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Association of California Water Agencies

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OCT 19 2010
3885-Delta Council

October 15, 2010

Mr. Chad Dibble, Water Branch
California Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, CA. 95814

RE: Draft Report on Delta Water Flow and Species of Concern

Dear Mr. Dibble:

The Association of California Water Agencies (ACWA) appreciates the opportunity to comment on the California Department of Fish and Game's (DFG; Department) draft report entitled *Quantifiable Biological Objectives and Flow Criteria for Aquatic and Terrestrial Species of Concern Dependent on the Delta* (draft report; report), dated September 21, 2010. ACWA represents nearly 450 public water agencies that collectively provide approximately 90 percent of the water for agricultural, business and residential use throughout California. This includes agencies located above, within and below the Delta.

While ACWA appreciates the fact that the task set forth for DFG in the Delta Reform Act of 2009 (SB X7 1; Stats. 2009 (7th Ex. Sess.) ch 5, § 39) was narrow in scope, we are extremely concerned that the report fails to discuss the negative implications to other public trust resources such as environmental impacts outside the Delta, human health and economic stability that will most likely occur across the State of California if the report's biological objectives and flow criteria recommendations are adopted. Not unlike the recent draft flow criteria accepted by the State Water Quality Control Board (SWRCB), the CDF&G's analysis is extremely myopic. No consideration whatsoever is given to a realistic course of action designed to fulfill the coequal goals of water supply reliability and Delta ecosystem sustainability – the specific mandate set forth by the Legislature when it passed the 2009 Comprehensive Water Legislation package, including SB X7 1, and endorsed by Governor Schwarzenegger when he signed the legislation into law.

This report, and the recommendations contained within, provides no realistic road map for California's future. Just like the SWRCB's approach, the Department's approach to developing flow criteria and biological objectives focused only on wildlife and fisheries resources **within** the Delta. By the reports own admission, no consideration was given to

other public trust resources the Department is responsible for outside the Delta (e.g. failure to consider resource needs such cold water pool management in upstream reservoirs for listed fish populations outside the Delta). See Executive Summary at pages ii-iii. In addition, no consideration was given to any public interest concerns such as human health and safety, economic stability or water supply reliability. Such an approach begs the questions – where is the balance, when do the coequal goals mandated by the Legislature come into play, and will there be any comprehensive, strategic planning amongst the responsible state agencies.

While the development of a more comprehensive solution that addresses the Delta environmental challenges may not be a specific responsibility of the Department of Fish and Game, ACWA believes it is incumbent that when a responsible agency releases a report with very specific recommendations such as this report does, the agency should dedicate a portion of the report to discussing the potential impacts associated with the implementation of its recommendations. It is insufficient to dismiss such responsibilities by merely stating "[t]he SWRCB's flow criteria report along with DFG's biological objectives and flow criteria will serve an important role in providing the scientific foundation for future water quality control planning activities, water rights proceedings, and Comprehensive Delta Plan and BDCP development." Id. at page v. For this report to have realistic value to decision makers in these other forums, it needs to disclose potential far-reaching impacts of its recommendations, beyond the benefits attributed to the fisheries and wildlife within the Delta.

ACWA is also concerned that this draft report, like the SWRCB's final flow report, fails to provide any analysis as to the impact of other stressors (e.g. non-native predation, contaminants) on aquatic resources within the Delta – "Other factors…can adversely affect the ecosystem by reducing overall productivity and affecting nutrient dynamics and the base of the foodweb. It is not the purpose of this document to address all these issues." Id. at page ii. By dismissing other environmental stressors in the Delta from its analysis, the Department fails to realistically consider a range of potential opportunities, in terms of adjustments to flow criteria recommendations, which might be derived by implementing strategies that address other factors adversely affecting the Delta ecosystem. Consequently, the agencies are, once again, inadvertently advancing piecemeal approaches as opposed to comprehensive solutions. ACWA fears that such an approach will continue to pit the goals of reliable water supply against achieving a sustainable Delta ecosystem – a pathway we have traveled down time and again with no success in terms of improvements for either goal.

ACWA strongly encourages the Department to incorporate in its final report a discussion regarding the full array of potential impacts that are likely to occur if the recommended Delta flow criteria are implemented as proposed in the report. We also believe that the report should also discuss the interrelationship between reducing the impacts of other stressors on the Delta aquatic ecosystem and modifications to the Department's flow recommendations. Such disclosures will truly move us in the direction of a comprehensive strategy that concurrently addresses the coequal goals of water supply reliability and Delta ecosystem sustainability.

Finally, we believe it is critical that any transmittal of this report to the SWRCB, or any other governing body, disclose that this report is only a preliminary work by the Department as directed by the Legislature in the Delta Reform Act, and that any final decision regarding Delta flow criteria must ensure consistency with the co-equal goals of providing a more reliable water supply for California while protecting, enhancing and restoring the Delta ecosystem, as required by the Act. Adoption of the flow criteria as set forth in this report, or the SWRCB's report on flow criteria, will preclude any realistic assurances for a reliable water supply for California, and will likely undermine the success of any long-term planning efforts such efforts as the Bay Delta Conservation Plan.

In closing, let me reiterate that ACWA stands ready to work with the Department of Fish and Game, as well as all the other responsible state and federal agencies, to advance a comprehensive strategy that fulfills the coequal goals enacted by the Legislature. If you would like to discuss our comments in further detail, please do not hesitate to give me a call at (916) 441-4545.

Sincerely,

Timothy H. Quinn
Executive Director

Cc: John McCamman, Director, Department of Fish and Game
Charlie Hoppin, Chair, State Water Resources Control Board
Phil Isenberg, Chair, Delta Stewardship Council