

**PERIODIC REVIEW OF THE 1995 WATER QUALITY CONTROL PLAN
FOR THE SAN FRANCISCO BAY/SACRAMENTO-SAN JOAQUIN
DELTA ESTUARY**

FINAL WRITTEN COMMENTS OF STOCKTON EAST WATER DISTRICT

Issue # 3: Salmon Protection Objective

The State Water Resources Control Board (State Board) accepted comments on the following key issue regarding the existing Salmon Protection Objective during the Periodic Review Workshops:

Should the SWRCB amend the narrative Salmon Protection Objective in the Water Quality Objective in the Water Quality Objectives for Fish and Wildlife Beneficial Uses (Table 4 of the 1995 Plan)? How should the value or description be modified and what are the scientific and legal arguments in support of and against such modifications?

Stockton East Water District believes certain clarifications should be made to the existing Salmon Protection Objective.

1. Doubling Objective is not a mandate but a goal.

The narrative Salmon Protection Objective contained in Table 3 of the 1995 Water Quality Control Plan should be modified as follows:

Water quality conditions shall be maintained, together with other measures in the Bay-Delta watershed, to strive to double the current ~~sufficient to achieve a doubling of~~ natural production of Chinook salmon ~~from the average production of 1967-1991~~, consistent with the provisions of State and federal law.

Fish and Game Code Section 6902 provides the California Legislature's intent regarding restoration of salmon populations in California. The modifications proposed above more accurately reflect the intent of the Legislature when it pronounced the policies on

increasing the natural production of anadromous fish. The reference to “the average production of 1967-1991” is inappropriate as Section 6902, which was enacted in 1988, sets forth the goal to “double” the “current” natural production, not historical levels. So if any time period is included in the Salmon Protections Objective, it should refer to levels of fish existing in the 1988-1989 time period.

Moreover, “production” of fish is specifically defined in Fish and Game Code Section 6911 as “the survival of fish to adulthood as measured by the abundance of the recreational and commercial catch together with the return of fish to the state’s spawning stream.” As such, the measurement of success in production must take into account, both recreational and commercial catch and those fish returning to streams.

2. **Quantitative Salmon Doubling Objective for each Chinook salmon run in each basin and salmon producing stream is not needed.**

Several parties have suggested that quantitative salmon doubling objectives are needed for each stream in the Bay-Delta watershed. First, there is no legal authority supporting the establishment of doubling goals on the individual streams within Bay-Delta watershed. The Salmon, Steelhead Trout, and Anadromous Fisheries Program Act provides a policy to increase the natural production of anadromous fish, but does not provide legal authority for the State Board to establish doubling goals on individual streams. Doubling the natural production of salmon is a goal of the State, period.

The United States Fish and Wildlife Service (FWS) has suggested that the State Board use numbers contained in its Final Anadromous Fish Restoration Program (AFRP) Plan as a baseline in determining the accomplishments in meeting the Salmon Protection Objective. The FWS claims that the doubling numbers contained in the Final AFRP were based on sound science; this is simply not the case. While the process for developing the numbers indeed took many years, the majority of the comments made by interested parties were ignored. The final product was an agency driven report without outside peer review or scientific support. Many of the suggested doubling targets are on streams where either none or very limited fishery information exists. At best, the doubling goals were based on anecdotal information that is neither corroborated by fact nor science. As such, these

doubling goals should not be used a baseline for measuring success of the Salmon Protection Objective.

3. **The State Board should not expand the geographic scope of the Periodic Review by including flow requirements on individual tributaries to the Bay-Delta watershed.**

A few interested parties have suggested that the geographic scope of the Periodic Review be expanded to consider fishery flow requirements on upstream tributaries to the Bay-Delta watershed. First, the Final Staff Report recommends, “the periodic review workshops should focus on habitat conditions and restoration efforts within the Delta itself, and not expand the focus of the Plan to Delta tributaries.” We concur with this limitation; this is not the proper forum for consideration of those types of issues.

Many factors influence the production of salmon in the Bay-Delta. One cannot separate out “flow” as the only viable measure to increase production. There are numerous scientific studies on-going that are evaluating the effect of other actions on the production of salmon, namely, the Vernalis Adaptive Management Plan is studying the effects of exports on fishery production. Moreover, many other actions are available and being implemented including, habitat improvements such as enhancing spawning gravel, increasing riparian vegetation, and decreasing sediment loading, as well as other instream improvements such as installation of fish screens, removal of barriers to passage, addition of fish ladders to assist in passage and temperature control devices.

