

**STATEMENT OF THE BAY/DELTA URBAN COALITION**  
**REGARDING THE STATE WATER RESOURCES CONTROL**  
**BOARD'S ADOPTION OF BAY/DELTA STANDARDS –**  
**APRIL 26, 1994 WORKSHOP**

**I. OVERVIEW**

Urban California recognizes the need to restore the Bay/Delta Estuary both as the heart of the State's priceless environmental heritage and as the key to the State's water supply reliability. The bulk of the water supplied to urban areas from the Bay/Delta watershed is supplied by the members of the Bay/Delta Urban Coalition that have joined together to present these comments.<sup>1/</sup> The coalition is an informal group of urban water agencies that serve communities throughout the northern, southern, and central coast areas of the state.

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<sup>1/</sup> The members of the Bay/Delta Urban Coalition are: Alameda County Water District, Central Coast Water Authority, Coachella Valley Water District, Municipal Water District of Orange County, Metropolitan Water District of Southern California, Public Utilities Commission of the City and County of San Francisco, San Diego County Water Authority, and Santa Clara Valley Water District.

The Bay/Delta Urban Coalition supports the scientific work of the California Urban Water Agencies. In addition, the Bay/Delta Urban Coalition has proposed certain additional refinements and has engaged in advocating the acceptance of the alternative standards in place of the standard proposed by the EPA.

The Bay/Delta Urban Coalition believes that the process the Board is about to begin is vital to the restoration of the Bay/Delta for all uses dependent on it. The comments with respect to that process which follow are based on the following basic principles:

- Urban agencies need a reliable water supply from the Bay/Delta. That water supply is not currently as reliable as it has been historically, most recently due to a number of fisheries-related problems in the estuary. There is a need to address and solve these problems before needed reliability can be restored.
- Bay/Delta water supplies are a crucial part of the State's economic infrastructure.
- For these reasons, urban agencies support immediate adoption and early implementation of phased Bay/Delta standards and urge the State to concurrently address other factors contributing to the decline of the fishery resources.
- These urban agencies have a proposed alternative to EPA's standards for protecting estuarine resources, which will provide the required levels of protection without so severely impacting water supply reliability, as discussed below.

- The urban agencies will continue to study the factors that influence these resources. While the Board has requested comments on the alternatives to be considered in the April 26, 1994 workshop, we will continue to address these issues and provide this information to the Board between now and final promulgation of the standards.
  
- We believe the State has primacy in setting the standards, and strongly urge that the State process result in adoption of standards by the end of 1994. This is critical to enable EPA to withdraw any standards they might otherwise promulgate before the Board is able to act.
  
- Standards are only the first step; they need to form the basis for a more comprehensive long-term solution to the environmental problems in the Bay/Delta estuary.
  
- Near-term solutions must include the other factors contributing to fisheries declines including agricultural drainage, urban and industrial pollutants, unscreened diversions, poaching, introduced species, excessive ocean harvest, and local land use modifications.
  
- The long-term plan should take a habitat-wide, multi-species approach to avoid the ad hoc, species-by-species approach currently taking place under the

**Endangered Species Act.**

- The long-term plan must include an environmental decision-making process consistent with CEQA/NEPA for examining alternative ways to improve the reliability of water supplies, including methods for diverting water from and conveying water through the Delta.

**II. THE BOARD SHOULD INCLUDE A REFERENCE PERIOD OF THE LATE 1960'S TO MID-1970'S AS A STARTING POINT FOR ANALYZING THE APPROPRIATE LEVEL OF PROTECTION**

Under the California Constitution and the Porter-Cologne Water Quality Control Act (Porter-Cologne Act), the level of protection the Board adopts for the beneficial uses of the Bay/Delta Estuary requires an evaluation of the actions necessary to accommodate the needs of all beneficial uses. However, the Bay/Delta Urban Coalition believes that a reference period of the late-1960's to mid-1970's (i.e., 1967-1975) is an appropriate starting point in order to begin focusing on the environmental needs of Bay/Delta environmental resources.

The Bay/Delta Urban Coalition recognizes that there is value in identifying a desired level of protection in order to focus the balancing analysis which California law demands. The Bay/Delta Urban Coalition also understands the need, in

view of the documented decline in a number of the aquatic resources in the Bay/Delta Estuary, for a concrete goal to guide the actions necessary to allow restoration of these resources to an appropriate level.

