

LATE COMMENT

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February 21, 2012



Charlie Hoppin, Chair
Francis Spivey-Weber, Vice Chair
Tam M. Doduc, Member
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95814

Re: February 21, 2012 SWRCB Meeting - Informational Item Regarding a Schedule of Actions to Update the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan)

Dear Chairman Hoppin and Members of the Board:

The State Water Contractors ("SWC") and the San Luis & Delta Mendota Water Authority ("SLDMWA") jointly submit this letter in response to the State Water Resources Control Board's ("State Water Board") recent invitation to comment on the schedule by which it should consider updates to the Water Quality Control Plan for the San Francisco Bay-Sacramento/San Joaquin River Delta (Bay-Delta Plan).¹

The SWC and SLDMWA have worked closely with other public water and power agencies to develop a proposed schedule that the State Water Board could follow prior to final State Board action on its Bay-Delta Plan update. A copy of that schedule is included as Attachment 2. The schedule will ensure a timely, open and transparent process, both to develop an administrative record that examines the strengths and weaknesses of latest science efforts and to provide information on impacts to other beneficial water uses of various water quality objectives proposals. The SWC and SLDMWA respectfully request that the State Water Board accept that schedule. The schedule set out in Attachment 2 will also maximize the ability of the State Water Board's actions to work synergistically with existing efforts intended to protect beneficial uses in the Bay-Delta (e.g., BDCP), and take into account the legislatively adopted "co-equal goals."

The SWC and the SLDMWA, in submitting the attached schedule, recognize that the State Water Board needs to begin its statutorily required processes soon in to complete them in a timely fashion. In fact, based on our understanding of the State Water Board staff's proposed schedule, the SWC and SLDMWA support much of the staff's proposed schedule. The SWC and SLDMWA (along with many other water and power users), however, believe the State Board must do more between today and when the State

¹ Descriptions of the SWC and SLDMWA and their interest in the Bay-Delta Plan update are included as Attachment 1 to this letter.

Water Board issues a draft environmental document in the first half of 2013. They ask the State Water Board to endorse the workshop/hearing format described in Attachment 2.

The workshops/hearings will provide an open forum to present and debate before the State Water Board and its staff in three critical areas. First, in the area of science, historically there has been tendency to accept statistical correlations without thoroughly examining the cause(s) of the correlations. In water quality objective setting, causation is the key factor that the State Board must consider. If a certain flow is proposed to dilute pollution, would it not be better in that case to control the source of pollution? Second, there has been little focus on balancing – whether objectives are "reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." The coalition of water and power agencies referenced earlier in this letter have developed important information on impacts, which show that objectives, if patterned after the "flow criteria" developed by State Board staff in 2010, may decimate salmon populations and have a major impact on State global warming initiatives by significantly reducing hydroelectric power generation, among other adverse impacts. Balancing of these considerations needs to be brought into the administrative record through a public process. The workshops/hearings serve that need well. Third, the workshop/hearings can act as a forum to bring the most current science and analyses, such as that which is being relied upon in the BDCP process, before the State Board. As noted earlier, integration of the State Water Board's Bay-Delta Plan process with other efforts, including the BDCP, is critical to success.

The SWC and SLDMWA welcome the opportunity to work with State Water Board staff over the next few weeks to develop a detailed plan for the workshop/hearing process and urge other stakeholders to do the same. We, therefore, ask the State Water Board to instruct its staff to prepare and present such a detailed plan to the State Water Board for its approval next month.

Thank you for the opportunity to submit these comments.

Sincerely,



Daniel G. Nelson
Executive Director
San Luis & Delta-Mendota Water Authority



Terry L. Erlewine
General Manager
State Water Contractors

Attachments

Attachment 1

State Water Contractors/San Luis & Delta-Mendota Water Authority

The SWC is a California non-profit corporation representing twenty-seven public agencies throughout northern, central and southern California that contract with the California Department of Water Resources ("DWR") for water from the State Water Project ("SWP"). The SWC members depend on water conveyed through the Delta to serve all or a portion of the needs of over 20,000,000 California residents and more than 1,000,000 acres of prime agricultural land.

The SLDMWA is a joint powers authority formed pursuant to California Government Code section 6500 *et seq.* The SLDMWA consists of 29 member public agencies, 27 of which contract with the United States Bureau of Reclamation ("Reclamation") for water supply from the federal Central Valley Project ("CVP") for distribution and use within areas of San Joaquin, Stanislaus, Merced, Fresno, Kings, San Benito, and Santa Clara Counties, California. Collectively, the member agencies of the SLDMWA deliver water to more than 1 million residents and more than 2,000,000 acres of agricultural lands.

And, the SWC, SLDMWA, and several of their member agencies, along with the California Department of Water Resources, are the proponents of the Bay Delta Conservation Plan ("BDCP"), which is intended to accelerate ecosystem restoration in the Delta while also restoring and improving CVP and SWP water supplies lost to members of the SWC and SLDMWA as a consequence of regulatory constraints imposed in recent decades – goals that mirror, even though determined years prior to, the Legislature's establishment of the coequal goals as state policy for management within the Delta. Ultimately, as the State Water Board recognized in its Supplemental Notice of Preparation and Notice of Scoping Meeting for the Update to the Delta-Plan, the expected outcome of the development and implementation of the BDCP will likely inform that State Water Board decisions.