We agree with the California Department of Fish Game assessment in its submittal on salmon protections that because there is a simultaneous manipulation of multiple factors potentially affecting salmon production, it is very difficult to determine how much success to attribute to individual actions. Continued monitoring of the response of more generation of salmon is needed before it can be determined whether the multifaceted restoration and protection program will be sufficient to achieve the increasing the natural production of salmon. More time should be given to these scientific endeavors before proceeding across the board with flow requirement in various tributaries.

**Issue # 8: River flows: San Joaquin River at Airport Way Bridge, Vernalis:
February - April 14 and May 16 – June**

The State Board accepted considerable testimony regarding the San Joaquin River flow objective during the February through June time period. Stockton East Water District will not reiterate our previous arguments, but only note, that elimination or modification of the San Joaquin River Flow Objective is required as there is no scientific or biological basis for the existing objective.

Since these proceedings were initiated a significant piece of legislation was passed by the United States Congress and signed by the President of the United States that impacts these proceedings. Public Law 108-361 title “Water Supply, Reliability, and Environmental Improvement Act,” was signed into law October 25, 2004 (attached as Exhibit A). This bill provides direction to both the Federal Department of the Interior and to the State of California. Of particular importance are the following sections that specifically deal with achieving the 1995 Bay-Delta Plan water quality objectives:

Section (d) Descriptions of Activities Under Applicable Law -- (2) Conveyance –
(D)(i.) PROGRAM TO MEET STANDARDS:

(i) IN GENERAL- Prior to increasing export limits from the Delta for the purposes of conveying water to south-of-Delta Central Valley Project contractors or increasing deliveries through an intertie, **the Secretary shall, not later than 1 year after the date of enactment of this Act, in consultation with the Governor, develop and initiate implementation of a program to meet all existing water quality standards and objectives for which the Central Valley Project has responsibility.**

(ii) MEASURES- In developing and implementing the program, the Secretary shall include, to the maximum extent feasible, the measures described in clauses (iii) through (vii).

(iii) RECIRCULATION PROGRAM- The Secretary shall incorporate into the program a recirculation program to provide flow, reduce salinity concentrations in the San Joaquin River, and **reduce the reliance on the New Melones Reservoir for meeting water quality and fishery flow objectives through the use of excess capacity in export pumping and conveyance facilities.**

(iv) BEST MANAGEMENT PRACTICES PLAN-

(I) IN GENERAL- The Secretary shall develop and implement, in coordination with the State's programs to improve water quality in the San Joaquin River, a best management practices plan to reduce the water quality impacts of the discharges from wildlife refuges that receive water from the Federal Government and discharge salt or other constituents into the San Joaquin River.

(II) COORDINATION WITH INTERESTED PARTIES- The plan shall be developed in coordination with interested parties in the San Joaquin Valley and the Delta.

(III) COORDINATION WITH ENTITIES THAT DISCHARGE WATER- The Secretary shall also coordinate activities under this clause with other entities that discharge water into the San Joaquin River to reduce salinity concentrations discharged into the River, including the timing of discharges to optimize their assimilation.

(v) ACQUISITION OF WATER- The Secretary shall incorporate into the program the acquisition from willing sellers of water from streams tributary to the San Joaquin River or other sources to provide flow, dilute discharges of salt or other constituents, and to improve water quality in the San Joaquin River below the confluence of the Merced and San Joaquin Rivers, and **to reduce the reliance on New Melones Reservoir for meeting water quality and fishery flow objectives.**

(vi) PURPOSE- The purpose of the authority and direction provided to the Secretary under this subparagraph is to provide greater flexibility in meeting the existing water quality standards and objectives for which the Central Valley Project has responsibility **so as to reduce the demand on water from New Melones Reservoir used for that purpose and to assist the Secretary in meeting any obligations to Central Valley Project contractors from the New Melones Project.**

As you can see from the above-cited sections, Public Law 108-361 provides clear direction for the Department of the Interior, in consultation with the State, to develop a program to achieve the Bay-Delta objectives that will **reduce the use of water from New Melones Reservoir to meet these objectives.** This law must be taken into consideration by the State in any implementation phase.

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We appreciate the opportunity to provide written comments on the Periodic Review of the 1995 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

Respectfully Submitted,

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A Professional Corporation



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