



State Water Resources Control Board



Linda S. Adams
Secretary for
Environmental Protection

Division of Water Rights
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Arnold Schwarzenegger
Governor

August 29, 2008

To: Enclosed Mailing List

REQUEST FOR WRITTEN INPUT ON FACTUAL ISSUES REGARDING THE BAY-DELTA

PURPOSE OF THIS REQUEST

The purpose of this letter is to request recommendations concerning the factual issues that the State Water Resources Control Board (State Water Board) should consider during upcoming evidentiary hearings.

The State Water Board is seeking written public input on the issues identified below, suggestions on any additional factual issues concerning the Bay-Delta's ecology that should be considered by the State Water Board during the information gathering process, and their relative priority. Specifically, the State Water Board is seeking information concerning what analyses have been conducted related to critical factual issues concerning the Bay-Delta's ecology and what those analyses show. At this time, the State Water Board is not requesting expert opinions. Rather instead, the Board is seeking to inventory and summarize the findings of well-documented data-based scientific analyses. Following receipt of this information, the State Water Board will provide public notice of the issues that will be the subject of the evidentiary hearing, the requirements for participation, and the order of those proceedings. The State Water Board will issue the formal notice with more information in advance of the evidentiary hearing.

BACKGROUND

On July 16, 2008, the State Water Board adopted a Strategic Workplan for the Bay-Delta (Workplan) that includes nine water quality and water rights related elements that the State Water Board, Central Valley Regional Water Quality Control Board, and San Francisco Bay Regional Water Quality Control Board (Water Boards) will pursue over the next five years. One of these elements is a comprehensive review of the Bay-Delta Plan, water rights and other requirements to protect fish and wildlife beneficial uses and the public trust. This element includes fact-finding proceedings, or evidentiary hearings, by the State Water Board, with testimony and cross examination under oath on critical factual issues concerning the Bay-Delta's ecology and the impacts of water pollution and diversions on that ecology. The Workplan identifies the following six issues that, at a minimum, will be discussed during the fact-finding hearings:

- Sources of salt to the Bay-Delta Estuary
- Biological impacts of constant or variability salinity on fisheries
- Biological benefits (if any) of fish screens in the legally defined Delta
- Biological impacts of ammonia discharges
- Biological impacts of toxic substances (other than ammonia)
- Biological impacts of net outflow objectives

California Environmental Protection Agency

The purpose of the evidentiary hearings is to receive evidence on these critical factual issues and render findings of fact, which may include statements that the science is as yet inconclusive. As appropriate, this information will then be used to inform the Water Board's basin planning and environmental review activities and other Water Board processes. For example, findings on ammonia toxicity may help to determine whether an ammonia receiving water objective should be part of the scope of potential revisions to the Bay-Delta Plan, Central Valley Basin Plan, San Francisco Bay Basin Plan, or if a statewide policy should be established. Findings on fish screens could establish what is and is not known on this topic, and thereby help guide subsequent environmental review and other processes, including changes to the Program of Implementation for the Bay-Delta Plan. The findings will also be provided to the Bay-Delta Conservation Plan (BDCP) process, Delta Vision, and other related processes to encourage and support the use of sound science. For more information concerning the relationship between this process and other Board related processes please see the enclosed "Description of Upcoming Related Bay-Delta Water Quality Control Planning Processes..."

HOW TO PROVIDE INPUT

Written input should be limited to issues relevant to the Bay-Delta ecosystem and associated water quality and flow issues, including the impacts of water pollution and diversions on the Bay-Delta's ecology. In particular, the State Water Board is seeking suggestions for issues not already identified in the Strategic Workplan (see list above). Submittals should include a brief explanation of reasons for recommending an issue, but should not include detailed factual information or data. The Board is also interested in receiving input on which issues should be given the highest priority in setting the hearing schedule. Participants are encouraged to keep their submittals under ten pages. Information submitted in response to this solicitation will be used for planning for the evidentiary hearing, and will not be construed as an intent to appear at the hearing.

