



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

TRANSMITTED ELECTRONICALLY

March 2, 2007

Ms. Gita Kapahi, Chief
Bay Delta/Special Projects Unit
State Water Resources Control Board
P.O. Box 2000
Sacramento, California 95812-2000

Dear Ms. Kapahi:

This letter is in response to the State Water Resources Control Board's (Board's) request for written submissions in advance of the March 22, 2007 workshop on the pelagic organism decline in the San Francisco Bay/Sacramento-San Joaquin Delta estuary.

EPA has been a participating member of the Interagency Ecological Program (IEP) for over ten years. In addition to contributing to the IEP, EPA has provided scientific assistance for many of the other science and resource management efforts underway in the Delta, including participation in the Pelagic Organism Decline (POD) Management Team, the Delta Smelt Working Group, and the CALFED Delta Regional Ecosystem Restoration Implementation Plan (DRERIP).

We thank the Board for sponsoring this workshop on the pelagic organism decline. The troubling status of many of the pelagic organisms raises serious questions about whether the current water management system in the Delta is sustainable.

EPA has three brief comments concerning the Board's review of the POD issues.

First, we reiterate our strong support for the POD science effort being conducted by the IEP. We continue to believe that this effort will eventually provide the scientific analysis necessary to make informed decisions about any possible regulatory responses to the POD. This POD science effort is unprecedented both in its scope and its integrity. The cooperation between the POD Management Committee and the CALFED Science Program is also commendable. The ongoing scientific peer review provided by the CALFED Science Program has been critical to refining the analysis and maintaining a high degree of scientific rigor in the POD process.

As you know, the state and federal project managers and wildlife agencies have been cooperating in the development of the POD Action Plan requested by the state legislature. That POD Action Plan, which will be submitted by the Resources Agency to the legislature in the near future, summarizes potential management responses to the scientific analyses developed in the POD Management Team process. Although not literally open to the public, the POD Action Plan process has made most of its background documentation available to the public. See, for example, the notes

of the Delta Smelt Working Group (http://www.fws.gov/sacramento/es/delta_smelt.htm.)

Substantial progress has been made in identifying potential management actions, but the POD science effort has not reached closure on either the sources of the pelagic organism decline or the best management options to address the decline. EPA believes it would be appropriate for the Board to allow the POD process to move further towards completion before the Board takes any final regulatory action. The POD Management Team is generating a peer-reviewed synthesis report to be released this fall. EPA proposes that the Board revisit this issue at that time. By doing so, the Board should have before it both the best scientific review available and, in the POD Action Plan, the best thinking of the resource management agencies about alternatives to management scenarios for addressing the POD issues in the Delta.

Our second comment is cautionary. Given the dominant role of endangered species in the regulatory regime, the development of the POD Action Plan has primarily focused on protective measures for listed species. The Board's obligations under Porter Cologne, however, are broader, encompassing protection of the whole range of designated beneficial uses in the Delta. The Board explicitly recognized this in its water quality control plan when it adopted the Estuarine Habitat beneficial use. EPA urges the Board to continue taking an ecosystem-wide approach to its evaluation of Delta POD issues, and to consider the impact of management options on all of the uses - listed species, unlisted species and habitats, and consumptive beneficial uses of Delta waters.

Finally, we note a continuing tension in the development of the POD Action Plan and other proposals for responses to the environmental declines in the Delta. The tension is based on certain agreements made between the Project Agencies (the U.S. Bureau of Reclamation and the Department of Water Resources) and Management Agencies (California Department of Fish and Game, U.S. Fish and Wildlife Service, and the National Marine Fisheries Service) at the time of the 2000 CALFED ROD. These agreements created the innovative Environmental Water Account (EWA), and provided for certain regulatory assurances under the Endangered Species Acts. EPA is a strong supporter of both the EWA approach and the CALFED ROD. Nevertheless, it is quite clear that those agreements were generated pursuant to the state and federal Endangered Species Acts, and were not a limitation on the Board's authority under Porter Cologne. In particular, the limitation on water supply impacts imposed on the Management Agencies under the EWA operating principles agreements does not apply to the Board. The Board can, and must, exercise its own authorities in determining whether additional restrictions on project operations are reasonable and appropriate in developing a response to the serious environmental problems in the Delta.

Thank you again for your leadership on this important issue. We look forward to working with the Board as it moves forward in the future with its consideration of measures to protect the beneficial uses of Delta waters. If you or your staff have any questions about our comments, please contact me at (415)972-3945.

Very truly yours,



Karen Schwinn

Associate Director, Water Division

United States Environmental Protection Agency