

The Bay Institute

Protecting and Restoring San Francisco Bay from the Sierra to the Sea

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December 14, 2004

Arthur G. Baggett, Jr., Chair
State Water Resources Control Board
P. O. Box 100
Sacramento, CA 95812-0100

RE: BAY-DELTA PLAN PERIODIC REVIEW TOPICS 2 AND 3

Dear Mr. Baggett,

This letter is submitted as supplemental comments of the Bay Institute regarding Topics 2 (Delta Cross Channel gates closure) and 3 (Salmon protection objective) for the State Water Resources Control Board's (SWRCB) public workshops to consider potential amendments or revisions of the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan). These comments focus on a few salient points made by other parties at the workshops, and do not attempt to respond to all comments by other parties.

Delta Cross Channel gates closure

Several parties (U.S. Bureau of Reclamation [USBR], Department of Water Resources [DWR], Contra Costa Water District [CCWD], and a group of Central Valley Project [CVP] and State Water Project [SWP] contractors making a joint presentation) have opposed changes to the criteria for DCC gates closure because of potential impacts to water quality in the Delta when the gates are closed. While these concerns are legitimate, they do not preclude the SWRCB from permitting additional days of closure.

Changing the objective to allow additional days of closure, as we have recommended, does not in fact require that the gates be closed at any time, just as the current objective does not require the project operators to close the gates for a set period of time. Furthermore, if additional days are permitted, we would expect USBR and DWR to adopt specific criteria for operating the gates to avoid degrading Delta water quality. In order to improve fishery benefits of gates closure, we would recommend that these criteria also be based on actions necessary to achieve consistent growth toward doubling salmonid populations, not simply avoidance of incidental take. In fact, increasing the number of possible closure days while maintaining operational flexibility and real-time management of the facility during the fall/winter period has the added benefit of targeting

protection and improving Delta conditions for the three runs of Chinook salmon (late fall, winter, and spring) that have the lowest populations and are the farthest from achieving the doubling objective.

As CCWD noted in their November 15, 2004, letter to the SWRCB, water quality degradation as a result of DCC gates closure typically occurs during conditions of low Delta outflow and high exports. The SWRCB should consider revising the export criteria in the Bay-Delta Plan to require export pumping rates to be curtailed when gates closure is needed to protect fish migration during periods of low Delta outflow. DWR's presentation at the November 15 workshop showed that significant reductions in export pumping during periods of low outflow and DCC closure can dramatically improve water quality conditions in the Delta. (Such a requirement would also benefit fish migration. Once migrating fish have entered the interior Delta through the DCC, according to data presented by the U.S. Fish and Wildlife Service [USFWS] at the November 15 workshop, survival is in large part a function of export pumping rates).

In its November 15, 2004, letter to the SWRCB, DWR stated that physical modification of the DCC gates is either impractical (screening) or would involve uncertain benefits and costs. Given these uncertainties and the need to complete long-term studies of physical and other modifications, permitting additional days of closure provides a less expensive, more adaptive alternative for increasing fishery protection as a result of DCC gates operation.

Salmon protection objective

The State Water Contractors (SWC) asserted in their workshop presentation dated October 27, 2004, that in its view it is not the SWRCB's position that salmon doubling must occur through water quality measures alone. In fact, adopting a more detailed, site-specific, numeric set of criteria for salmon doubling to augment the narrative objective, as we have recommended, does not dictate how the objective will be achieved. The evidence presented by the Bay Institute, USFWS and NOAA Fisheries conclusively demonstrates, however, that flows, export and diversion limits, temperature and other water quality conditions within the SWRCB's authority are insufficient on many streams and in the Delta to support achieving this objective, and should be the subject of future actions by the SWRCB and the Central Valley Regional Water Quality Board.

The SWC also asserted that in its view it is not the SWRCB's position that it is required to set salmon doubling criteria on a run-specific, stream-specific basis. Putting aside the issue of whether this argument has legal merit, the evidence presented by the Bay Institute, USFWS and NOAA

Fisheries conclusively demonstrates that the doubling objective is not being achieved for most races on most streams. Neither SWC's written or oral presentations nor any information presented by any other party refutes this conclusion, and parties claiming that the salmon objective is being achieved rely exclusively on numbers for total salmon production in the Sacramento basin for a limited number of years without reference to return ratios or other measures of consistent population growth.

As noted by SWC, NOAA Fisheries has recently proposed changing the listing of winter-run Chinook salmon from endangered to threatened. Our review of the proposed rule (as well as reviews by other entities, including the California-Nevada Chapter of the American Fisheries Society and NOAA Fisheries' own Biological Review Team, clearly shows that the proposed change is not supported by available information on winter-run Chinook salmon population status: all four of the "viable salmonid population" criteria indicate the run remains at high risk of extinction. However, even if the listing status of winter-run Chinook salmon is revised, this change in status does not at all mean that the SWRCB doubling objective is being achieved or is likely to be achieved in the near future. NOAA Fisheries' own presentations do not support such a finding.

Several parties (DWR, SWC, CVP contractors, Northern California Water Association) have commented that revisions or refinements to the salmon protection objective are not necessary because there are a number of projects to improve salmon habitat conditions that have been initiated by the CALFED Ecosystem Restoration Program, implementation of the Central Valley Project Improvement Act (CVPIA), and other programs. These comments do not offer any explanation as to why modifying the objective should be precluded because of the existence of these projects.

We agree that these projects have provided important benefits, particularly in removing barriers to fish passage as a result of agricultural diversions. However, as we have demonstrated in our previous submissions, the doubling objective is not being achieved despite the implementation of these projects. Indeed, NOAA Fisheries presented information at the November 15 workshop indicating that several salmonid populations, including steelhead, are continuing to decline. Major barriers to fish passage, particularly Red Bluff Diversion Dam and Delta export operations, continue to adversely impact Chinook salmon. Insufficient flows exist to support salmon doubling on many streams, yet efforts to acquire water for instream flow augmentation or other salmon habitat improvements are highly inadequate. The CALFED Environmental Water Program has not yet secured any water toward meeting the Record of Decision target of acquiring 100,000 acre-feet to improve salmon spawning and juvenile survival in upstream tributaries. The majority of the water acquired by the CALFED Environmental Water

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Account has been used to reduce export impacts on delta smelt. On average, only about one quarter of the 800,000 acre-feet of water dedicated to fish, wildlife and habitat restoration pursuant to Section 3406(b)(2) of the CVPIA is used for restoration purposes (the majority being credited toward compliance with the Bay-Delta Plan and ESA take permit requirements), while supplemental CVPIA water acquisitions have been primarily targeted at increasing refuge water supplies or offsetting compliance with the Bay-Delta Plan (e.g., implementing the Vernalis Adaptive Management Plan). In our view, augmenting the narrative salmon protection objective with run-specific, stream-specific objectives will have the effect of catalyzing more effective implementation of these initiatives and helping focus future investments in salmon habitat improvements.

Thank you for considering our supplemental comments on Workshop Topics 2 and 3. Please contact us if you have any questions regarding this letter.

Sincerely,



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