

**California Fisheries Restoration Foundation (CFRF)
California Striped Bass Association (CSBA) • Fly Fishers of Davis
Friends of Trinity River (FOTR) • Klamath Riverkeeper
Northern California Council / Federation of Fly Fishers (NCCFFF)
Pacific Coast Federation of Fishermen's Associations (PCFFA)
The Institute for Fisheries Resources (IFR)**

9 September 2009

Honorable Fran Pavley, Chair
Senate Committee on Natural Resources and Water
Sate Capitol
Sacramento CA 95814

Honorable Jared Huffman, Chair
Assembly Committee on Water, Parks and Wildlife
Sate Capitol
Sacramento CA 95814

Comments on Proposed Delta/Water Legislation

Dear Senator Pavley and Assemblyman Huffman:

We appreciate the work you and your fellow legislators have performed regarding this important legislation. We appreciate the efforts to comprehensively address what has become a thoroughly degraded and compromised Delta ecosystem and an unreliable water supply for Californians and their businesses.

We do not support moving forward with legislation this session. If, during this session, the legislature feels compelled to bring the proposed Delta/Water legislation before a vote of the full Senate and Assembly, we want to be clear that the legislation must not contain provisions or funding for additional surface water storage, an isolated facility/peripheral canal, or any compromise regarding the status of water in the Public Trust.

To strengthen the proposed Delta/Water legislation, we offer the following comments.

IMMEDIATELY IMPLEMENT CONTROLS AND SAFEGUARDS REGARDING THE BDCP

Modify the goals and objectives of the BDCP to immediately comply with the NCCP program (Natural Community Conservation Planning Act of 1991, Fish and Game Code 2800 et seq.)

- The under-development Bay Delta Conservation Plan does not comply with the Natural Communities Conservation Plan program but instead

establishes a minimum efficacy of avoiding jeopardy for special status species. The proposed Delta/Water legislation seeks to rectify this by providing compliance with the Natural Communities Conservation Plan program, thereby upgrading the ecosystem goals from “avoid jeopardy” to recovery.

- The Natural Communities Conservation Plan program should be immediately implemented.
- Our fishery groups consider restoration as essential and achievable. We consider avoiding jeopardy as a continuation of the failed status quo - simply unacceptable.

SWRCB must immediately make flow determinations (instream flows)

- The under-development Bay Delta Conservation Plan lacks scientific basis and credibility because the State Water Resources Control Board flow determinations are unavailable/incomplete. The Bay Delta Conservation Plan will ultimately be delayed until the SWRCB establishes the requisite instream flows.
- The proposed Delta/Water legislation identifies this need and we strongly support these legislative provisions. The proposed Delta/Water legislation should be strengthened by mandating that instream flow determinations be expedited and mandating that no infrastructure improvements be planned or permitted (including modifications to the location of diversion), or constructed, until the instream determinations are made part of an SWRCB Order.

Delta Stewardship Council must review and approve the BDCP

- In addition to the reviews and approvals of the Bay Delta Conservation Plan mandated under existing law - reviews and approvals by state and federal fish agencies - the newly-proposed Delta Stewardship Council must review, comment on, and approve this important plan. We understand the proposed Delta/Water legislation does not contain this provision and it needs to be added.
- The Delta Stewardship Council will generally be charged with implementing the Bay Delta Conservation Plan and its buy-in is required.

Mandate a reasonable range of alternatives for the BDCP EIR/EIS, including fish-friendly alternatives

- The Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Bay Delta Conservation Plan must cover a

reasonable range of alternatives, including alternatives that favor the expressed goal of ecosystem restoration. This must translate into a deliberately-constrained alternatives for water export.

- For example, with regard to the contemplated isolated facility/peripheral canal, the reasonable range of alternatives must contain a pipeline that limits exports to approximately 5,000 cubic feet per second. We have termed this alternative the “Delta straw” or “Delta sipper” alternative. The Delta sipper alternative may be contrasted to hydraulic capacities of approximately 15,000 cubic feet per second that are currently being contemplated.
- Our expression of the need for a Delta sipper alternative should not be construed as a preference for this method of conveyance nor its hydraulic capacity. We cite this example to emphasize how the Legislature must intervene to facilitate an objective EIR/EIS. Based on their historic performance, the California Department of Water Resource and the US Bureau of Reclamation will, left to their own recognizance, develop and analyze a narrow range of alternatives that maximizes water exports (as was done for the South Delta Improvements Program EIR/EIS).
- The proposed Delta/Water legislation does not currently mandate the development of fish-friendly alternatives and these provisions must be added to ensure a reasonable range of alternatives is evaluated.