The United States Environmental Protection Agency (EPA), the Fish and Wildlife Service (USFWS) and others have suggested that a level of protection which would restore habitat conditions to those existing in the late-60's to mid-70's is required. In the recent EPA proceedings to adopt federal Bay/Delta standards, the Bay/Delta Urban Coalition assumed this target period for the purpose of analyzing EPA's draft estuarine habitat proposal. In the course of doing so, the Bay/Delta Urban Coalition determined that, with important revisions, an estuarine habitat standard based on the proposed target period would likely provide reasonable protection.<sup>2/</sup>

With respect to an estuarine habitat standard, a late-60's to mid-70's level of protection for Bay/Delta

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<sup>2/</sup> Under California's water resource allocation law, the role of the Board in acting upon applications to appropriate water has been characterized as a "necessary balancing process requiring 'maximum flexibility' in considering competing demands of flows for instream purposes and diversions for agricultural, industrial, domestic and other consumptive uses to arrive at the public interest." (United States v. SWRCB (1986) 182 Cal.App.3d 590, 603; Fullerton v. SWRCB (1979) 90 Cal.App.3d 590, 603). In developing its regulatory program for the Bay/Delta Estuary, the Board is required "to provide 'reasonable protection' to beneficial uses, considering all the demands made upon the water." (United States v. SWRCB, supra, at p. 122; Natural Audubon Society v. Superior Court (1986) 33 Cal.3d 419 at 426, 446-47).

resources should be included as one of the alternatives considered by the Board. The estuarine habitat standard proposed by the Bay/Delta Urban Coalition in its recent comments submitted to EPA was developed with the intent of providing a flow regime approximating that which occurred during the target period. A copy of these comments is submitted herewith as Coalition Exhibit 1.

The Bay/Delta Urban Coalition believes that its estuarine habitat standard will likely provide a reasonable level of protection for the uses of the Bay/Delta waters and may generally be implemented without imposing unacceptable losses of water or economic impacts on the Bay/Delta system's water users. We are currently engaged in efforts to refine the estimated water supply impacts of this proposed standard and hope to present the results during the course of these workshops.

The range of the parties the Board includes in its ultimate decision also is highly relevant to any assessment of the reasonableness of a particular level of protection. The Bay/Delta Urban Coalition believes that the Board must consider and include the broad range of parties impacting Bay/Delta environmental resources, and not just focus on the state and federal water projects, when determining the appropriate level of protection for the Bay/Delta environment. Simply stated, all parties using water from, or affecting the water quality

of, the Bay/Delta Estuary and its watershed must be required to not only mitigate the direct impacts of their activities but also must equitably share in the responsibility of providing Delta outflow.<sup>3/</sup> In its Notice of Public Hearing for the process which resulted in Draft D-1630, the Board identified a list of some 77 "major water rights holders" that were to be reviewed for the imposition of possible water rights requirements for protection of Bay/Delta uses. That list must be expanded if the Board intends to include all those whose activities impact the Bay/Delta system.

Outflow is only one of the many factors impacting aquatic species. The increased outflow created by the proposed estuarine habitat standard likely will not, by itself, restore the populations of all Delta species; nor should it be required to. Instead, it is incumbent on the Board to address the other factors affecting the aquatic environment, and not simply increase the burdens on water suppliers. Stated differently, while it is appropriate to require water users to mitigate the impacts of their use on aquatic species, it is not reasonable to require water users to mitigate for impacts caused by pollution, overfishing, introduced species, and other factors unrelated to water diversion and use. Rather, additional

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<sup>3/</sup> Under some hydrologic conditions, some water agencies may be unable to meet their customers' demands without severely jeopardizing their operations or obligations, despite meeting best management practices criteria, if reductions occur as a result of implementation measures. Therefore, the Board should formulate alternative methods for contribution to impact reductions, such as "mitigation credits" or water purchases.

regulatory requirements should be imposed on the other factors affecting the Bay/Delta system, including sources of pollution, overfishing and the like. To the extent these factors benefit the resources of the Bay/Delta system which are being protected through water/flows, outflow requirements and other project constraints should be reduced accordingly.

