



May 25, 2023

Via email

State Water Resources Control Board
Sacramento, CA
Email: LSJR-SD-Comments@waterboards.ca.gov

Re: Beneficial uses REC1 and REC2 are not being adequately protected

Dear Water Board staff,

In the WaterFix hearing, Douglas Rischbieter testified for the Department of Water Resources

The 2006 Delta Water Quality Standards determined that the water quality objectives in Table 1 provide reasonable protection of the beneficial uses of REC-1 and REC-2. (Exhibit SWRCB-27.) Those water quality standards include objectives for the parameter Chloride (Cl) at alternative but specific compliance points. Based on modeling output of this parameter at those compliance points, under the conditions expected with CWF H3+, the water quality objectives in Table 1 will continue to be met. (Exhibits DWR-1015 and DWR-1016.) Thus CWF operations will reasonably protect the REC-1 and REC-2 beneficial uses.

(Exhibit DWR-1024, p. 5.)

However, on cross-examination on March 9, 2018, Mr. Rischbieter could not recall any studies which supported the assertion that the standards in Table 1 actually provide reasonable protection of REC-1 and REC-2. (Hearing Transcript, p.128-138, excerpt attached.)The Delta has seen increasing extent and severity of harmful algal blooms in recent years, as well as continued declines in pelagic fish populations, including Striped bass. The Water Board needs to revisit the standards in Table 1 to ensure that the recreation beneficial uses are being protected.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Des Jardins", is positioned above the typed name.

Deirdre Des Jardins, Director
California Water Research
145 Beel Dr
Santa Cruz, CA 95060
ddj@cah2oresearch.com
(831) 566-6320

1 MS. DES JARDINS: Go to . . .

2 Yes. I'd like to go to look at the recreation
3 impacts, so REC-1 and REC 2, Mr. Rischbieter.

4 Can -- You testified that they would be
5 protected.

6 Can we go to Exhibit SWRCB-27, which is the
7 2006 Water Quality Plan.

8 And . . .

9 (Exhibit displayed on screen.)

10 MS. DES JARDINS: I'd like to go to Table 1 on
11 Page 23.

12 (Exhibit displayed on screen.)

13 MS. DES JARDINS: Mr. Rischbieter, are you
14 familiar with -- that the Table 1 water quality
15 standards are proposed to protect REC-1 and REC 2 uses?

16 WITNESS RISCHBIETER: I didn't testify that
17 they were designed to do that.

18 My testimony relates -- with respect to
19 Table 1 relates to the table and the accompanying text
20 paragraph which describes that these water quality
21 objectives for municipal and industrial beneficial uses
22 were determined to also reasonably protect -- protect
23 REC-1 and REC 2.

24 MS. DES JARDINS: I'd like to pull up Exhibit
25 Porgans -- Well, first, I'd like to ask, just a sec,

1 while we're at this"

2 Mr. Rischbieter, the -- one of two of the
3 intakes are at Delta-Mendota Canal at Tracy Pumping
4 Plant.

5 And the --

6 Let's scroll down further, please.

7 (Exhibit displayed on screen.)

8 MS. DES JARDINS: No. Scroll up.

9 (Exhibit displayed on screen.)

10 MS. DES JARDINS: Please scroll up. Just go
11 all the way back up.

12 (Exhibit displayed on screen.)

13 MS. DES JARDINS: -- and West Canal at the
14 mouth of Clifton Court Forebay.

15 Aren't those the M&I standards at the intakes
16 for the State Water Project and Central Valley Project?

17 MS. ANSLEY: Is -- Is that a question?

18 MS. DES JARDINS: Yes.

19 Mr. Rischbieter?

20 WITNESS RISCHBIETER: You're referring to two
21 of the five locations --

22 MS. DES JARDINS: Yes.

23 WITNESS RISCHBIETER: -- in the bottom half of
24 the page?

25 MS. DES JARDINS: Yes.

1 WITNESS RISCHBIETER: Those are in the
2 vicinity, yes. I'm not exact -- I'm not personally
3 aware of the exact location the water quality
4 measurements are taken from geographically.

5 Yes, those are near those locations.

6 MS. DES JARDINS: But these M&I standards
7 are -- while they're stated in the Water Quality Plan
8 to protect beneficial uses, they're tied to
9 specific . . . M&I intakes, including Clifton Court
10 Forebay, Delta-Mendota Canal, North Bay Aqueduct,
11 Contra Costa Canal; correct?

12 WITNESS RISCHBIETER: Those are listed in
13 Table 1 as compliance locations, yes.

14 MS. DES JARDINS: Thank you.

15 I'd like to go to Exhibit Porgans 332.

16 (Exhibit displayed on screen.)

