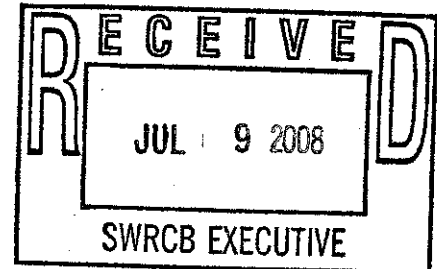




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

July 9, 2008

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812



RE: Comments on Draft Strategic Workplan for Activities in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary

Dear Ms. Townsend:

We have reviewed the June 2008 *Draft Strategic Workplan for Activities in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary* (Strategic Workplan). We recognize and commend the significant effort to generate this document. By establishing the Bay-Delta Team of staff from the State Board and two Regional Boards, the Board has enabled an unprecedented coordination of regulatory activities focused on Bay and Delta issues. Overall, the Strategic Workplan is a comprehensive and ambitious effort to address the most critical water quality and water management issues facing this troubled resource.

We have previously submitted comments for the Board's March 2008 Workshop on developing the Strategic Workplan. A copy of those comments is enclosed for your reference. We have a few additional comments on this Strategic Workplan.

Specific Comments

(1) Water Quality and Contaminants Control

Total Maximum Daily Loads - The challenge of restoring impaired water quality requires a wide range of activities and resources. TMDLs can provide a useful framework for this work. The Strategic Workplan acknowledges the shortfall in resources to develop and implement the many TMDLs necessary to address water quality impairments in the Bay-Delta. We are committed to working with the Regional Boards to help leverage existing resources for these issues (e.g., Farm Bill funds allocated through NRCS). We also believe that the planned Delta Regional Monitoring Program should include the necessary monitoring, assessment, and modeling to better identify the location, type and extent of practices necessary to achieve TMDL load allocations, as often this level of information is not available when TMDL implementation plans are initially developed.

Blue-green algae - Board staff has made much progress over the last few years in collaboration with other agencies to develop the statewide blue-green algae (BGA) voluntary guidance document. The Strategic Workplan outlines additional work needed to more effectively monitor, assess and control BGA occurrences. Another critical role for the Regional Boards is working with the Department of Public Health to ensure that where BGA occurs above the threshold levels established in the guidance document, the public is adequately advised, either by a local agency or the state.

Delta dredging - Although the Strategic Workplan encompasses many of the State and Regional Boards' on-going efforts in the Bay-Delta, it does not mention the Board's regulatory activity related to dredging and dredge material management in the Delta, nor the Board's critical participation in developing a Delta Long Term Management Strategy (Delta LTMS). The Delta LTMS is an interagency collaboration to develop a more efficient and effective permitting process for dredging, while also facilitating appropriate beneficial reuse of dredged materials. The Strategic Workplan should recognize the Board staff investment needed if the Delta LTMS is to be successful.

In addition, the US Army Corps of Engineers recently initiated the environmental review process for two proposed ship channel deepening projects for the Ports of Stockton and Sacramento. Given the potential for highly significant impacts from these projects, including impacts to water quality and hydrology, we believe it would be appropriate to include the Board's activities related to these projects in the Strategic Workplan.

(2) Monitoring

EPA strongly supports the development of a more integrated and comprehensive water quality monitoring and assessment system for the Delta and its upstream watersheds. We have seen tremendous benefit of these regional efforts in the San Francisco Bay and on the south coast. As the Board is aware, there are a number of valuable, focused monitoring and assessment activities sponsored by the Interagency Ecological Program (IEP), the CALFED Science Program, and the various CALFED agencies. Coordination and the integration of these efforts will be challenging. The recent Pelagic Organism Decline (POD) science review is a good example of a collaborative effort to integrate many different data-gathering efforts into a cohesive whole, providing useful information for all agencies.