A corollary to the requirement that all parties must be considered when establishing and implementing environmental protections for the Bay/Delta Estuary, is the need to phase in compliance with the ultimate level of protection, as these parties are included. Indeed, a compliance schedule is critical to ensuring that the burdens of meeting a new level of protection are fairly commensurate with the impacts. For example, the state and federal projects do have an impact on Delta outflow and should be required to meet their share of the Board's flow and operational requirements relatively soon after the Board adopts those requirements at the end of 1994. Additional time may be required to impose a fair share of the burden on the other parties who affect the Bay/Delta system. In the interim, it would not be proper to impose the entire burden of the requirements identified by the Board on the state and federal projects alone. The full level of protection adopted by the Board should be met incrementally as the responsibility of additional parties is established.

### III. THE STANDARDS ON WHICH THE BOARD SHOULD FOCUS

The Bay/Delta Urban Coalition believes that because of the importance of the flow-related issues in the Bay/Delta Estuary, these issues should be addressed along with the objectives/standards in the existing May 1991 Water Quality Control Plan. It is imperative, however, that the Board not ignore the numerous other factors affecting Bay/Delta resources. At some point in this process the Board must take steps to regulate, or promote and coordinate the regulation of, other factors, including agricultural drainage, urban and industrial pollution, unscreened diversions, poaching, introduced species, excessive ocean harvest and local land-use modifications. The uses which should be the focus of these supplemental requirements, and the Bay/Delta Urban Coalition's preliminary recommendations with respect to each of those uses, are discussed below.

#### Estuarine Habitat Standard

The Bay/Delta Urban Coalition recognizes, as do many other water users, that additional freshwater outflow is required as part of a comprehensive, multi-faceted effort to restore and protect Bay/Delta environmental uses. While the distinct cause-and-effect relationships are not clear, it appears that the condition of some Bay/Delta aquatic species could be improved by an increase in the amount of freshwater

outflow. Determining the appropriate level of restoration and protection is, of course, the very reason for the Board's current proceeding. Without prejudging the results of the analysis which the Board is about to begin, the Bay/Delta Urban Coalition proposes that an "estuarine habitat standard", such as that described in the comments of both the Bay/Delta Urban Coalition and the California Urban Water Agencies (CUWA) to the EPA, should be considered for adoption.

Analyses of the EPA-proposed estuarine habitat standard performed by scientists on behalf of CUWA indicate that the urban alternative, when compared with EPA's proposal, would provide equal or better protection to a wide range of aquatic species, including those species listed as threatened or endangered or proposed for listing.

Briefly, the coalition's proposal would provide necessary protection to aquatic resources through, among other things, additional freshwater outflow which: 1) improves habitat conditions in the Suisun-Honker-Grizzly Bay complex and 2) provides for transport of nutrients, eggs, larvae and young fish through the Delta. Compliance with the standard would be accomplished by providing outflows which place the calculated position of the 2-ppt isohaline at the confluence of the Sacramento and San Joaquin rivers for a majority of the time during most hydrologic conditions, and downstream of Chipps Island for periods of time which would vary, depending on

hydrologic conditions.

Meeting the proposed standard at the confluence of the Sacramento and San Joaquin rivers would move the eggs, larvae and young fish of many aquatic species through the Delta, thus avoiding predation in the Delta's narrow open channels as well as diversion and entrainment by agricultural and industrial intakes, and water facilities located in the Delta. In addition, maintaining the outflows necessary to position a 2-ppt isohaline at the confluence will keep nutrients, eggs, larvae and young fish from re-entering the central delta once they have reached the estuary.

Meeting the proposed standard at Chipps Island would, in turn, place the entrapment zone -- a zone of mixing of freshwater and saltwater and of high turbulence and turbidity -- adjacent to the shallow-water habitat of the Suisun-Honker-Grizzly Bay portion of the estuary. This would create significantly enhanced habitat conditions in the estuary by making it possible for wind, tide, currents and other factors to distribute nutrients, eggs, larvae and young fish into this shallow-water habitat.