17 MS. DES JARDINS: And this is -- This is
18 actually the previous Water Quality Plan from 1991,
19 which was superseded.

20 And I'd like to go to Page 126 -- .pdf
21 Page 126, which is Page 5-52.

22 (Exhibit displayed on screen.)

23 MS. DES JARDINS: And this -- I -- I just was
24 going to see if you were aware of the history which --
25 at 91, they said there were no Delta Plan objectives

1 for protection of the estuary recreational beneficial
2 use.

3 So . . . Are -- Are you aware that, prior to
4 1995, there were no -- no specific objections (sic) for
5 protection of swimming, boating, fishing, hunting,
6 water-skiing and house boating which are listed here?

7 WITNESS RISCHBIETER: Your question used the
8 term "objections" but I believe you are referring to
9 "objectives"?

10 MS. DES JARDINS: Objectives. Objectives.
11 I'm sorry. Objections are . . .

12 WITNESS RISCHBIETER: No, I'm no longer
13 familiar with the contents of this Plan. I vaguely
14 recall having seen it a long time ago.

15 MS. DES JARDINS: Let's go down to -- To
16 refresh your memory, let's go to the next page.

17 (Exhibit displayed on screen.)

18 MS. DES JARDINS: And, I think, Page 553. It
19 might be down towards the bottom.

20 (Exhibit displayed on screen.)

21 MS. DES JARDINS: There we go.

22 And at that time, they said for REC-1, which
23 included fishing (reading):

24 "Water quality objectives to protect
25 specific fish species in marsh habitat

1 areas are intended to protect
2 recreational uses also."

3 Are you familiar with the fact that there used
4 to be specific water quality objectives to protect fish
5 species in marsh habitat areas?

6 MR. MIZELL: Objection: Asked and answered.
7 He's indicated he's not currently familiar
8 with the content of this document.

9 And then, additionally, I'd like to raise an
10 objection as to relevance.

11 The questioner herself has indicated that this
12 plan was superseded by the existing Water Quality
13 Control Plan.

14 So to the extent that the 2006 Water Quality
15 Control Plan does indicate what is -- is in -- what is
16 protective of the Recreational 1 and 2 beneficial uses,
17 that's the appropriate document to be discussing at
18 this point, not what was occurring in 1991.

19 CO-HEARING OFFICER DODUC: Except to the
20 extent that she might be exploring this as a matter of
21 proposed conditions or . . . other aspect.

22 I mean, I -- Miss Des Jardins?

23 MS. DES JARDINS: Yes.

24 I believe that there is quite a bit of concern
25 and, to the extent that all of the M&I intakes that

1 were listed on -- on -- as protecting recreational
2 uses, are going to have additional intakes at Hood or
3 the -- you know, the Contra Costa intake at Freeport.

4 I think the issue of whether there's specific
5 protections for specific fish species or for swimming
6 beneficial use, are reasonable and relevant.

7 There is both the beneficial use and the
8 existing standard. And this Board will need to make a
9 determination as to the beneficial uses.

10 CO-HEARING OFFICER DODUC: All right. All
11 right.

12 Overruled, Mr. Mizell.

13 MR. MIZELL: I'd like to point out that I
14 believe the Board's current justification for the
15 standards are found in the existing Water Quality
16 Control Plan.

17 The previous Water Quality Control Plan does
18 not speak to what was later implemented.

19 But I respect your overruling my objection.
20 We can move forward.

21 CO-HEARING OFFICER DODUC: All right. Thank
22 you for respecting my overruling your objection.

23 Miss Des Jardins.

24 MS. DES JARDINS: So, all I wanted to do,
25 before we had this long detour, was ask:

1 Are you familiar that the previous Water
2 Quality Control Plans, '91 and earlier, assume that
3 water quality objectives to protect specific fish
4 species would protect recreational uses also?

5 WITNESS RISCHBIETER: I do not recall that --
6 knowing that that was the approach at that time.

7 MS. DES JARDINS: Okay. Thank you.

8 I'd like to pull up Exhibit Porgans 334.

9 (Exhibit displayed on screen.)

10 MS. DES JARDINS: And I'd like to -- Zoom out,
11 please, so we can see the whole thing.

12 (Exhibit displayed on screen.)

13 MS. DES JARDINS: Mr. Rischbieter, this is a
14 warning for Discovery Bay. And it says -- the
15 second -- from Contra Costa Health Services, dated
16 October 24th, 2017.