Consequently, the SWC and SLDMWA and their members are vitally interested in the State Board's ongoing and upcoming efforts to consider amendments the Bay-Delta Plan.

Attachment 2

Coordinating the Revisions to the Bay/Delta Water Quality Control Plan

2/14/2012

Coordinating the Revisions to the Bay/Delta Water Quality Control Plan

We recognize that the State Board will need to proceed with Phase II of its periodic review of the existing Bay-Delta Water Quality Control Plan (WQCP). However, the periodic review needs to: (a) be closely coordinated with ongoing parallel efforts to improve Delta conditions (e.g., BDCP and ESA); (b) recognize that a great deal of new science has been under development since the State Board last amended its WQCP; (c) consider "all factors which affect water quality in the area" (section 13241(c) of the Porter Cologne Act); and (d) result in objectives that "attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible" (section 13000 of the Porter Cologne Act). By structuring and scheduling its planning effort in the manner set forth below, the State Board can ensure that its obligations are met in a manner that: (a) works in synergy with and as a component of the totality of efforts that are underway to "fix" the Delta; (b) meets the legislatively established co-equal goals; and (c) is in accordance with Water Code section 85031.¹

Based on these considerations, we recommend a schedule for Phase II as follows:

- Use the scoping meeting now scheduled for May 16 for more than just CEQA scoping purposes. This may require a supplemental notice. The notice would inform the public that the State Board's next step in proceeding with its periodic review will be to schedule a series of workshops/hearings that will: (a) allow detailed presentations and critiques on the latest science; (b) enable stakeholders to inform the State Board of the impacts of possible water quality objectives or approaches to water quality objectives; and (c) provide the State Board with periodic updates on ongoing efforts intended to provide protections for beneficial uses (including the BDCP and FESA processes). If needed, the supplemental notice would ask interested parties to provide their views on the science topics to be considered at such workshops/hearings.

- We suggest that about six months (until mid-November/Early December) be provided for such workshops, that they be scheduled for at least one full day, and that there be from five to seven such proceedings. We believe that at least two such workshops would be devoted to the impacts of certain proposed approaches on competing beneficial uses of water, while the rest would address new science, including but not limited to, the latest studies on X2 (both fall and spring), lifecycle modeling, pollution issues, and similar current science efforts. Also, one workshop should focus on the narrative goal and salmon population objectives and current management of the salmonids. Each workshop would also include an update on recent developments on other related activities, including the BDCP and FESA processes.

¹ We also believe that the approach described herein can reduce the otherwise existing extreme risk of basin-wide litigation over the responsibility to meet flow related objectives (i.e., the program of implementation), which would be detrimental to all stakeholders and the State as a whole.

- During the period when these workshops are being held, the BDCP and its environmental documents will be completed to the point that DWR and the USBR will likely file their petitions to add points of diversion and to amend their water rights permits to make them consistent with the BDCP. Procedural issues will, therefore, arise as to how to integrate action on these petitions with actions that may be needed to update the WQCP.

- Upon completion of the initial set of workshops, a second scheduling workshop should be held. We believe, based on information provided from the workshops, the change petitions, the BDCP documents, the BDCP EIR/EIS, federal ESA actions, and other actions intended to benefit aquatic species, that when this second scheduling workshop is held, the State Board will have obtained substantial new data to inform its periodic review. This new data and information should allow the State Board to focus on the process from that point forward. This includes how to proceed with any proposed amendments to the WQCP to meet the long-term water quality/flow needs of the Bay-Delta system and to determine if any short-term actions are needed in light of the final BDCP requirements and/or then current efforts. We expect, at this second scheduling workshop, to recommend that the State Board use all of this data to begin addressing the requirements that will be imposed on the SWP/CVP as a result of the change petitions, recognizing that Water Code section 85088 requires that those requirements be inserted into the water rights permits before DWR can commence construction of an isolated diversion facility. All of this data could also be available to the State Board for its consideration of the long-term water quality objectives that may be needed as the result of BDCP implementation.

These recommendations are directed at the State Board's latest notice and, therefore, have not focused on the ongoing processes to adopt new water quality objectives for South Delta agriculture and San Joaquin River flow objectives. We do want to point out that the State Board's current process for San Joaquin flow objectives remains flawed in its: (1) failure to take into consideration the specific instream flow needs of these tributaries based on the best-available science for these tributaries; (2) not recognizing that instream flow proceedings are different than Bay-Delta flow proceedings and trying to force the former into the latter; and (3) failure to recognize that the upcoming FERC proceedings on the Merced and Tuolumne Rivers provide the best opportunity for reaching agreement on a mutually-acceptable set of flow objectives to meet instream fishery needs.

The Administration has initiated negotiations on the San Joaquin River. The parties hope this will lead to an accord, similar to that which settled issues on the Yuba River. State Board staff participated in the first meeting. You have a response letter from the SJTA to Dr. Meral. The State Board could significantly improve the chances that such discussions will be successful if it would consider deferring further action on San Joaquin River fishery flows for a period of twelve months and then receive a status report before deciding how to proceed. This would coincide with a second scheduling workshop.