

***TESTIMONY OF DAN B. ODENWELLER
CALIFORNIA SPORTFISHING PROTECTION ALLIANCE***

A) Please state your name and address for the record.

Ladies and Gentlemen, thank you for the opportunity to appear before you today, my name is Dan Bowman Odenweller, and I reside at 2643 Tamarisk Avenue, Stockton, California, 95207-1344.

B) Please briefly review your background and qualifications for the record.

Attached is a short resume, outlining my background and qualifications, for the record. I have both a Bachelor's and a Master's Degree from C.S.U. at Long Beach, and retired in the Fall of 2001 from the California Department of Fish and Game, after 33 years of employment. During that tenure, I served as an expert witness for a number of hearings before this Board, including the hearings that led to D-1485 (Delta Hearings), and in the hearings for the Mokelumne and Yuba river water rights decisions.

After retirement from State service in the fall of 2001, I was employed on a limited term basis for three years by the National Marine Fisheries Service. There I worked on fish passage issues in the Central Valley, on the ESA - OCAP Biological Opinion, and I wrote the first drafts of the Essential Fish Habitat - Biological Opinion for the CVP and SWP Operations in the Central Valley (OCAP). Funding for the position expired in the fall of 2004, and I retired again

I am presently acting in a volunteer capacity as a Fisheries Biologist, for the California Sportfishing Protection Alliance. I appeared in a similar capacity for Deltakeeper (a Chapter of BayKeeper), during the Triennial Review workshop for D-1485 earlier this year.

C) Would you please summarize your testimony for the record.

Thank you, I will try to keep my remarks brief, but I have six major points:

- 1) In my capacity as the Supervisor of the Contract Services Unit for the California Department of Fish and Game's Delta Studies Project, I oversaw and had developed a study plan to document the impacts of constructing tidal barriers in the south Delta.

These studies, which commenced in the late 1980's, were intended to assess the presence of, and the impacts (if any), of the construction and operation of tidal barriers in the south Delta. The activities ranged from the impact of changes in water surface elevations on the listed plants known to exist in and above the location of the tidal barriers, to predation on fishes, associated with the barriers. Anecdotal information from anglers identifies the South Delta Temporary Barrier sites as gathering points for predatory fish, including striped bass. This is based on angler success while fishing in the Delta. The planned studies, if completed as planned, would shed more light on this issue.

The purpose of these studies was to provide the information needed to support the preparation of a "full disclosure" document, as required by both the NEPA and by CEQA. I do not believe all of the studies were ever completed, although they would appropriately be referenced in the Draft EIR/EIS on the South Delta Improvement Project, which has yet to be made available to public review (as of 10/09/2005). Unfortunately, without this document, we are unable to define the project, and assess its effects on the biota of the South Delta.

- 2) The existing water quality standard is not a standard, and should be modified to separate the actual "standard" from the "method of compliance."

The Board, has equated a water quality standard (EC of 0.7 mmhos/cm), with a method of compliance (South Delta Permanent "or Operable" Barriers). In doing so, it has arguably become liable for the achievement of the standard. This latter point is of considerable significance, as the ability of the proposed solution to accomplish the goal is in serious doubt.

I would recommend that the Board revise the objective, and require compliance with the objective (EC of 0.7 mmhos/cm), leaving the method of compliance to the CVP and the SWP.

- 3) The South Delta Permanent Barriers, prescribed by the SWRCB, may in fact exacerbate existing water quality problems in the south Delta. We are currently at somewhat of a disadvantage on this matter, as the Draft EIS/EIR for the South Delta Improvement Project (SDIP) has yet to be released, despite numerous promises that it was forthcoming.

CVRWQCB staff has expressed concern over the potential increase in the methylation of mercury into the food chain associated with the SDIP and its operation. This concern is contained in the draft TMDL for Mercury, just out for review. Quoting from the August 2005 draft TMDL for Mercury, we find that:

"Sulfate concentrations are about seven times higher in the San Joaquin River than in the Sacramento River. At present, the San Joaquin River is

almost entirely diverted out of the Delta by way of Old River and Grantline Canal for export to southern California via the State and Federal Pumping facilities near Tracy. This reduces the proportion of San Joaquin River water in much of the southern and central Delta and allows intrusion of Sacramento River water with lower sulfate concentrations. The Record of Decision for the Bay-Delta Authority committed the State to evaluate and, if practical, begin construction of a series of permanent, operable barriers in the southern Delta to better control the routing of San Joaquin River water. An indirect consequence of the permanent barriers is that their operation will determine sulfate concentrations in much of the central and southern Delta.

Sulfate amendment studies need to be undertaken with sediment collected throughout the year from the southern, central and western Delta to determine whether the sulfate concentration in the overlying water affect methylmercury production in sediment. Results of these experiments can be considered when evaluating how to manage the permanent, operable barriers in the southern Delta and when considering water right decisions to modify the location of the salinity field in the estuary.”

The Delta in an area which is “under Public Health Advisories” regarding the consumption of fish, due to mercury contamination (among other reasons including PCB’s, pesticides, and heavy metals). The public health advisories are summarized in the CDFG Angling Regulations, and read as follows:

“San Francisco Bay and Delta Region

Because of elevated levels of mercury, PCBs, and other chemicals, the following interim advisory* has been issued.

- Women beyond their childbearing years and adult males should eat no more than two meals per month of San Francisco Bay sport fish, including sturgeon and striped bass caught in the delta. (One meal for a 150-pound adult is about eight ounces.)**
- Women beyond their childbearing years and adult males should not eat any striped bass over 35 inches.**
- Women of childbearing age and children should not eat more than one meal of fish per month. In addition, they should not eat any striped bass over 27 inches or any shark.**
- This advisory does not apply to salmon, anchovies, herring, and smelt caught in the bay; other sport fish caught in the delta or ocean; or commercial fish.**

• Richmond Harbor Channel area: In addition to the above advice, no one should eat any croakers, surfperches, bullheads, gobies or shellfish taken within the Richmond Harbor Channel area because of high levels of chemicals detected there.

