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Subject: Blog post -- True California Water Leadership: Facing Difficult Choices [Part 1]
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Attachments: [Statement of Service 01-13-19.pdf](#)

Please accept this blog post on the historic context of the Board's recent actions on the Phase 1 Bay-Delta Water Quality Control Plan Update as a policy statement.

Deirdre Des Jardins
California Water Research

True California Water Leadership: Facing Difficult Choices [Part 1]

<https://cah2oresearch.com/2019/01/08/true-california-water-leadership-facing-difficult-choices-part-1/>

As Governor Jerry Brown leaves office, there has been a flurry of press releases and media coverage about the Brown administration's leadership on California water issues. But true leadership in California water is not cheerleading for new water diversion projects. True leadership in California water involves addressing major ongoing conflicts between beneficial uses and the hard choices that need to be made in an age of increasing demands and finite resources. In this context, the true California leaders in the Brown administration have not been Governor Brown, Director Nemeth, or Secretary Laird, but the chairs of the State Water Resources Control Board and Delta Stewardship Council, two regulatory agencies which recently faced these conflicts and took difficult and politically unpopular regulatory actions that needed to be taken.

Delta Reform Act of 2009

The historic context for the recent actions by the State Water Resources Control Board and the Delta Stewardship Council is the Delta Reform Act of 2009. The Delta Reform Act mandated that the State Water Resources Control Board set "appropriate Delta flow criteria" that is protective of public trust resources, and that the criteria should be included in any order approving a change in Point of Diversion for the State Water Project. The floor analysis for the Delta Reform Act stated,

This bill's "flow criteria" reflect a landmark concept of the state exercising its public trust authority to ask – FIRST – what the Delta needs, before completing plans for fundamental change to the nature of the Delta...

The requirement for the State Water Resources Control Board to set comprehensive instream flow criteria had been identified as a key issue in a 1978 report by the Governor's Commission to Review Water Rights Law. The Commission was created by Governor Jerry Brown during his first term, in the height of the 1976-77 drought. The Commission recommended:

That comprehensive instream flow standards be set on a stream-by stream basis by the State Water Resources Control Board and that the Board comply with these standards in its administrative and adjudicatory decisionmaking; that instream flow standards be expressed in terms of certain quantities or flows of water which are required to be present at certain points along the stream at certain times of the year to protect fishery, wildlife, recreational, aesthetic, scenic and other beneficial instream uses;

It took another three decades for state legislation to be passed that would address the need for comprehensive minimum instream flow standards. The Delta Reform Act of 2009 not only required that the State Water Resources Control Board set "appropriate Delta flow criteria," it also required that the State Water Resources Control Board send a report to the legislature giving costs for preparing instream flow standards for rivers and streams in the rest of the state.

Unfortunately, the historic mandate for the Water Board to set new instream flow standards was met with stiff resistance from water diverters in the state, including the California Department of Water Resources. The Department of Water Resources proposed that the Board determine no new Delta flow criteria for inclusion in DWR's permits when approving the WaterFix Change in Point of Diversion. When the Water Board nevertheless persisted in determining new Delta flow criteria, the Department of Water Resources proposed to take over the writing of the Substitute Environmental Document for the Board's Bay-Delta Water Quality Control Plan Update. The action was clearly backed by Governor Brown.

An Unconstitutional Power Grab

In a difficult and politically unpopular decision, the Water Board rejected the power grab by the Department of Water Resources and Governor Brown and voted instead to approve the draft Water Quality plan prepared by the Water Board's staff. This act was historic, and its significance should be recognized. The Water Board's decision was the only one that respected the state constitution and the mandate of the legislature in 2009. The Water Board exercises the adjudicatory and regulatory powers of the state over water resources, and should not delegate those powers. The Delta Reform Act also mandated that the Water Board, not the Department of Water Resources, determine appropriate Delta flow criteria.

An Inconvenient Truth

It is an inconvenient truth that the best available science points to the need for increased instream flows in the Sacramento-San Joaquin Delta to protect fish and other public trust resources. The Scientific Basis Report for the Water Board's Bay-Delta Water Quality Plan Update clearly documented this science, and was independently peer-reviewed. It would have been politically expedient for the Water Board chair and members to disregard their own

Scientific Basis report and approve the Department of Water Resources' proposal on 15 year voluntary agreements. But the voluntary agreements were so weak that the environmental groups that had been participating in the settlement negotiations sent a letter to the Water Board stating that the agreements were insufficient to meet legal requirements or protect fish and wildlife.

It has been recognized for decades that there are no easy solutions in the Delta. Balancing public trust resources with increasing demands requires difficult and politically unpopular actions. Facing these choices, rather than kicking the can down the road, is an act of true leadership in California water.

STATEMENT OF SERVICE

CALIFORNIA WATERFIX PETITION HEARING Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)

I hereby certify that on January 13, 2019 I submitted to the State Water Resources Control Board and caused a true and correct copy of the following document(s):

Email “Blog post -- True California Water Leadership: Facing Difficult Choices [Part 1]”

to be served by Electronic Mail (email) upon the parties listed in the Current Service List for the California Water Fix Petition Hearing, dated October 30, 2018, posted by the State Water Resources Control Board at http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml

Note: In the event that any emails to any parties on the Current Service List are undeliverable, you must attempt to effectuate service using another method of service, if necessary, and submit another statement of service that describes any changes to the date and method of service for those parties.

I certify that the foregoing is true and correct and that this document was executed on January 13, 2019.

Signature:



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