulatory constraints has provided good cause to review the salinity objectives. Furthermore, the southern Delta salinity objectives are sufficiently outside the purview of the other Bay-Delta planning processes so that any modification to the salinity objectives or their implementation will not likely conflict with the other processes. As such, DWR recommends that, at this time, the State Water Board narrow its scope of review to focus on southern Delta salinity and prepare an EIR for the single purpose of proceeding with review and potential modifications to the southern Delta salinity objectives and water rights implementing the objectives.

### **2. Environmental Baseline/Settings**

The environmental baseline/setting conditions must be based on and take into account the existing conditions and problems associated with diverting water from the Bay-Delta and the uncertainties these problems create for the Californians who rely on the State Water Project's and Central Valley Project's Delta exports for water supply. Delta exports have been and will be unreliable due to environmental and regulatory constraints, and therefore must be considered in the context of any proposed modification to the southern Delta salinity objectives or their implementation. By considering the environmental and regulatory constraints placed on the Projects, the environmental documentation can then adequately forecast the reasonableness of potential objectives and potential environmental impacts related to implementing these objectives, and provide for appropriate, feasible mitigation measures.

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### 3. No Project Alternative

CEQA requires that the no project alternative address "existing conditions" as well as "what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure[.]" (14 Cal. Code Regs. §15126(e)(2).) That requirement compels the State Water Board in any new EIR to fully study the future consequences of implementation of the current southern Delta salinity objectives and program of implementation, such as effects on water supply and fish.

### 4. Project Alternatives

For the past three decades, the State Water Board, DWR, U.S. Bureau of Reclamation, and South Delta Water Agency has been involved in efforts to improve water quality conditions in the southern Delta. The efforts have focused on a physical solution, the installation of permanent gates across certain channels in the southern Delta, to implement the southern Delta salinity objectives which have remained unchanged since the 1978 Bay-Delta Plan. The information obtained to date suggests that permanent operable gates would improve circulation, water levels and water quality for agricultural uses. In essence, the operable gates have been the preferred solution and there has been little emphasis on evaluating other factors that could be considered for developing revised reasonable objectives for protecting agricultural uses or their implementation.

DWR recommends that the State Water Board consider other factors, including: 1) variations in precipitation and hydrology each year, such as recognizing different water-year types, 2) the variation in water quality needs of crops during different growth stages, 3) the relationship between leaching, rainfall, applied water quality, and crop production in the southern Delta, 4) the water quality on the San Joaquin River upstream of the southern Delta, 5) the influence and characterization of discharges into the San Joaquin River, 6) the effects of local dischargers into southern Delta channels, 7) illegal water diversions affecting the southern Delta salinity, and flows when developing revised salinity objectives and their implementation. By considering the above factors, and others that may arise in the course of the current review, the State Water Board will be better able to develop and examine a range of reasonable alternatives that would feasibly obtain most of the proposed objectives, but avoid or substantially lessen any significant adverse environmental effects of the proposed project (i.e., proposal to consider updating the southern Delta agricultural water quality objectives in the Water Quality Control Plan). (14 Cal. Code Regs. §15126.6.)

### **San Joaquin River Flow Objectives**

At this time, DWR's scoping comments regarding the San Joaquin River flow objectives are brief because DWR believes the State Water Board's review of these objectives should follow other actions that may affect this review.

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DWR and the U. S. Bureau of Reclamation are in a federal Endangered Species Act Section 7 consultation with the National Marine Fisheries Service (NMFS) to comply with the federal Endangered Species Act. DWR believes this process needs to be completed before DWR should make comments or recommendations on whether elements of the San Joaquin River flow requirements should be amended, added, or the entire program of implementation be revised.

While recognizing the immediate interrelationship between San Joaquin River flows and southern Delta salinity, DWR believes more time is needed to determine the best course of action for establishing San Joaquin River flow objectives that help protect all the relevant beneficial uses. Specifically, the expected result of the Section 7 consultation will be a Biological Opinion (BO) that prescribes operational requirements designed to protect several federally listed salmonid species and green sturgeon. The NMFS BO is expected in June 2009.

In addition, the need for San Joaquin River flows entering the Delta may change depending on the outcomes of the Bay-Delta Conservation Plan (BDCP). This summer a draft BDCP is scheduled to be available for public review. Because two important documents may be available this summer, DWR recommends that the State Water Board postpone beginning any substantive environmental review of the San Joaquin River flow objectives until, at least, the NMFS BO is issued this summer.

DWR appreciates the opportunity to comment on this draft and looks forward to working with the State Board as the environmental review process moves forward. If you or your staff have questions on these comments or would like additional information please contact me at (916) 653-8826 or [esoderlu@water.ca.gov](mailto:esoderlu@water.ca.gov).



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