

State Water Resources Control Board Delta Activities Update – 9/23/11

The fifth staff draft of the Delta Stewardship Council's Delta Plan recommends the State Water Resources Control Board (State Water Board or Board) adopt and implement updated flow objectives for the Delta by June 2, 2014, and develop flow criteria for high-priority tributaries in the Delta watershed by June 2, 2018. Following is a discussion of the State Water Board's current process to adopt and implement Delta flow objectives, and to develop and implement flow criteria for Delta tributaries. Included is a discussion of how these processes could be augmented to implement the draft Delta Plan recommendations, and how tributary flow criteria could be integrated with the Delta flow effort.

State Water Board Process to adopt and implement Delta flow objectives

In February, 2009 the State Water Board sent out a notice stating it would prepare environmental documentation for the potential update and changes to implementation of the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta) (Bay-Delta Plan), including:

- 1) the review and update of water quality objectives, including flow objectives, and the program of implementation in the Bay-Delta Plan; and
- 2) changes to water rights and water quality regulation consistent with the program of implementation.

The environmental documentation is intended to identify and evaluate the significant environmental impacts associated with potential changes to the Bay-Delta Plan and potential changes to water rights and other measures implementing the plan that may be needed to ensure the reasonable protection of beneficial uses in the Bay-Delta watershed. Through the environmental review process, the Board intends to identify ways to minimize the significant effects, and describe a range of reasonable alternatives to the potential changes to the Bay-Delta Plan and its implementation through water rights and other measures.

From February 2009 through March 2011, the Board held several workshops, and supporting documentation was prepared for the review and update of southern Delta salinity objectives. The Board also developed flow criteria for the Sacramento-San Joaquin Delta ecosystem pursuant to the Sacramento-San Joaquin Delta Reform Act of 2009. On April 1, 2011, the State Water Board sent out a revised notice, and held a California Environmental Quality Act (CEQA) scoping meeting to clarify the scope of the State Water Board's current effort, and to provide opportunity to comment on the clarified scope.

As described in that notice, the focus of the current effort is review of the southern Delta salinity and San Joaquin River flow objectives, and the program of implementation for those objectives. With regard to flow, the State Water Board is proposing:

- 1) narrative flow objectives to support migratory fish populations for the San Joaquin River and tributaries to the San Joaquin River; specifically the Stanislaus, Tuolumne, and Merced Rivers;
- 2) a program of implementation to achieve the narrative objectives by providing flow conditions that approximate the timing and magnitude of natural flows - that could range from 20 to 60 percent of natural flows, depending on the assessment of the competing uses for water; and
- 3) an implementation framework that recognizes the need for, and allows use of, adaptive management in order to respond to changing information on flow needs, and to minimize water supply costs.

The State Water Board is currently preparing a Substitute Environmental Document (SED) in support of these potential additions and changes to San Joaquin River flow objectives and the program of implementation for those objectives. As explained in the 2009 notice, the State Water Board is not currently considering changes to Bay-Delta Plan flow objectives other than San Joaquin River flows, or any specific changes to water rights and other requirements implementing the Bay-Delta Plan.

To implement the Delta Stewardship Council's draft Delta Plan recommendation to adopt and implement updated flow objectives for the Delta by June 2, 2014, the State Water Board would need to expand its current effort. This would require additional resources or a shift of priorities. With additional resources or redirected staff, the State Water Board could expand its efforts and implement the Delta Plan recommendation to:

- complete its current planning activities for the San Joaquin River and southern delta by June 2012.
- initiate the Bay Delta plan update for other Delta flow objectives by Spring 2012, and to be completed by September 2013; and
- commence water rights proceeding to implement Delta flow objectives by September 2012, and to be completed by June 2014

The State Water Board would provide additional notice upon initiation of these other Bay-Delta Plan flow objective review and implementation efforts.

State Water Board Process to Establish and Implement Flow Criteria

In December 2010 the State Water Board completed a prioritized schedule and estimate of costs to complete instream flow studies for the protection of public trust resources in accordance with Water Code Section 85087 pursuant to the Sacramento-San Joaquin Delta Reform Act of 2009. The report identifies 138 high priority rivers and streams. Only 28 of these priority rivers and streams are tributaries to the Sacramento River and Delta. The other 110 priority rivers and streams are outside the Sacramento River and Delta watershed. The prioritized schedule and costs to develop instream flow studies identified the resources needed to develop flow criteria. Flow criteria, as used in the report, would have no regulatory effect. Flow criteria provide only a technical determination of the flows that would be needed to support a specified purpose, such as supporting various life stages of migrating fish. Similarly, the State Water Board report

prepared for the Sacramento-San Joaquin Delta ecosystem pursuant to the Sacramento-San Joaquin Delta Reform Act of 2009 developed flow criteria based upon its review of the best available scientific information on the life stage needs for various fish species. The report and criteria had no regulatory basis and did not consider the competing uses for water. In contrast, the State Water Board must consider the competing uses for water when developing flow objectives. Adoption of flow objectives is therefore a more time consuming and resource intensive regulatory process. Unlike flow criteria, the review, development, and adoption of flow objectives requires compliance with CEQA.

The fifth draft Delta Plan recommends adoption and implementation of Delta flow objectives by June 2014 and development of flow criteria for high priority Delta tributaries by June 2018. This timing is not inconsistent with a staged development, implementation, and adaptive management approach the State Water Board could use to develop and implement flow objectives. General determinations of flows needed to achieve the coequal goals could be established in the Delta using such an approach. Tributary-specific flow needs that are consistent with the general downstream determinations could be developed concurrent with and subsequent to the development of the general delta determinations. This is the approach proposed in the State Water Board's current San Joaquin River flow effort. Draft Bay Delta Plan language developed for this effort requires the implementation of flows within an adaptive management framework that allows for changes in flows as more specific information becomes available in San Joaquin River tributaries.