

Statement of
Zeke Grader, Executive Director
Pacific Coast Federation of Fishermen's Associations
to the Little Hoover Commission
Concerning the Commission's Review of the Governance
of the California Bay Delta Authority
Sacramento, California -22 September 2005

"Fish gotta swim".....Oscar Hammerstein
"Fish don't swim in money".....Molly Thomas

Chairman Alpert and Members of the Commission, we would like to thank you for the opportunity to provide comments this morning on the productivity and governance of the California Bay Delta Authority (CBDA) and its "CALFED" program. To discuss governance, however, and what changes are needed, if indeed the CALFED program is worth saving, it is important to understand the history and purposes, purported and otherwise, behind this program, which we wish to discuss. We have attached a 13 July paper signed by fishing and conservation groups with recommendations for the CBDA process, including governance.

Introduction

By way of introduction, the Pacific Coast Federation of Fishermen's Associations (PCFFA) is a non-profit trade organization representing working men and women in the West Coast's commercial fishing fleet. PCFFA represents California's commercial salmon and Dungeness crab fishermen. The California Herring Association is a PCFFA member. These three fisheries, in particular, are heavily dependent on the health of the San Francisco Bay/Sacramento-San Joaquin River estuary. To put it in perspective, the fall-run chinook migrating to the sea from the Sierra streams through the Delta and San Francisco Bay account for over 90 percent of the California's ocean salmon catch and a significant share of the catch offshore Oregon and Washington as well. San Francisco Bay is one of the largest, if not the largest nursery area for Dungeness crab along the Pacific Coast. San Francisco Bay further supports the largest herring roe fishery south of British Columbia, which is, by the way, the nation's single remaining "urban commercial fishery" – something to be treasured and preserved.

The Bay and Delta serve as important habitat for other commercially valuable species ranging from California halibut, English sole and anchovy, and important recreational fisheries for native sturgeon and non-native striped bass. The Bay, too, once supported major shrimp and oyster fisheries and could again, if restored.

The significance of “estuary” to CBDA’s mission

An estuary, as many of you know, is where freshwater outflow meets and mixes with seawater inflow. The lighter freshwater slides along the top. The heavier seawater slides up on the bottom, pushed by the tides. Where the energy of the freshwater outflow is finally exhausted by the energy of the incoming seawater, we have the “mixing zone.” This is where an estuary does a great deal of its important work on behalf of aquatic organisms, including the fish species that our fishermen depend on.

The location and size and productivity of the estuary’s mixing zone is determined by the amount of freshwater flowing “downhill”. Too little outflow, and the mixing zone retreats upstream into the deep, dark, confined channels of the Delta. Sufficient freshwater outflow and the mixing zone occurs in shallow, sunny Suisun Bay and Honker Bay – roughly in the Benicia area – which are veritable pastures for estuarine fauna – the tiny copepods and shrimp that young fish eat.

What did the State learn about the estuary and when did it learn it?

Through the development of the federal Central Valley Project (CVP) and State Water Project (SWP) pumping stations in the southern Delta, beginning in the 1950s, the two governments made possible the removal of half the freshwater that once flowed out of the Central Valley and into the estuary and Bay. This pumping has displaced the historic location of the estuary’s mixing zone, increasingly in recent years, to the detriment of the fish and wildlife resources of the river-Delta-Bay continuum.

When did State officials know what these projects can do to the Bay and Delta? Maybe not in the earliest planning stages, however, if you had an electronic copy of the 1958 State Water Plan and you asked your computer to word-search “estuary” it would not find the word. So here was the State of California, poised to impact the most valuable estuary in North or South America, and it did not understand – or perhaps it did not care to understand – that the health of the estuary and its 10,000-year-old ecosystem depends, primarily, on the amount of freshwater flowing through the river-Delta-Bay continuum.

What State officials might have been ignorant of in 1960, they certainly couldn’t ignore in the 1980s. The State had entered into an agreement with the federal government to implement the federal Clean Water Act. The State had adopted a Bay-Delta water quality/water rights plan in the late 1960s, in furtherance of that Clean Water Act implementation, and it had updated that first plan in the mid-1970s to strengthen fish protections, among other things.