The number of days of required compliance under the Coalition's proposed estuarine habitat standard would vary depending upon hydrologic conditions, with wet-year hydrology resulting in the greatest number of days of compliance, and

critical dry year hydrology resulting in the fewest days of compliance. The compliance schedule contained in the urban proposal is based on a least-squares analysis of the number of days during which the standard would have been met during EPA's 1967-75 target period.

Finally, the proposed urban estuarine habitat standard provides for compliance to be measured in any one of three different ways: 1) maintenance of average daily 2-ppt salinity at the compliance point; 2) maintenance of 14-day average 2-ppt salinity at the compliance point; or 3) maintenance of outflows which are calculated to maintain the average 2-ppt salinity at the compliance point. These alternative methods of determining compliance are intended to ensure that extreme winds, tides, or other factors beyond human control do not cause non-compliance, but still produce the estuarine processes that are necessary to provide the intended biological protection.

### Salmon

The proposed Bay/Delta Urban Coalition estuarine habitat standard will provide enhanced protection compared to current standards through increased flows for all runs of Central Valley salmon. In addition to these increased general outflow requirements, operational measures specifically designed to protect salmon should be considered. These should

include measures to deter salmon from entering the Central Delta.

In addition, the Bay/Delta Urban Coalition believes that salmon smolt survival issues should be addressed within the water and fisheries management programs that are currently being conducted and administered by the federal and state agencies. EPA's proposed criteria would severely constrain the ability of these programs to validate relationships between smolt survival and hydrologic and operational parameters, and would potentially cause significant water supply impacts without accomplishing EPA's stated goal of improving smolt survival.

The Board must also recognize the significant existing protections which are already being provided winter-run salmon independently under the Federal Endangered Species Act (ESA). Those protections must be considered by the Board as it balances the need to add additional protections in this proceeding.

#### Striped Bass

The issue of striped bass protection is complicated by the impact of that species on other species in the estuary, especially on the listed Delta smelt and winter-run salmon. Because of these impacts, additional protections designed

specifically for striped bass should not be adopted until recovery plans for the listed species and the Department of Fish & Game striped bass management plan are developed.

In the interim, striped bass will receive an increased level of protection from the estuarine habitat flow standard. Consequently, the spawning objectives in the existing WQCP should not be revised at this time. Also, this increased protection, the fact that spawning habitat does not now limit striped bass, and existing WQCP electrical conductivity and dissolved oxygen standards show that the Board does not need to adopt the salinity standards proposed by EPA. If the Board feels that consideration of additional actions to benefit striped bass is still necessary, it should focus on the impacts of pollution from non-point sources such as agricultural return flows on the San Joaquin River.

#### Delta Resident Fish

A standard has not previously been established for the native resident fish in the Delta. Whether a specific standard is necessary for those species is an open question. In any case, we believe that since the estuarine habitat flow standard is specifically intended to restore habitat conditions to a level more favorable to species that inhabit the Estuary, it will provide measurable enhancement to aquatic species native to the Delta. It is likely that these native species

also are receiving additional protection from the independent ESA requirements in place for the Delta smelt and the winter-run salmon.

### Suisun Marsh

The existing WQCP contains a standard for the Suisun Marsh. However, more reasonable solution to the problems in Suisun Marsh has been before the Board since 1985. That is the Suisun Marsh Preservation Agreement negotiated between the Department of Fish and Game, Suisun Resource Conservation District, the United States Bureau of Reclamation and the Department of Water Resources. The Board should adopt and allow implementation of that agreement.

### Municipal and Industrial Standards

The drinking water quality of Delta waters remains a concern. The Board should review the program of implementation contained in the current WQCP to determine the status of the implementation measures identified therein for protection and enhancement of drinking water quality. The Board also should take the lead in a comprehensive effort to begin to remedy the drinking water quality problems associated with the use of Delta waters by expeditiously identifying, evaluating and implementing the non-flow measures necessary to provide protection to the source of drinking water for two-thirds of

the State. Finally, the Board should proceed with its program for regulation of those agricultural drainage and other non-point discharges in the Delta that have an immediate impact on drinking water quality.