Interested persons should provide their written materials within 30 days from the date of this letter. Information received after this date may not be considered. Parties who wish to provide written comments should provide one electronic copy, one original hard copy, and 15 paper copies of their comments. Any documents submitted electronically must be in Adobe™ Portable Document Format (PDF). Electronic submittals of documents less than 15 megabytes in total size (incoming mail server attachment limitation) should be sent via electronic mail to commentletters@waterboards.ca.gov with a subject of "Bay-Delta Fact Finding Issues". Electronic submittals to the State Water Board of documents greater than 15 megabytes in total size should be sent by regular mail in PDF format on CD.

All hard copies should be sent to:

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

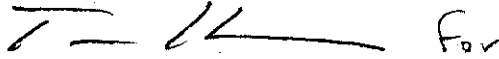
Written comments may also be faxed to Ms. Townsend at (916) 341-5620, or delivered by hand to the above address.

Couriers delivering comments must check in with lobby security and have them contact the Ms. Townsend at (916) 341-5600. Any comments sent by electronic mail or fax must be followed by a mailed hard copy with an original signature.

ADDITIONAL INFORMATION

Questions concerning this request may be directed to Diane Riddle, Staff Environmental Scientist, at (916) 341-5297, or Erin Mahaney, Senior Staff Counsel, at (916) 341-5187.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Grober". The signature is written in a cursive style with a horizontal line extending to the right.

Leslie F. Grober, Manager
Hearings and Special Programs Section

Enclosures: Bay-Delta Mailing List

DESCRIPTION OF UPCOMING RELATED BAY-DELTA WATER QUALITY CONTROL PLANNING PROCESSES INCLUDED IN THE WATER BOARDS' STRATEGIC WORKPLAN FOR THE BAY-DELTA BACKGROUND

On July 16, 2008, the State Water Resources Control Board (State Water Board) adopted the Strategic Workplan for Activities in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta) (Workplan). Although the Workplan contains many water quality-related elements, two of these elements are specifically related to water quality control planning efforts that will commence in the next three months. This document describes these two elements and the three related, but distinct, proceedings concerning those elements:

- 1) Element: A review of the southern Delta salinity and San Joaquin River flow objectives contained in the Water Quality Control Plan for the Bay-Delta (2006 Bay-Delta Plan). This salinity objective review will be limited to the issue of the quality of water necessary to protect water supply for agricultural beneficial use.
 - a. Proceeding: Workshop on September 17, 2008
- 2) Element: A comprehensive review of the 2006 Bay-Delta Plan and its implementation through water right requirements, and other requirements to protect fish and wildlife beneficial uses and the public trust (comprehensive Bay-Delta Plan review).
 - a. Proceeding: An October 2008 scoping meeting to obtain input on possible revisions of the Bay-Delta Plan
 - b. Proceeding: An evidentiary hearing beginning in November of 2008 on a number of critical factual issues concerning the Delta's ecology

SOUTHERN DELTA SALINITY AND SAN JOAQUIN RIVER FLOW OBJECTIVES REVIEW

As described in the Workplan, the State Water Board, in the 2006 Bay-Delta Plan, committed to conduct a review of the southern Delta salinity and San Joaquin River flow objectives and the implementation of those objectives through water rights and other measures. This salinity objective review will be limited to the issue of the quality of water necessary to protect water supply for agricultural beneficial use. The Workplan reiterates the State Water Board's commitment to this review and provides a timeline for completing that work. The State Water Board will hold workshops to discuss the San Joaquin River flow objectives and southern Delta salinity, on September 17, 2008, continuing on November 5, 2008. Following those workshops, the State Water Board will complete the activities described in the Workplan to consider possible plan amendments and changes to water rights or other measures implementing those objectives.