Federal approval of the State's plan was contingent on maintaining annual fish production in the estuary at certain target levels. Those levels were not being met in 1986 when the State Appellate Court directed the California State Water Resources Control Board (SWRCB) to revisit and improve its Bay-Delta Plan.

The SWRCB spent that year scoping its Bay-Delta proceedings and the next, 1987, conducting its proceedings. The SWRCB hearing record produced 14,000 pages of testimony and 40,000 pages of exhibits, much of it explaining, in detail, the function and health-needs of the estuary.

The SWRCB then spent another year producing a draft water rights/water quality order which recognized clearly the need to provide the estuary 1.6 million feet more freshwater outflow than recognized in its 1969 and 1974 plans. That draft order was released in October, 1988.

By this time, 1988, the State establishment knew clearly what it would take to prevent a collapse of the estuary.

Congress responds

Responding to the State's call for the need for more freshwater outflow for the estuary, Congress sent President George H. W. Bush the Central Valley Project Improvement Act (CVPIA), which, among other things, pledged 800,000 acre-feet – the federal share of the 1.6 million in additional needed outflow – to help secure the health of the San Francisco Bay-Delta estuary. The President signed the bill in October, 1992, four years to the day of the release of the SWRCB's draft order.

The “historic” Bay-Delta Water Accords of 1994, the launch of the CBDA

The two years following enactment of the CVPIA were fairly promising ones for the future of the estuary. The U.S. Bureau of Reclamation, which only seven years earlier had boasted that it had an additional million acre feet of water a year to sell from the Central Valley Project – a boast that was challenged by the California Legislature in Senate Joint Resolution 43 of 1988 (which passed the Assembly unanimously) – was directed to work with the U.S Fish & Wildlife Service and others to determine the timing of the new federal contribution to Delta/Bay freshwater inflow.

In addition to Sacramento winter-run king salmon, Delta smelt had been listed under the federal and State endangered species acts and State and federal resource managers had their hands full developing the fisheries restoration program contemplated in the CVPIA. And there were more ESA listings under consideration.

And then, in fall, 1994, a new majority in Congress vowed to terminate the environmental and species protection acts developed by Congress over the preceding 20 years. The latter-day environmental organizations (into which journalists to this day insist upon lumping California's 150-year-old commercial fisheries) panicked.

The “historic” Accords (to which the fishermen were not a party, because of our legitimate reservations about their shortcomings concerning Delta outflow, Sacramento salmon protections, and San Joaquin River restoration) became the eventual launch pad for the California Bay Delta Authority.

PCFFA has, however, attempted to participate in the CALFED process, despite its being an energy and resource sump for our small organization. The late Nat Bingham, a commercial fisherman who served nine years as PCFFA President, served on the original Bay-Delta Oversight Committee and his successor as PCFFA President, Pietro Parravano, was a member of the Bay-Delta Advisory Committee.

Given that the State knows what the Delta needs, what has CBDA delivered ?

It seems to us that the major products of the CALFED era are:

- A “dumbing-down” of California’s once-sharp focus on what precisely what is needed – that is, freshwater outflow -- to prevent the collapse of the river-Delta-Bay health. The issue was reported vigorously to the public at the time of the SWRCB’s 1987 proceedings and the release of its 1988 draft plan, and seems to us to have somehow fatigued since.
- An unprecedented warping of State and federal environmental laws. PCFFA knows of nowhere else the public has been presented with a three-foot-high environmental document that identifies a thousand serious environmental issues and concludes “Not to worry, these will all be sorted out by a world-class (whatever that is) science program, which we’ve already launched.” (What were those hundred scientists that testified before the SWRCB in 1987, chopped liver?)
- Influence over river-Delta-Bay related federal funding has passed from the anti-dam environmental and fisheries community, instigators of the CVPIA, to the pro-dam agricultural community. The pro-dam community’s insistence that the CALFED program address new or enlarged dams – or receive no new federal funding -- has called the federal government’s commitment to Bay-Delta protection into question like no time since the 1950s.
- An unprecedented shift away from the time-honored policy of “let the user pay” for goods and services to somehow making the delivery of quality water supplies to communities south of the Delta the financial responsibility of the 18 million or so Californians that live upstream of the Delta, as well – through the continuum of CALFED program-enabling bond acts.
- And last but certainly not least, the recent unexplained collapse of the four key Delta pelagic fish species

The CALFED Program's Premise and Governance

So what do the events of the CALFED/CBDA years say about the program's premise and the organization's ability to deliver on that premise?

