

MAY 16 1994

PRESENTATION
by the
SAN LUIS AND DELTA-MENDOTA WATER AUTHORITY
at the
STATE WATER RESOURCES CONTROL BOARD WORKSHOP
May 16, 1994

What are the principal ESA issues the SWRCB should consider during this review?

The water supply of most of the 39 members of the SLDMWA is curtailed by the requirements in your Decision 1485. It is further curtailed by the ESA requirements and provisions of the Central Valley Project Improvement Act. It could be further curtailed by the proposed EPA standards. These existing and proposed state and federal requirements are interrelated. Therefore, we will comment on all of them together rather than restricting our comments to ESA alone.

We have three serious concerns about this collection of existing and proposed requirements:

Even though these requirements are interrelated, they are not being developed as a coordinated set of protections.

Taken together, their effects on our water supply in particular and the California economy in general may not be justified. More specifically, we question

the scientific basis of the requirements, and

the inordinate amount of attention on the state and federal water projects (specifically, Delta exports and the effect of the projects on Delta outflow) as opposed to numerous other, heretofore generally ignored, factors affecting Delta environmental values.

We are concerned about the uncertainty that these requirements impose on our water supply. We have always had to deal with the uncertainty of the weather. Now, in addition to the weather, we must try to anticipate how the CVPIA will be implemented next year and what next year's ESA requirements will look like. Once those requirements are set, we will still have to deal with the uncertainty of take limits. This is no way to supply our urban customers or for our farmers to do the planning and obtain the financing to grow crops.

We hope that the SWRCB can address our two concerns.

What does the SWRCB bring to the Delta issues that the various federal agencies do not bring?

Your authority is broader. It covers all water users and the methods of diversion and use. It covers all sources of pollution. Because of your broad specific authorities, we believe that you also have opportunities to greatly influence matters not within your specific authority. For example, we believe you could affect factors such as fishing pressure or the construction of facilities in the Delta to better protect fish. In other words, you have the authority to

require actions that, taken together, provide more comprehensive environmental protection than provided by federal requirements.

You are obliged to balance the effects of your requirements. This eminently reasonable act of balancing is missing from federal actions, or at least federal agencies assert that they have neither the responsibility or authority to balance. We think that, on the face of it, this is absurd, the result of poorly conceived federal requirements or mis-interpretations of these requirements. Therefore, you have the opportunity and the obligation to act in the best interests of the entire state rather than of one interest group.

Based on these additions that the SWRCB could bring to the Delta issues, we have two general recommendations:

The SWRCB should develop comprehensive protections for environmental values in the Bay-Delta system. The Board's protections should be equally or more protective of environmental values than current protections. These protections should encompass endangered species requirements. These protections should provide more year-to-year certainty than the current set of requirements. They should address all factors adversely affecting these values, not just the state and federal water projects and not just Delta exports and outflow. They should address factors not necessarily under the direct authority of the Board. These protections should be closely tied to a real time monitoring system, and they should be flexible and capable of modification as new information becomes available. These protections should include Delta facilities as a long term measure for protecting the Delta environment and the state's water supplies.

These protections should include a limit on the amount of water dedicated to environmental protection from all water users. This limit should remain in effect for several years to provide the necessary level of certainty.

We intend to provide more specific recommendations later.

What are the effects of diversions throughout the Bay-Delta Estuary on beneficial uses?

We are developing information on this question and will present that information later.

What methods should the SWRCB use to analyze the water supply and environmental effects of alternative standards?

In the past, such "methods" have provided much of the basis for environmental regulation and for assessing the effects of these regulations. In the past, we and others have argued at length before this Board on the validity of these methods. We do not think this is the appropriate forum to resolve such issues.

If such methods are to be used, we recommend that the SWRCB establish a method of review more appropriate to the complexity of these methods. Specifically,

The SWRCB should establish a separate peer review process for assessing the merits and limitations of candidate analytical methods. This process should use bona fide experts to provide this review.

The Bay Delta Modeling Forum has been created expressly to provide, among other things, such peer review. The SWRCB should make maximum use of the Bay Delta Modeling Forum to carry out these peer reviews.

Finally, we recommend that these methods incorporate the idea of flexible requirements, tied closely to actual conditions in the Delta.