#### IV. OTHER FACTORS WHICH MUST BE CONSIDERED IN DEVELOPING BAY/DELTA STANDARDS

Any Standards which are adopted must be amenable to revision in the future as new conditions arise, including regulation/control of other factors which impact fishery resources. The standards which are adopted must also serve as the foundation for a comprehensive solution to Bay/Delta problems

The Board's adoption of standards for the Bay/Delta Estuary by the end of 1994 is only one step in the ultimate resolution of the problems faced by all users of Bay/Delta watershed water. A regulatory package limited only to the currently proposed standards will fail to provide the comprehensive solution that is required to protect the State's enormous environmental and economic stake in the Bay/Delta Estuary. Indeed, the Bay/Delta Urban Coalition's participation in the recent EPA proceedings and its support of the Board's development of new, more environmentally protective standards is based, in part, on their expectation that adoption of these new standards will be the foundation for the immediate

commencement of an environmental decision-making process to identify and analyze the potential components of a more comprehensive solution. The ability to manage any impacts to water supply in the future will depend upon a prompt and comprehensive solution to those problems as well as implementation programs which fairly spread the burden and allow the regulated parties to pursue the water management measures necessary to mitigate the impacts, thus minimizing the unnecessary costs of Delta protection.

In addition, any standards ultimately adopted by the Board should explicitly recognize that, as the broader array of measures available for protection of Bay/Delta environmental resources is implemented, the narrowly focused outflow and operational standards applicable to the SWP, the CVP and others may be revised. Improvements to riverine habitat upstream of the Delta, improvements in the way water is conveyed across the Delta, reduction in the discharge of substances toxic to aquatic species and many other potential measures may offer more effective protection to environmental resources at a smaller cost to California's economy. The Board must ensure that, as the benefit of these measures is felt, it will review its standards to determine whether they can be revised to minimize the impact on consumptive users reliant on Bay/Delta waters without compromising the level of protection required for environmental uses.

## Interaction with the Endangered Species Act

The Board is only one of several agencies regulating activities within the Bay/Delta Estuary to protect environmental uses. In particular, the Fish and Wildlife Service and the National Marine Fisheries Service have radically altered the way the State and federal projects operate in the Delta through biological opinions intended to protect the winter-run salmon and Delta smelt. Both the CVP and SWP are now operating pursuant to reasonable and prudent alternatives and incidental-take permits which incorporate significant outflow requirements, pumping restrictions and other operational constraints.

These operational restrictions under the ESA are specifically designed to enhance the aquatic environment of the Bay/Delta Estuary for listed species, but will have the incidental effect of enhancing the habitat of other non-listed species as well by improving water quality, water temperatures and overall habitat conditions.

Likewise, existing and anticipated regulatory actions under the ESA, including flow and non-flow elements, are likely to address many of the same objectives as regulatory actions that the Board must adopt under the Clean Water Act and the Porter-Cologne Water Quality Act. In order to maximize the reasonable and beneficial use of the water, the Board should

strive to coordinate any flow and non-flow elements of its water quality standards with the requirements of the ESA to the greatest degree possible.

Further, in order to implement the coordination of the various regulatory regimes and maximize the benefits of regulatory actions, the Board should take the initiative to adopt real-time management for the entire Bay/Delta system. Given the scarce water resources and increasing demand for environmental needs and urban population growth, it will be critical to adopt a regulatory system that maximizes the beneficial use of every drop of water allocated to every type of use. Accordingly, the Board should require biological monitoring to determine the timing for implementation of flow and non-flow measures to guarantee their usefulness and resist the temptation of adopting easy to implement calendar-driven schedules. Such an approach will ensure that water allocated to environmental protection will, in fact, further that purpose.

In short, all types of water use in the State, including water allocated to environmental protection, are subject to the prohibition against waste and unreasonable use of the California Constitution. The Board should take all necessary steps to guarantee that the water allocated for environmental purposes is not wasted because of arbitrary implementation decisions that compromise its effectiveness.

Coordination of regulatory actions and real-time monitoring in the Bay/Delta will go a long way toward ensuring the maximum benefit of water resources.