During the Wilson-to-Davis administration transition, a group of scientists, including one of ours, were discussing a prospective program of buying water and routing it through the Delta at specified times to assist the migration of key fish species through the area. As the Davis team took office this was becoming known as the "Environmental Water Account", or EWA. Within what seemed like hours of the Davis team reaching their new desks, the Secretary of the Resources Agency announced, in a press release, that the EWA "demonstrated" that more water could be removed from the estuary without harming the fish and wildlife that depend upon it.

There had been no such "demonstration". The EWA was barely out of its conceptual stage.

This premise, that we can tap the estuary's freshwater indefinitely and it will somehow continually forgive us and keep our fish and wildlife heritage intact appears, given the unexplained collapse of the pelagic fish species, dead wrong.

And yet it is the CBDA's principal operating premise.

When the courts reviewed the failed Bay-Delta water rights/water quality plans of the 1970s and ordered the SWRCB to revisit and correct the plan everyone was clear where the buck stopped. Getting a defensible plan in place was the clear responsibility of the SWRCB. The SWRCB was given that responsibility when the Legislature passed, and Governor Reagan signed, the state's landmark Porter-Cologne clean water act.

When agencies like the SWRCB failed to act, or acted inadequately, they were hauled into court and made to account for themselves. It didn't matter that the Governor had smothered their work – that's what happened to the SWRCB's clear-on-the-concept 1988 Bay-Delta Plan. The law still required them to deliver, Governor's Office politics or no.

What can you make the CBDA answer to? What would be the harm of returning to the condition where we knew who was responsible for protecting the river-Delta-Bay continuum – i.e., as we did before there was a CBDA ? For the life of me, I can't see the harm.

Before charging head-long into the governance issues, we'd better ask this fundamental question first. Because, unless the CDBA and CALFED are given clear responsibility for protecting and restoring the Bay-Delta and held responsible for it, then all it is doing is muddling lines of authority and responsibility of other agencies for the health of the Bay and Delta; it's part of the problem, not part of the solution. And, the Delta is declining more rapidly, it appears, than it did before we had a CBDA.

Thank you for this opportunity to testify.

Butte Environmental Council
California League of Conservation Voters
California Sportfishing Protection Alliance
Clean Water Action
Environmental Defense
Environmental Working Group
Friends of the River
Mono Lake Committee
Natural Resources Defense Council
Northern California Council/Federation of Fly Fishers
Pacific Coast Federation of Fishermen's Associations
Planning and Conservation League
Public Citizen
Sierra Club
Southern California Watershed Alliance

Interim Recommendations Regarding CALFED's Future **13 July 2005**

1. Refocus the CBDA Process

A key goal of the effort to improve the Bay-Delta Program should be to restore the importance and credibility of the CBDA. Under a revised CBDA process, stakeholders should be involved in more face-to-face discussions/negotiations with each other and with state and federal agencies. Although CBDA staff and regulatory agency staff should be active participants, the stakeholders should be far more directly involved in problem-solving and pre-decisional agency discussions.

In addition, the CBDA will work only if all significant matters relevant to the Bay-Delta Estuary are brought before the CBDA for meaningful discussion before decisions are made. In the past, major actions have been brought to the CBDA only after agencies had made key commitments to move forward on a particular track (e.g. OCAP, CVP contract renewals, the (b)(2) rollback and the Napa Agreement.) Near-term specific recommendations include:

- The CBDA should be fully involved in key decisions and in constructing solutions and strategies. Regarding the SDIP, the CBDA should be involved in the process of determining how to proceed. before DWR issues the Draft EIR/EIS.
- CBDA should hire a top rated mediator empowered to keep the process open, transparent and inclusive.