CHANGE THE MAKE-UP OF THE DELTA STEWARDSHIP COUNCIL AND INCREASE THE ACCOUNTABILITY OF THE DELTA STEWARDSHIP COUNCIL

Design the Delta Stewardship Council with balance of stakeholder interests

- The proposed Delta/Water legislation contains provisions for the Governor to appoint 4 of the 7 positions, albeit at staggered terms and albeit subject to Senate confirmation. Unfortunately, the staggered terms and Senate confirmation do not adequately assure balance. Staggered terms for appointees must be shortened to provide adequate evaluation by the Senate of their performance for continued service.
- Substitute a designee from the State Water Resources Control Board for one of the Governor’s appointees. This will provide a stakeholder with purview over important issues such as water rights and water quality. The SWRCB-elected representative would, upon election, need to be a member of the State Water Resources Control Board (SWRCB), but would continue to serve even if his/her term on State Water Resources Control Board expired during service on the Delta Stewardship Council.
- Substitute a designee by the Secretary of the California Environmental Protection Agency (CalEPA) for one of the Governor’s appointees.

Such designee could be the Secretary himself/herself or could be an employee of the California Environmental Protection Agency.

- Neither the State Water Resources Control Board nor the California Environmental Protection Agency will be front-line agencies charged with implementing the Bay Delta Conservation Plan; accordingly, there is no conflict of interest.
- The Governor would still maintain substantial but indirect influence by virtue of the Governor's responsibility to appoint members of the State Water Resources Control Board and the Governor's responsibility to appoint the Secretary of the California Environmental Protection Agency.

Require the Delta Stewardship Council to report to the Legislature on an annual basis

- The proposed Delta/Water legislation lacks accountability regarding the Delta Stewardship Council. Formal reporting requirements would enhance accountability. These provisions must be added.
- On an annual basis, prior to formulating a State budget, the Delta Stewardship Council must prepare a report to the Legislature presenting an audit of income and expenditures, metrics of the program performance, planned versus actual accomplishments, recommended legislative measures, and concomitant issues.

Immediately implement the Delta Stewardship Council for the benefit of the BDCP process, before proposing any bonds, and before constructing any infrastructure

- Because it is not possible at this point and time for the legislature and Governor to agree on water operations and water infrastructure, the proposed Delta/Water legislation agrees on a process wherein these decisions result from the Bay Delta Conservation Plan and the authority of the Delta Stewardship Council. Obviously, the proposed Delta/Water legislation relies heavily on the Delta Stewardship Council.
- It would be illogical to circumvent the authority of Delta Stewardship Council by pre-determining or otherwise constraining that authority. Meaningful involvement of the Delta Stewardship Council must be expedited.

STRENGTHEN PROVISIONS REGARDING GROUNDWATER EXTRACTION AND USE

- We are concerned about impacts to groundwater basins from over-drafting, from both local and state-managed water programs. Accordingly, requirements for groundwater extraction and use are a

necessary part of the proposed Delta/Water legislation and a positive step for sustainable water management in the Central Valley. The groundwater provisions that are part of the originally-proposed Delta/Water legislation must be carried forward to the final version. In addition, we request the following additions.

- Limits on groundwater extraction must be established to provide sustainable, reliable water supplies. The proposed Delta/Water legislation needs to, but does not, establish a process to identify elevations at which groundwater extraction must be curtailed and elevations at which extraction may be resumed.
- The proposed Delta/Water legislation does not require concurrent monitoring of groundwater basins and the interconnected streams and rivers. Many streams and rivers discharging to the Central Valley and its groundwater basins support threatened and endangered fish species, so it is critical to maintain adequate and supportive flows and water quality. Only by monitoring the groundwater and surface water interactions can shortfalls be documented and appropriate actions be taken to mitigate fishery impacts. This must be coordinated with instream flow requirements established by the State Water Resources Control Board, NOAA Fisheries, and the Fish & Wildlife Service.

Thank you for considering our comments.

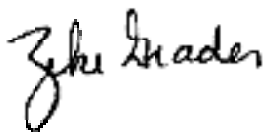
Sincerely,



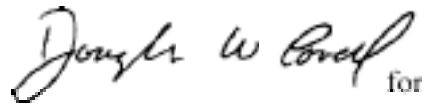
Byron Leydecker, Chair
Friends of Trinity River



Mark Rockwell, VP Conservation
Northern California Council / Federation of Fly Fishers



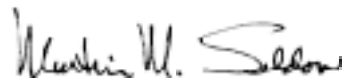
William F. "Zeke" Grader, Executive Director
Pacific Coast Federation of Fishermen's Associations (PCFFA)
The Institute for Fisheries Resources (IFR)

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Erica Terence, Riverkeeper
Klamath Riverkeeper

Handwritten signature of Lowell L. Ashbaugh in cursive.

Lowell L. Ashbaugh, Conservation Chair
Fly Fishers of Davis

Handwritten signature of Martin M. Seldon in cursive.

Martin M. Seldon, President
California Fisheries Restoration Foundation

Handwritten signature of Gary Adams in cursive.

Gary Adams, VP State Board
California Striped Bass Association