As the Strategic Workplan indicates, EPA is currently collaborating with the Central Valley Board, other agencies, and stakeholders on a strategy for more effective and efficient water quality monitoring and assessment within the San Joaquin basin. In addition, for many years, we funded much of the monitoring conducted under the Sacramento River Watershed Program. We have also worked with Regional and State Board staff on a set of water quality indicators for the CalFed Program. In the course of these activities, we will continue to make every effort to link to the comprehensive monitoring program contemplated for the Delta. We look forward to the State Board's leadership in facilitating the development of a coordinated system for monitoring and assessing water quality in and around the Delta, and will assist in any way we can.

(3) San Joaquin Flows

We support the Strategic Workplan's attention to water quality and flow issues in the lower San Joaquin. From the perspective of the Delta, the focus on activities directly related to Vernalis and South Delta water quality objectives and VAMP flows is understandable. However, the Workplan also clearly acknowledges the severity of a broader set of flow-related impairments in the San Joaquin River and the consequences within the Delta of the imbalance of Sacramento and San Joaquin inflows. Higher flows and water quality improvements in the lower San Joaquin River (that is, from the confluence with the Merced, downstream) have the potential to affect a range of environmental and human uses in the Delta and upstream. The Workplan also references a number of ongoing activities involving the Central Valley Regional Board and other agencies to improve River conditions; these programs present opportunities for coordinating information and analyses. To reiterate our March 2008 comments to the Board, the State and Regional Board staff might usefully participate in the planning of environmental monitoring and analyses being conducted for San Joaquin River Restoration for the purpose of enhancing the information which the Boards will need for its analyses on San Joaquin actions.

(4) Comprehensive Review of Bay-Delta Water Quality Control Plan and Public Trust Evaluation

The Strategic Workplan proposes to rely substantially on the Bay Delta Conservation Plan (BDCP) as the analytical process underlying any future Board actions on the Water Quality Control Plan, future water rights decisions, and potential reviews of public trust values in the estuary. Given the complex, interrelated analyses and the limited resources of most of the participants in the multiple ongoing Delta processes (Board actions, Delta Vision, BDCP, among others), we agree that using a single environmental review process makes sense. (See our BDCP scoping comments of March 17, 2008, a copy of which is attached.) To make this work, Board staff must continue active engagement in the BDCP process to assure that an adequate array of both interim and long-term alternatives are examined, in light of the multiple potential actions evaluated in this multi-purpose document.

If a single environmental document is envisioned, that single document will inevitably need a significantly broader set of alternatives analyses than would be expected in a single-purpose NCCP/HCP environmental document. That is, an NCCP/HCP ordinarily evaluates only those alternatives relevant to the "covered activities" of the participating entities (primarily the water export projects in this case), whereas the Board's mandate and potential actions are substantially broader, encompassing water rights for all uses of Delta waters and water quality for all beneficial uses (not limited to those affecting endangered species). Furthermore, the analysis of beneficial and adverse impacts associated with the alternatives must attend closely to issues of State Board concern.

As participants in the mammoth CalFed EIS/EIR process, we are fully aware of the problems and pitfalls of managing a multipurpose document. We believe that the Board, the BDCP participants, and any other regulatory agencies intending to rely on this environmental review should carefully craft an environmental review strategy that meets the needs of all agencies and ensures that the information necessary for each agency's respective processes is developed.

In addition, we recommend that the Board consider whether there are aspects of Delta water management issues that will not be covered by the BDCP process. The Pelagic Organism Decline (POD) science effort identified several stressors on the system, including toxics and invasive species. Recent research has raised significant questions about, for example, the role of ammonia in the decline of the Delta aquatic environment. It is unlikely that even a broadly conceived NCCP/HCP under the Endangered Species Acts will have the regulatory authority to adequately address some of these other stressors. Through the Strategic Workplan, we believe the Board should identify and move forward now on evaluating potential actions to address these additional stressors.