2. Change the Focus of the Program

The CBDA should focus on five areas: Near-term performance measures and water project operations criteria; the health of the Delta; near-term financing; science; and a strategic plan for the long-term future of the Delta.

- A. Near-Term Performance Measures: Performance measures (aka Senator Machado's "performance outcomes") in all program areas should be developed. These could include numbers of fish, quantity and quality of habitat, measures of water supply reliability, water

quality, and delta levee maintenance. In particular, the water supply reliability effort should be designed to reduce – not increase reliance and pressure on the Bay Delta Estuary, as part of a water reliability strategy (e.g. by increasing water conservation, water recycling, groundwater clean-up, and urban stormwater capture and reuse.)

This effort should also include the development of more comprehensive rules for Bay-Delta Estuary, water project operations with regard to protection of endangered fish species and restoration of the ecosystem. The following recommendation discusses specific actions in this area.

- B. Reversing the Collapse of the Bay-Delta Ecosystem: The recent collapse of the Bay-Delta ecosystem reveals that estuary health has significantly lost ground since the signing of the ROD. Restoring balance to the CALFED progress requires restoring the Bay-Delta Estuary and the tools designed to help in this effort, so that we are moving forward – not backward – in this area.

Near-term specific recommendations include:

- Restoring the health of the Bay-Delta ecosystem and its fisheries prior to any consideration of an increase in Delta pumping limits.
- Restoring the water dedicated to ecosystem protection and restoration that has been lost since the ROD was signed.
- Making significant progress towards the flow-related restoration goals in the ROD.
- Designing near-term operational modifications for the Delta pumps designed to benefit fisheries and improve our understanding of the system.
- Developing a strategy to ensure that ecosystem-related water quality issues are fully addressed, and no longer forgotten.
- Continuing restoration of salmonid species.

- C. Near-Term Financing. Parallel to the effort to refocus CALFED, the Program should begin meaningful finance discussions. This process must be open, transparent, and founded on clear and detailed findings, based on a fully accessible public record. This effort should be designed to determine benefits and allocate costs appropriately. The ROD is now five years old and virtually no progress has been made to implement the beneficiary pays requirement. This is a key obstacle to the development of a credible long-term financing plan. For example, this effort should include:

- The \$35 million in new water user fees required by the ROD to support ecosystem restoration.
- Near-term water user contributions to pay for the full water reliability currently provided by the EWA.
- Water user contributions to finance any continuing surface storage studies.

- D. Engaging Science on Key Issues. As many others have noted, the Science Program needs to be focused on today's critical issues to a much greater degree. This increased focus should certainly include what is affecting pelagic fisheries in the Bay-Delta Estuary and strategies for restoring these fisheries. This is reinforced in CBDA Chief Scientist Johnnie Moore's suggested new vision for the CALFED Science Program (attached). Greater engagement in important issues, action, and more stable funding are essential.

Near-term specific recommendations include:

- Carefully evaluating the ecosystem collapse in the Bay-Delta Estuary, including the positive and/or negative effect of the EWA.
- Fully investigating the potential impacts of all actions that have reduced the amount of water anticipated by the ROD to be dedicated to fisheries and ecosystem restoration. (See, for example, the June 7 letter signed by many EWC groups.)
- Developing a process for evaluating whether agency actions in one area (e.g. OCAP) are undermining progress in another area (e.g. ecosystem restoration.)
- Immediately investigating the benefits to the Bay-Delta Estuary (e.g. fisheries, primary productivity and water quality) of restoring flows to the San Joaquin River below Friant dam.

E. Develop a Long-Term Vision for the Bay-Delta Estuary: Leaders in each stakeholder community agree that it is time to have a reasoned look at the future of the Bay-Delta Estuary. It is clear that if we take no actions beyond what we have been doing over the past decade, the Estuary will likely look different in 50 years. Such major potential changes would undoubtedly affect the benefits that the Bay-Delta Estuary provides to all CALFED participants. Careful consideration of this issue will require time. Fortunately, given that this is a long-term issue, we have time to develop this vision. This process must be very strategically designed, as it will raise deep concerns in nearly all stakeholder groups.