*** A final state advisory is being developed. Follow this advice in the interim.”**

We have also identified a concern associated with the operation of the South Delta Temporary Barriers project, which would become a permanent condition with the construction of the SDIP. Specifically, by isolating the Tracy Pumping Plant intake from the channels contained within the SDIP, the effects of the low water conditions during spring low tides are exacerbated.

This reduced water surface elevation during the low tide condition causes the Tracy Fish Collection Facility to operate outside its design criteria. As a result, the collection and salvage of fish is compromised, and at times ceases to occur, due to the dewatering of the facility at extremely low water surface elevations.

These problems can only be made worse by the proposed increase in pumping capacity, being sought by the permittee's.

- 4) Generalized fish kills occur annually in South Delta during the late summer and fall.

Threadfin shad, carp, catfish and bullhead constitute a large fraction of the losses, at least from cursory inspection of the areas affected. These lost fish are carried to the CVP and SWP fish salvage facilities by the export flows, and often require increased staffing to deal with the large numbers of dead fish.

The causal mechanism has not been identified, although many of the fish show evidence of bacterial and viral pathogens. A summary of one such event was documented by Dr. G. Fred Lee, and was presented to the SWRCB. The summary is part of the record for the D-1641 workshops, and can be found as Delta Keeper Exhibit DK - EXH – 3 at:

http://www.waterrights.ca.gov/BAYDELTA/exhibits_list.htm#deltakeeper

- 5) The south Delta has been subjected to a major decline in the Pelagic Organisms Guild, despite efforts to manage this problem through both the IEP, and the CalFed process.

The effort to increase exports by removing the protection of the U.S. Army Corps of Engineers limitation of 6680 cfs (SWP-three day running average) places the

fish and wildlife beneficial uses at further risk. The result would fail to honor the basic premise of the Delta Accord (and of CalFed), namely that “We will all get better together.”

- 6) The lack of flows from the San Joaquin River is a causal mechanism limiting the south Delta beneficial uses including fish and wildlife maintenance, agriculture and water associated recreation.

Flows from the San Joaquin River above the Merced River junction were eliminated when the U.S. Bureau of Reclamation closed Friant Dam and completed the diversion and distribution systems in the southern San Joaquin Valley.

Impoundment’s on the Merced, Tuolumne, and Stanislaus rivers further degraded the San Joaquin River flows, although releases from storage on the Merced, the Tuolumne, and the Stanislaus river are one tool which has permitted the limited maintenance of some anadromous fish stocks in the basin. Unfortunately these impoundment’s alone cannot meet all of the demands placed upon them, and it is the San Joaquin River flows above the Merced River that need to be restored.

Improved instream flows, of San Joaquin Basin origin, would greatly assist in meeting the challenge of meeting the water quality standard (an EC of 0.7 mmhos/cm), and would improve both the upstream and the downstream migration conditions for anadromous fish. This recommendation is consistent with the one expressed in the CDFG Exhibit 10 to the SWRCB D-1641 Triennial Review that was dated June 30, 2005. The following table is extracted from that report:

Table 3. CDFG’s Recommended Vernalis Flows to Protect Fall-run Chinook Salmon¹⁴

CDFG Recommended Vernalis Flow Targets		
Water Year Type	Flow Level (daily average cfs)	Window Duration (days) ¹⁵
Wet	20,000	90
Above Normal	15,000	75
Below Normal	10,000	60
Dry	7,000	45
Critical	5,000	30

¹⁴ The Department submits these Vernalis flow recommendations to the Board within the following caveats:

1. DFG is proceeding with further internal review of its preliminary recommendations;
2. DFG will be proceeding with external stakeholder (including VAMP partners) and scientific peer review activities to refine the utility of the Model as another tool in defining a revised set of Vernalis flow objectives which provide adequate protection; and,
3. DFG encourages the Board to give serious consideration to the process necessary to revise the Vernalis flow objectives, and the refinement of VAMP as an implementation strategy, over the next 3 years.

¹⁵ Window Duration assumes a May 1 central time period date for all window lengths regardless of window duration.

We specifically reject the approach proposed by the permittee's "DMC/San Joaquin River recirculation" plan, which would transport water of Sacramento River origin upstream in the San Joaquin River drainage (near Westley) for release into the San Joaquin River. This proposal can only make conditions worse for anadromous fish indigenous to the area by introducing water of Sacramento River origin upstream in the San Joaquin River basin.

Based on the current status of the south Delta, I believe a Cease and Desist Order is not only appropriate, but mandated. Further, I believe the action of Board staff, waiving the implementation of the standard should be overturned. The action was inconsistent with the provisions of the Clean Water Act, and the California Administrative Procedures Act.

Changes in a formally adopted standard should not be undertaken without adequate public notice and an opportunity for public review and comment. To my knowledge, this was ignored in this case. Further, efforts to increase exports, and to reconfigure the Delta with barriers and pumps should also be deferred until we understand the nature of the problem.

We believe the following quote taken from the October 6, 2005 edition of the Oakland Tribune, which summarizes the need for caution in taking such actions.

“ Gerald Johns, Deputy Director of Water and Planning and Management for the Water Resources Department he said. "It's way too early to jump to conclusions.... This is more like 'CSI Delta'," Johns added.”

We agree with the need to stop and ensure that the actions being proposed do not exacerbate the very problems we are trying to solve.

Thank you for the opportunity to appear today, and I am prepared to take questions on my testimony.