



October 19, 2011

**Attention: Imported Water Committee**

**Bay-Delta Quarterly update. (Information)**

### **Background**

This quarterly update discusses activities that are taking place in the Bay-Delta region.

### **Discussion**

#### **Delta Stewardship Council**

The Delta Stewardship Council has now produced five drafts of the Delta Plan. A coalition of agricultural and urban water agencies within the Association of California Water Agencies (ACWA) has prepared an alternate Delta Plan, which will be considered in the DSC's CEQA analysis of the plan. The Water Authority joined in an ACWA coalition letter requesting consideration of the alternate Delta Plan.

ACWA member agencies have been concerned that the drafts prepared by the DSC have given the DSC more of a regulatory role than is authorized in the legislation. The DSC proposes to regulate the conservation practices of water agencies that receive water from the Delta.

The DSC's drafts also require flow restrictions for protection of fish species. These flow restrictions are not adequately justified by science. There is increasing scientific evidence that the fish species are being affected more by other stressors, such as wastewater discharges, invasive species, and predators. Furthermore, the regulatory approach and flow restrictions are not consistent with achieving the coequal goals of water supply reliability and ecosystem restoration as required by law and state policy. The water agencies are concerned that the emphasis on flow restrictions will either reduce or eliminate the benefits of the investments that the water agencies are being asked to undertake in an isolated facility.

#### **Bay-Delta Conservation Plan**

The Bay-Delta Conservation Plan is continuing to progress under the direction of Natural Resources Agency Undersecretary Jerry Meral. Dr. Meral has emphasized the new Governor's desire to complete the BDCP and to carry on the work of the previous administration to achieve the co-equal goals of water supply reliability and ecosystem restoration in the Delta.

The Natural Resources Agency has held public meetings on the BDCP in an attempt to achieve wider participation in the BDCP process. Under the previous administration, participation in the process was limited to those organizations that were willing to sign onto the preliminary plan. The state and federal water contractors and several environmentalist organizations signed onto the preliminary plan, but local governments in the Delta and other environmentalist organizations refused. Although the public has always been invited to attend meetings of the BDCP steering committee, non-participants were not allowed input into the plan itself.

Dr. Meral has opened the process to non-participants. He has also formed several working groups on specific issues related to the BDCP. The Water Authority is participating in working groups on governance, conveyance systems, and finance. The governance working group has already met twice, while the other working groups are expected to begin work in the summer and fall respectively.

The BDCP Steering Committee released an incomplete working draft at the end of 2010 and is working to complete various chapters. The National Research Council released a report that strongly criticized the draft. The Council's strongest criticism was that the draft lacked an "effects analysis," which is the heart of a Habitat Conservation Plan.

Review materials on the effects analysis were made available to the public for comment on October 7. An independent review panel of academics will review the technical appendices connected with the effects analysis and submit a report by the end of November 2011. The effects analysis is scheduled for completion by April 2012. The California Natural Resources Agency and the federal Department of Interior have jointly announced that the BDCP will be substantially complete and ready for public review in June 2012.

### **Wanger Decision**

The judge of the federal district court in Fresno, Oliver Wanger (rhymes with "ranger"), has been overseeing Delta litigation for several years now. It was Judge Wanger who imposed restrictions on the export pumps to protect the Delta smelt in 2008, which has led to the loss of hundreds of thousands of acre feet of water to Southern California and the Central Valley.

In 2010 and 2011, the state and federal water contractors and the State of California have been suing the federal government to relax the restrictions for Delta smelt and salmon, arguing that the restrictions are not based on good science. Last spring, Judge Wanger entered an injunction against the federal government to halt some of the restrictions. This summer, the federal government moved to lift the injunction with respect to "X-2," the point in San Francisco Bay where fresh water from the Delta mixes with salt water from the bay. The federal agencies wanted to move the X-2 point further West, which would have cost the state and federal projects approximately 300,000 acre feet of water.

Judge Wanger refused to lift the injunction. In his announcement of his decision, he found that the federal government acted in bad faith by providing scientists as witnesses who gave misleading testimony. According to Judge Wanger, the federal scientists stuck to their conclusions that the Delta smelt were in jeopardy of extinction, even when their own scientific data and prior testimony contradicted the conclusions. The finding of bad faith was unusual and highly dramatic. Judge Wanger retired from the bench on September 30.

### **Employment Impacts of Delta Fix**

On September 19, 2011, an economics consulting firm, the Brattle Group, released an analysis of the employment impacts of a Delta fix. The paper, entitled "Economic Impacts for Proposed Bay-Delta Tunnel Options," was commissioned by MWD for the DHCCP. The paper concluded

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that construction of a 15,000 cfs tunnel would create 129,000 jobs, while construction of a smaller, 3,000 cfs tunnel would create 78,000 jobs. The jobs would be direct (actual construction workers), indirect (support services and supplies), and induced (increased employment in local communities due to the increased economic activity).

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