Standards must allow system flexibility in order to minimize water supply impacts (i.e., cross-Delta conveyance; water transfers; water management programs)

Because access to a geographically diverse water market (including water transfers from north of the Delta to south of the Delta) allows existing users to mitigate water losses from regulatory actions with less adverse impacts on the economy, State and federal regulatory agencies must work cooperatively with the water users and others to identify voluntary water transfer strategies. Such strategies should: (1) be consistent with environmental protection and restoration efforts; (2) provide necessary flexibility to water project operators and existing users to protect urban supply reliability and California's economy; and (3) generate upstream environmental benefits. Specifically, the Board must insure that its standards provide flexibility necessary to implement the transfer strategies described above in order to achieve environmental objectives in an economically responsible manner.

## V. PROCEDURE FOR SUBMISSION TO EPA

A question that the Board has not included in the list of subjects for its workshops--but which is extremely important--is the interaction of its process with the EPA review requirements of the CWA. In view of the jurisdictional issues raised by this question the Bay/Delta Urban Coalition believes that the Board should consider and seek input on this question early in the process.

It is the Bay/Delta Urban Coalition's view that EPA's review and approval authority under Section 303 is limited to traditional water quality parameters and does not extend to outflow and water project operational requirements. However, we also recognize EPA's broad authority to work with the states to develop comprehensive programs for the protection of water dependant uses. For this reason, the Bay/Delta Urban Coalition believes that presentation of the State's "full package" to EPA -- consistent with one of the approaches described below -- will assist the State in demonstrating that the State's comprehensive program, including Section 303 standards, will protect Bay/Delta environmental uses.

Conceivably the Board may adopt three types of standards in this proceeding: (1) true "water quality" standards; (2) freshwater outflow or salinity repulsion standards; and (3) operational constraints such as diversion

limits and pumping restrictions. Only the first category of standards must be submitted to EPA for its approval under Section 303 of the CWA.

Outflow requirements and operational constraints may, if the State wishes, be submitted as part of an area-wide waste management plan under Section 208 of the CWA. While EPA would not have the authority to substitute its own outflow/operational requirements, it could use this information to determine whether Bay/Delta uses are being appropriately protected. Alternatively, non-water quality measures adopted by the Board could be included in the "program of implementation" required as part of a State WQCP by the Porter-Cologne Act. (W.C. § 13242). While this program of implementation is not required by the CWA, it could be presented as a matter of comity as an informational document to provide EPA with the full scope of the protection plan being adopted by the State. Yet another approach would be to include for information the outflow and operational measures in a water resource management/planning document prepared under the Board's general state law authority to regulate, allocate and plan the use of the State's waters.

Each of these approaches would be consistent with the careful delineation of federal and State authority intended by Congress when it drafted the CWA, and should be the subject of discussion by the Board and interested parties in the following

workshops.

## VI. CONCLUSION

The economic "stakes" of resolving the Bay/Delta crisis are high. Urban water agencies in both Northern and Southern California depend on the Bay/Delta Estuary for a substantial portion of their water supplies. To the extent regulatory standards create uncertainties about the ability of these agencies to meet residential and industrial demand for water or to meet increasingly stringent water quality standards, doubts about the State's economic infrastructure ripple through the business community.

A recent article in Standard & Poor's CreditWeek Municipal, an investment periodical, is just one example of this spreading "ripple" of economic doubt. The article states:

Problems faced by California water suppliers will have a generally negative impact on credit quality for years to come due to the economic impact and rising costs associated with water supply and reliability . . . . [T]he allocation of water supplies for consumption in California remains in gridlock as both federal and state legislators try to achieve a workable solution to the conflicting interests in the Delta. (S&P CreditWeek Municipal, March 21, 1994, p. 112.)

If public water agencies in California experience a down-grading of their credit ratings -- at a time when agencies throughout the State are issuing billions of dollars of debt to finance ambitious infrastructure improvement projects -- the entire State will suffer. Utility rates will increase and, more significantly, public agencies will find it more difficult, if not impossible, to obtain the underwriting necessary to finance economically vital capital improvement projects.

To avoid these impacts and to ensure the future health of California's economy, concrete steps must be taken this year to resolve the environmental problems in the Bay/Delta Estuary. The Bay/Delta Urban Coalition believes that adoption of appropriate standards for the Bay/Delta Estuary by the end of 1994 is the first of several steps necessary to achieve this result.

**COALITION EXHIBIT 1**

**Submitted to the Board under a separate cover.**