

LATE COMMENT



February 17, 2012

Via Electronic Mail And First Class Mail

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 Northern California Water Association (NCWA) and Glenn-Colusa Irrigation District (GCID) submit this letter in response to the State Water Resources Control Board's (Board) public notices for the above-referenced matter. In those notices, the Board indicates it would receive comments regarding its overall schedule of actions to update the Bay-Delta Plan, and the relationship of these actions to the Bay-Delta Conservation Plan (BDCP).

NCWA is an association of water suppliers and local governments throughout the Sacramento Valley, whose water supplies over 2,000,000 acres of farms, much of the habitat for birds using the Pacific Flyway, the cities and rural communities, recreational opportunities and the fisheries throughout the region. NCWA is committed to advance the economic, social, and environmental sustainability of the Sacramento Valley by enhancing and preserving its water rights, supplies, and water quality for the rich mosaic of farmlands, cities and rural communities, refuges and managed wetlands, and meandering rivers that support fisheries and wildlife.

GCID is located in the heart of the Sacramento Valley and is one of the most senior diverters of water from the Sacramento River. GCID diverts water from the Sacramento River for irrigation of approximately 141,000 acres of valuable, productive agricultural land and delivery of water to three wildlife refuges – the Sacramento, Delevan, and Colusa National Wildlife Refuges that comprise over 20,000 acres of critical wildlife habitat. GCID also delivers water in the fall and winter to over 30,000 acres of private farmland, which is used for wintering habitat and food for migrating waterfowl and other aquatic and terrestrial species.

NCWA and GCID have been coordinating closely with other public water and power agencies in the state, including state and federal water contractors that export water from the Bay-Delta, and upstream interests on the San Joaquin River, regarding the Board's Bay-Delta Plan update. As a result of this coordination, we have jointly developed a proposed schedule, which is attached

hereto. We believe that this proposed schedule and approach will provide the Board with the best available science and information that it needs to update the Bay-Delta Plan, and should afford all of the parties a full, fair, and meaningful opportunity to participate in that process. It will also ensure an open and transparent process allowing the public to be better informed as to the basis for the Board's decisions regarding its Bay-Delta Plan update.

NCWA and GCID also believe that the proposed approach is critical to ensuring that the Board will not proceed prematurely down a path that focuses almost solely on increased flows to protect beneficial uses in the Bay-Delta. In this regard, NCWA, GCID, and others in the Sacramento Valley have been closely following or otherwise participating in the Board's proceedings to update the Bay-Delta Plan, and the Delta Stewardship Council's (DSC) development of its Delta Plan. Throughout those processes, Sacramento Valley interests have expressed their significant concerns with the Board and DSC's apparent intention to look almost exclusively to increased flows to protect fish and wildlife beneficial uses in the Bay-Delta. In this regard, the Board and DSC have referred to the alleged need for a "more natural flow regime" to improve habitat conditions in the Bay-Delta, and the Board is currently proposing the imposition of a more natural flow regime on the San Joaquin River as part of its current update of the San Joaquin River flow objectives and South Delta salinity objectives in the Bay-Delta Plan.

Implementing a "more natural flow regime" will likely have significant impacts on the water availability for a myriad of beneficial uses in the Sacramento Valley. Available information demonstrates that implementing such a flow regime, geared towards improving fisheries in the Delta, could have very significant impacts on the Sacramento Valley's fisheries, including its populations of Chinook salmon and steelhead. In fact, an April 2011 report¹ reveals that implementing the type of natural flow regime recommended by the Delta Plan could undermine 20 years of work to improve conditions for salmon in the Sacramento Valley. Available information also shows that implementing a "more natural flow regime" will significantly impair existing beneficial uses for water upstream of the Delta. These reduced diversions in turn would have significant adverse impacts on birds using the Pacific Flyway; terrestrial species that use the Sacramento Valley's farmlands as habitat; Sacramento Valley's wildlife refuges; hydroelectric generation associated with the Sacramento Valley's reservoirs (which could result in increased greenhouse gas emissions); recreation, including the major reservoirs in the region; and groundwater resources as a result of additional pumping to make up for lost surface water supplies.

In addition, there remains the fundamental question as to whether additional flow requirements above existing baseline conditions will provide any better protections for beneficial uses, particularly on the Sacramento River and its tributaries. In this regard, Sacramento Valley streamflow requirements have been developed in the last 10 years based on state-of-the-art science, largely to improve conditions in the Delta's tributaries for salmon and steelhead.² As such, it is critical to understand whether flow objectives that impose a "more natural flow

¹ Vogel, *Insights into the Problems, Progress, and Potential Solutions for Sacramento River Basin Native Anadromous Fish Restoration*, April 2011.

² See NCWA's report, "Instream Flows in the Sacramento River Hydrologic Region," posted at <http://www.norcalwater.org/wp-content/uploads/2012/01/flowssacvalley-sep2011.pdf>.

regime” would impact continued implementation of existing streamflow requirements in the Sacramento Valley’s rivers, and the salmon and steelhead that those requirements benefit.

Finally, Board staff indicated in a January 25, 2012 letter to NCWA and other public water and power agencies that the Board needs to proceed with a more accelerated schedule to update the Bay-Delta Plan because: (1) the DSC’s August 2, 2011 fifth draft Delta Plan “includes direction to the State Water Board to adopt and implement flow objectives for the Delta by June of 2014;”³ and (2) “the Delta Reform Act specifies that no construction of . . . BDCP facilities is allowed until the State Water Board approves any necessary changes in the point of diversion. A change in the point of diversion will require updated flow objectives.”

Concerning the Delta Plan, as the Board is aware, the DSC’s August 2, 2011 draft Delta Plan is not a final plan. The Board, in fact, recently submitted comments on the DSC’s draft EIR for that draft plan. In any case, the Delta Reform Act specifically states that the Delta Plan does not affect the Board’s authority over the diversion and use of water. (Wat. Code, § 85031(d) [“Nothing in this division expands or otherwise alters the board’s existing authority to regulate the diversion and use of water”].)

As to the BDCP, the Delta Reform Act requires only that any “order approving a change in the point of diversion . . . of the State Water Project or the federal Central Valley Project . . . shall include appropriate Delta flow criteria” (Wat. Code, § 85086(c)(2).) No law requires that the Board adopt new water quality objectives that could apply throughout the Central Valley, and potentially to thousands of water users not affiliated with the SWP or the CVP, in order to enable the Board to consider a petition to change the SWP and CVP’s point of diversion. The Board has often inserted new streamflow requirements in individual water-right permits or licenses without adopting new water quality objectives.

For the foregoing reasons, the undersigned parties respectfully request the Board proceed with Phase II of its Bay-Delta Plan update in accordance with the proposed approach set forth in the attachment hereto. We appreciate the Board’s consideration of these comments.

Very truly yours,

NORTHERN CALIFORNIA
WATER ASSOCIATION



David Guy
President

GLENN-COLUSA
IRRIGATION DISTRICT



Thad Bettner
General Manager

³ The Board’s staff proposed this schedule to the DSC in an April 15, 2011 letter.

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.