(5) Water Use Efficiency

We are encouraged that the Strategic Workplan responds to the statewide priority of water use efficiency by bringing this subject to bear on policy and management practices for delta water supplies. The activities outlined in the Strategic Workplan will enhance the sustainability of delta supplies and reinforce the expectation that conservation is an important aspect of reasonable use of these supplies.

As the state agencies are in the early stages of developing plans for implementing the Governor's recently announced target of a 20% reduction in per capita water use statewide, we encourage you to make use of tools and information being developed by EPA's WaterSense program, such as specifications for water efficient household fixtures, new homes, and landscaping programs.

We look forward to working with Board staff as the Strategic Workplan is refined and implemented. If you have any questions about our comments, please call me at (415)972-3472.

Sincerely,

(original signed by Karen Schwinn)

Karen Schwinn
Associate Director
Water Division

Enclosures:
EPA's BDCP Scoping Comment
EPA's March 19, 2008 comment letter to Board



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

March 17, 2008

Rosalie Del Rosario
National Marine Fisheries Service
650 Capitol Mall
Suite 8-300
Sacramento, CA 95819

Subject: Scoping Comments for the Bay Delta Conservation Plan for the
Sacramento-San Joaquin Delta, CA.

The U.S. Environmental Protection Agency (EPA) has reviewed the Federal Register Notice published January 24, 2008 requesting comments on the National Marine Fisheries Service (NMFS) and Fish and Wildlife Service (FWS) (Services) decision to prepare an Environmental Impact Statement (EIS) for the above action. Our comments are provided pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

The Bay Delta Conservation Plan (BDCP) is being prepared through a collaboration between a number of State and Federal agencies, nongovernmental entities, and "Potentially Regulated Entities" (primarily Delta water diverters) to meet the requirements of the Federal Endangered Species Act (Federal ESA) and California Natural Community Conservation Planning Act. The BDCP may or may not include a Habitat Conservation Plan (HCP) under the Federal ESA. The California Department of Water Resources intends to apply for Incidental Take Permits from the Services based upon the BDCP. These incidental take authorizations would allow the incidental take of threatened and endangered species resulting from covered activities, including those associated with water conveyance and the operations of the California State Water Project and Federal Central Valley Project.

The Points of Agreement (November 16, 2007) of the participants in the BDCP process appear to organize the BDCP process around the question of conveyance in the Delta (existing conveyance, isolated facility, or dual conveyance). To meet the requirements of the Federal ESA, the BDCP EIS would presumably address construction, operations, and species protection measures for each of the possible conveyance alternatives, and would also make provisions for species protection during the multi-year "interim period" prior to the implementation of an alternative conveyance, if any.

Our staff has discussed the Notice of Intent (NOI) with several staff at the Department of the Interior and at NMFS. We understand that there is some discussion of issuing a revised NOI as the planning for environmental compliance for the BDCP advances. EPA believes that a revised NOI is desirable. The project purpose and need statement, proposed federal action, and intended covered activities need significantly greater definition before the interested public can meaningfully comment on the scope of the environmental analysis. We believe the federal action agencies should, at a minimum, discuss the following issues within the context of a revised NOI:

(1) What are the proposed federal actions?

The revised scoping notice should clarify the description of the proposed federal action(s) and the broader project purpose. Although the FWS and NMFS action is, literally, signing a permit, the environmental analysis and review will be of the permitted activities. The revised scoping notice should provide more specificity as to what activities (construction and operation of the existing or new facilities) are intended to be covered by the federal permit.

(2) Who are the appropriate lead agencies?

Given the substantial emphasis on new conveyance alternatives in the Points of Agreement, we believe the BDCP participants should consider whether additional or alternative federal lead agencies are necessary. Most observers of Delta conveyance alternatives believe that the US Bureau of Reclamation (or, potentially, the US Army Corps of Engineers (Corps)) will need to be involved in the construction and operation of at least some part of any new conveyance alternative. To streamline the environmental review process, these agencies should be included as lead agencies in this and any subsequent environmental reviews.