COMPREHENSIVE BAY-DELTA PLAN REVIEW

The Workplan requires a comprehensive review of the Bay-Delta Plan, and water rights and other measures implementing that plan to establish interim and long-term water quality objectives and implementation measures to protect fish and wildlife beneficial uses of water and the public trust (other than the southern Delta salinity and San Joaquin River flow objectives as described above). The State Water Board's review of the southern Delta salinity and San Joaquin River flow objectives is on a separate path from that of the comprehensive Bay-Delta Plan review because of the State Water Board's prior commitment to undertake these proceedings. These reviews may, however, merge later in the process as appropriate. Similarly, the review of the Suisun Marsh water quality objectives included in the Workplan may also merge with the comprehensive review of the Bay-Delta Plan as appropriate.

The Workplan anticipates that the Bay-Delta Conservation Plan (BDCP) environmental review may include some of the analyses needed to inform the comprehensive Bay-Delta Plan review.¹ In addition, the Workplan includes information-gathering activities by the State Water Board that may affect the scope of the Bay-Delta Plan revision or provide summaries of science to date at the commencement of the environmental review process:

- An October 2008 scoping meeting on periodic review of the Bay-Delta Plan; and
- A series of evidentiary hearings on a number of critical factual issues concerning the Delta's ecology²

Periodic Review and Potential Changes to the Bay-Delta Plan and its Implementation

The purpose of the periodic review scoping meeting is to receive comments from agencies and members of the public regarding elements of the 2006 Bay-Delta Plan that may need amendment and potential new elements that should be considered. Under its authority to protect the beneficial uses of water, the State Water Board adopted the 2006 Bay-Delta Plan on December 13, 2006. Water Code section 13240 requires that water quality control plans be periodically reviewed. The federal Clean Water Act section 303(c) (33 U.S.C. § 1313(c)) requires a triennial review of state water quality "standards," as defined in the Act. The October 2008 workshop will formally begin the review process. The periodic review will conclude when the State Water Board determines which issues it should consider for potential changes to the Bay-Delta Plan. After completion of the periodic review process, State Water Board staff will prepare any needed plan amendments or revise the entire plan. The State Water Board may conduct additional technical information gathering proceedings to inform that amendment process.

Evidentiary Hearings

Along with the periodic review and basin planning processes described above, the State Water Board will conduct evidentiary hearings with testimony and cross examination under oath on critical factual issues concerning the Delta. Specifically, the State Water Board is seeking information concerning what analyses have been conducted related to critical factual issues concerning the Bay-Delta's ecology and what those analyses show. At this time, the State Water Board is not requesting expert opinions. Rather instead, the Board is seeking to inventory and summarize the findings of well-documented data-based scientific analyses. The purpose of the evidentiary hearings is to receive evidence on the facts and identify uncertainties regarding these critical issues. The State Water Board will make factual findings on these issues as appropriate to guide the State Water Board's basin planning and environmental review activities described above, and other Water Board processes. For example, findings on ammonia toxicity may help to determine whether an ammonia receiving water objective should be part of the scope of potential revisions to the Bay-Delta Plan, Central Valley Basin Plan, San Francisco Bay Basin Plan, or if a statewide policy should be established. Findings on fish screens could establish what is and is not known on this topic, and thereby help guide subsequent environmental review and other processes, including changes to the Program of Implementation for the Bay-Delta Plan. The factual findings will also be provided to BDCP, Delta Vision, and other related processes. As a first step, in August 2008 the State Water Board is soliciting written public input regarding the critical factual issues that parties believe should be considered by the State Water Board in the evidentiary hearings.

¹ Where the State Water Board relies on analyses prepared by other agencies, the Board will conduct a public and independent proceeding to consider whether the analyses and the use of the analyses are appropriate for the Board's proceedings.

² These issues will include, at a minimum: sources of salt to the Bay-Delta Estuary, biological impacts of constant or variable salinity on fisheries, biological benefits (if any) of fish screens in the legally defined Delta, biological impacts of ammonia discharges, biological impacts of toxic substances (other than ammonia), and biological impacts of net outflow objectives.

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