17 And it states (reading):

18 "Environmental Health advises
19 residents and visitors to Discovery Bay
20 to avoid coming into contact with water
21 in affected areas. Avoiding contact
22 with . . . water is also advised for
23 pets.

24 "Based on the results obtained from
25 the EPA in accordance with State

1 guidance, Environmental Health will post
2 public access areas and advise
3 residents . . . of harmful toxin levels
4 via social media and . . . electronic
5 communication."

6 Are you familiar with the kinds -- these kinds
7 of warnings that are going up in the Delta about water
8 contact?

9 MS. ANSLEY: Excuse me. Water content or --

10 MS. DES JARDINS: Water --

11 MS. ANSLEY: -- blue-green algae?

12 MS. DES JARDINS: Water contact.

13 MS. ANSLEY: Yes, but --

14 MS. DES JARDINS: Avoiding water contact in
15 affected areas, specifically with respect to harmful
16 alga blooms.

17 WITNESS RISCHBIETER: I have recollection of
18 advisories that have been issued for a number of
19 different bodies of water in California over the last
20 year or two at respective times and recall this
21 occurrence of harmful alga bloom in the vicinity of
22 Discovery Bay as being reported in the media.

23 MS. DES JARDINS: Isn't REC-1 water contact
24 sports?

25 Or doesn't it involve -- Isn't that the

1 definition?

2 WITNESS RISCHBIETER: Yes. I believe the
3 definition of REC-1 is body contact recreation and
4 REC 2 is water -- other water-dependent recreation.

5 MS. DES JARDINS: So aren't these -- Aren't --
6 Isn't Contra Costa health services advising residents
7 and visitors to Discovery Bay to -- that -- to not
8 engage in water contact sports in affected areas?

9 WITNESS RISCHBIETER: By virtue of the Notice
10 issued that's displayed on the screen, they did provide
11 that notification in response to specific water quality
12 testing results last year.

13 MS. DES JARDINS: So, based on this, do you
14 think that REC-1 is being adequately protected
15 currently?

16 WITNESS RISCHBIETER: Well, it is my
17 understanding that the compliance obligations at the
18 specific compliance points listed in Table 1 are
19 generally being met and will be met in the future under
20 the operation of Cal WaterFix.

21 I do not know the relationship between the
22 parameters measured at the compliance points with the
23 occurrence of the sighted harmful algal bloom that
24 occurred at Discovery Bay last year.

25 MS. DES JARDINS: Mr. Rischbieter, are you

1 aware of any study that links salinity at the indu --
2 municipal and industrial intakes in the Delta to
3 usability of the estuary for swimming?

4 WITNESS RISCHBIETER: No, I'm not specifically
5 aware of such study.

6 MS. DES JARDINS: Are you aware of any study
7 which links salinity at municipal and industrial
8 intakes to recreational fish species, such as Striped
9 Bass?

10 WITNESS RISCHBIETER: It . . . I think I
11 elaborated in my testimony that the protective measures
12 for fish and wildlife resources that are outlined in
13 Table 3 are the ones that are deemed protective of
14 activities that might include recreation fishing,
15 commercial fishing, and a number of other beneficial
16 uses.

17 So it would be the parameters that are --
18 Several parameters that are listed in Table 3 of the
19 2006 Water Quality Control Plan would be relevant to
20 that question.

21 MS. DES JARDINS: Thank you.

22 Are you aware of any studies which link
23 boating and whether there is sufficient water levels
24 for boating to municipal and industrial intake --
25 salinity at municipal and industrial intakes?

1 WITNESS RISCHBIETER: Boating generally falls
2 into both the REC 2 beneficial uses described in
3 Table 1 and the navigation -- nav beneficial uses in
4 Table 3.

5 I am not aware of any specific studies related
6 to boating frequency or boating suitability related to
7 the compliance points that are -- where salinity is
8 measured.

9 MS. DES JARDINS: I'd like to go -- Finally,
10 I'd like to go -- I just have one more set of questions
11 and I'd like to go to Exhibit SWRCB-107, which is the
12 Incidental Take Permit.

13 (Exhibit displayed on screen.)

14 MS. DES JARDINS: And I'd like to go to
15 Page 44 --

16 (Exhibit displayed on screen.)

17 MS. DES JARDINS: -- which is Borrow Fill.

18 And this says that there will need to be
19 (reading):

20 ". . . 21 million cubic yards" of
21 borrow, "including 3 million cubic yards
22 for tunnel shaft pads, 6 and a half
23 million cubic yards for Clifton Court
24 Forebay . . . 2 million . . . for the
25 intake, 6.7 . . . at the three intake