(3) What is the purpose of the document?

Construction of any new conveyance alternatives, as well as significant modification of operations of existing facilities, may trigger the need for a number of federal permits. In particular, Corps permits under Clean Water Act (CWA) Section 404 and Section 10 of the Rivers and Harbors Act will likely be required for implementation of either conveyance changes or many projects under the BDCP. In addition, depending on the configuration of new conveyance alternatives, a CWA Section 401 certification may be necessary. Similar permitting issues under state law may confront state agencies proposing to take action under the BDCP. To avoid unnecessary duplication and delay, EPA recommends that the lead agencies coordinate with the potential regulatory agencies to assure that the proposed EIS meets the needs of regulatory agency NEPA/California Environmental Quality Act (CEQA) compliance.

(4) What is the intended level of review of the proposed EIS?

The revised NOI should clarify the proposed level of review of this document. Typically, large projects include some kind of programmatic review with subsequent documents tiering from the programmatic review to deal with site-specific issues or particular problems. The lead agencies should clarify whether this EIS is intended to serve as a single environmental review covering both programmatic decisions (such as, what form of conveyance will be used, at what size) and site specific issues (actual alignment, rights of way, site specific mitigation). If a tiered or supporting document approach is intended, the lead agencies should discuss their proposed division of issues between the programmatic and the site-specific documents.

EPA appreciates the leadership and significant resources being invested in this effort by the BDCP participants. It is clear that the current condition and uses of the Sacramento-San Joaquin River Delta are unsustainable. We recognize that developing a response to the multiple environmental and water supply problems facing the Delta is a massive undertaking, and that the environmental review process will be similarly complex. EPA believes that "re-scoping" the project to clarify the issues raised above will enable the process to move forward more defensibly and expeditiously.

We appreciate the opportunity to provide comments on the preparation of the EIS. We look forward to continued participation in this process as more information becomes available. Please send subsequent scoping notices and three copies of the Draft EIS to the address above (mail code: CED-2). If you have any questions, please contact me at (415) 972-3846 or Laura Fujii, the lead reviewer for this project. Laura can be reached at (415) 972-3852 or fujii.laura@epa.gov.

Sincerely,



Nova Blazej, Manager
Environmental Review Office
Communities and Ecosystems Division

Cc: Lori Rinek, US Fish and Wildlife Service
Agency Coordination Team



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

MEMORANDUM

Date: March 19, 2008

Subject: State Water Resources Control Board Public Workshop on Development of a Strategic Workplan for the San Francisco Bay/Sacramento-San Joaquin Delta

From: Karen Schwinn, Associate Director, Water Division
U.S. Environmental Protection Agency

We would like to thank the Board for holding this workshop as part of the process for developing a Strategic Plan: this opportunity is timely and very important. These remarks will focus on a few topics that we recommend be incorporated into the Strategic Plan (i.e., the concerns of Attachment B). It is important that the Strategic Plan not only coordinate the various activities represented in Attachment A (current work commitments) but consider the information, analytical tools, and larger issues of policy suggested in Attachment B. The broader guidance must support the long-term viability of the Delta. In some cases, this will require more active involvement in upstream issues.

Our agency has engaged both management and staff in a number of specific Delta activities, largely in the context of the CALFED Program. Along with the State Board and the Central Valley Regional Board, we are one of the implementing agencies for the CALFED Water Quality Program. Our work with this Program has focused to date on developing information on drinking water quality, and developing policies and programs to protect or improve source water quality. In the process of this work, as well as our work on the Pelagic Organism Decline (POD), we have become increasingly convinced of the need for better water quality monitoring and assessment -- information that is tailored to our management priorities and that can help us target important contaminants, implement effective responses, and document our results. Although we recognize that this particular topic—comprehensive regional monitoring—was addressed at a recent Central Valley Regional Board workshop, we feel it is important enough to warrant reiteration. Working with the Regional Board, our agency is funding a pilot program in the San Joaquin Basin to foster a coordinated monitoring and assessment program. We very much support development of coordinated, comprehensive monitoring for the Delta and its larger watershed, with links to the Bay Regional Monitoring Program, and are committed to working with the Boards and the other interested parties to make this happen.

