

## **SOUTH DELTA WATER AGENCY**

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March 10, 2008

**Via E-mail**

State Water Resources Control Board  
Diane Riddle, Senior Environmental Scientist  
Hearings and Special Programs Section  
Division of Water Rights  
P.O. Box 2000  
Sacramento, CA 95812

Re: Bay-Delta Strategic Workplan

Dear Ms. Riddle:

On behalf of the South Delta Water Agency and the Central Delta Water Agency, I submit the following comments regarding the SWRCB's development of a Strategic Workplan for the San Francisco Bay/Sacramento-San Joaquin Delta.

The Board's primary concern relates to the decline of pelagic organisms. According to the information presented by the POD work group and other interested parties, there are a number of activities or conditions which can affect the fishery, all of which are being investigated further. However, one activity is known to have a direct effect on smelt and other populations is export pumping.

A recent state court decision revealed that DWR does not have any "take" permit or other authorization under the California ESA. A condition of which DFG is aware and yet takes no action. Similarly, a federal court recently found the federal take authorizations to be inadequate and has directed exports be curtailed under various scenarios in order to protect fish under federal ESA mandates.

It is clear then that the SWRCB, as the regulator of the DWR and USBR export permits should similarly implement limits on exports in order to protect the diminishing fisheries. Exports cannot be allowed during times when it adversely affects endangered species. Until such time as the species of concern recover, the SWRCB must further curtail exports to protect the beneficial use.

With regard to other possible factors affecting fisheries, the SWRCB must go through the Ms. Diane Riddle

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proper analysis to determine if additional actions can or should be taken. It appears that other factors are themselves directly or indirectly associated with current export levels. For example, it appears that outflow needs to be increased during certain times of the year in order to protect the necessary habitat of the species being affected by exports. Similarly, toxicity is directly related to dilution, suggesting that upstream reservoir operations are not being coordinated to provide sufficient inflow to the Delta.

Our agencies also believe that the SWRCB must enforce the current water quality objectives (which are permit conditions of the projects) as a means of keeping the Delta healthy. Last summer, the salinity standard measured at Old River at Tracy Blvd. Bridge was violated for a long period. During that time, DWR and USBR exported additional water under JPOD. Both the violation and the extra exports were permit violations. The SWRCB recognized these violations, but took no action to correct them, prevent them from re-occurring or punishing the guilty parties. Before embarking upon additional goals, the SWRCB must comply with its current obligations and enforce permit conditions and water quality standards.

Please feel free to contact me if you have any questions.

Very truly yours,

JOHN HERRICK