There are four other subjects which we would like to highlight for further evaluation and involvement by the State Board and staff:

1. We support the Board's evaluation of a public trust proceeding to identify appropriate measures for protecting public trust resources in the Delta. As we are all aware, there is substantial scientific and technical work underway on the issue of declines in Delta species and suitable habitat, and on potential stressors. Strategies to reduce some stressors and, where feasible, to improve local conditions for key species are emerging. However, there is also evidence that the current management of water into and within the Delta is not our best option for saving the trust resources or for providing sustainable, reliable water supplies. We believe that any significant changes in Delta water management, such as alternatives aired recently by the Governor, will require action by the Board in both its water rights and water quality capacities. A public trust proceeding or similar Board forum could serve as the basis for the Board's leadership in defining new policies and management approaches for the Delta.

2. We urge the Board to continue closely following the work of the Interagency Ecological Program's (IEP) POD Management Team. The most recent progress report was submitted to you electronically at the January workshop and the printed version is expected next week. Further research and synthesis of this work is proceeding quickly. Presentations at the IEP workshop at Asilomar demonstrated the rapidly developing, integrated, ecosystem view of changes in the Delta. The Board can expect to keep abreast of this progress through their continued involvement with the IEP coordinators.

Regional Board staff has taken a lead role in the POD sub-team working on contaminants. By coordinating with the State Board's staff working with the IEP Coordinators it should be possible to integrate new water quality monitoring with the ongoing surveys of biological aspects of the estuary to ensure that water quality standards developed to protect the ecosystem are closely tied to ecosystem data

3. The Board's direction to develop a peer-review of the Vernalis Adaptive Management Plan (VAMP) is well timed. This study has collected valuable data to date. However, despite several wet years in the early years of the VAMP no data have been gathered to examine the effects of higher, controlled flows. This has resulted in data that only support the idea that flood flows are adequate to protect salmon, as reflected in the recent San Joaquin salmon model developed by the California Department of Fish and Game. It has also prevented studies of the effects of different export levels. Until data are gathered under moderate flows and different export levels the goals of VAMP cannot be met. The VAMP study has undergone substantial restructuring in response to changing conditions and the availability of new technologies. The Board should ensure that future VAMP studies will address San Joaquin salmon needs under current conditions, expected future conditions of the delta, and the needs of salmon in a restored San Joaquin River.

4. In addition to VAMP, there are a variety of other activities underway in the San Joaquin watershed with flow and water rights implications, as well as water quality components. One of the most important is planning for restoration of the San Joaquin River. As you no doubt know, restoration planning and environmental analyses are currently proceeding in accordance with the legal Settlement. If this approach continues to make progress, implementation is certain to require Board actions on diversion and flow issues. On the other hand, if the Settlement process fails, the Board may be required to assume a more central role in planning and implementing

River restoration. Setting aside these scenarios, at the present time participation is needed at a technical level by Board staff on topics such as: a) information needed to comprehensively evaluate water quality impacts of restoration and supply recapture options; b) appropriate analytical tools for assessment of water quality and beneficial use impacts; and c) assessment questions and analytical tools which relate the upper San Joaquin (the restoration focus) to the lower San Joaquin River and Delta.

In closing, we believe that this immediate period of scientific study, planning, and policy debate bearing on the future of the Delta offers extraordinary opportunities for the Board's involvement. We commend the Board for stepping forward with a strategic planning approach. We urge you to provide leadership in activities – technical, such as a comprehensive monitoring and assessment, and policy, such as consideration of trust issues—which will lead to ecosystem restoration and sustainable management of Delta resources.