



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

3536 Rainier Avenue, Stockton, CA 95204

T: 209-464-5067, F: 209-464-1028, E: deltakeep@aol.com, W: www.calsport.org

24 August 2009

Assembly Member Jared Huffman
Chair, Assembly Committee on Water, Parks, and Wildlife

Senator Fran Pavley
Chair, Senate Committee on Natural Resources and Water

Re: PAB 1 (Huffman) and PSB 1 (Simitian) – OPPOSE UNLESS AMMENDED

Dear Chairman Huffman and Chairwoman Pavley:

The California Sportfishing Protection Alliance (CSPA) is opposed to PAB 1 (Huffman) and PSB 1 (Simitian) unless they are substantially amended. CSPA appreciates the efforts to address California's long-existing water crisis and looks forward to working with you and your colleagues in developing an improved legislative package. However, we believe the remaining days before adjournment provide insufficient time to achieve a comprehensive and effective solution. We urge you to pause and resume consideration of this package early next year.

CSPA is still evaluating the bill package and developing suggestions that we believe will better address the elusive goals of water supply reliability and ecosystem protection. Our present concerns with the bills, as drafted, include:

1. **The bills represent the first time the legislative has expressed its intent of the Public Trust.** The Public Trust represents the people's common property right in rivers and estuaries and establishes the baseline or minimal standards that must be met before water is available for private use. The bills diminish that protection by establishing water supply reliability as coequal with protection of the public trust.
2. **The bills are inconsistent with recent precedential appellate court decisions protecting the Bay-Delta estuary.** Recent decisions in cases involving the CalFed ROD and the State Water Board's implementing order for the Bay-Delta Plan hold that water exported from the Delta estuary is subordinate to environmental protection of the estuary's environment and that the beneficial uses of water in and upstream of the estuary are superior to the beneficial uses of water exported from the Bay-Delta. The Bills undermine those decisions.
3. **The bills fail to define numerous incorporated terms like "coequal," "balanced" or "reliable."** Consequently, the bills set the stage for a decade of litigation as various parties argue over their meaning.

4. **The bills lack meaningful and effective standards to ensure Bay-Delta restoration.** There is a total lack of specific standards, goals or yardsticks that would mandate, measure and ensure restoration of the estuary. The 1980 peripheral canal legislation and the 1995 USEPA federal water quality standards for the Bay-Delta contained specific measures, such as minimum outflows, smolt-survival ratios and doubling goals, to protect fisheries. What is the goal or target of restoration? The legislature should maintain continuing oversight authority until such standards are in place.
5. **The bills are an enabling roadmap to a peripheral canal.** While not expressly mentioning or authorizing a peripheral canal, the bills allow a Governor, who has repeatedly stated his intent to construct a peripheral canal, to appoint the majority of the members of a Stewardship Council that has authority to approve and fund it.
6. **Coequal goals of water supply reliability and Delta restoration are incompatible where the state has granted water rights beyond available supplies.** More water is likely to be required to restore fisheries and water quality and meet the demands of state and federal laws. Water supply reliability can only be secured after the estuary is on its way to recovery and not simply after politically dominated agencies, which acquiesced in the estuary's collapse, propose a streamflow regime.
7. **The bills fail to address the over-allocation of water in California and the priority of water rights and beneficial uses.** The State Water Board has granted far more rights to water in the Delta watershed than the 100-year unimpaired flow, even in the wettest of years. A U.S. Congressional Committee found in 1951 that the water supplies of the Central Valley were "overcommitted and oversubscribed" and that failure to adjudicate would create a "legal Frankenstein." And this was before our State Water Project, which was predicated on five million acre-feet of North Coast water that never materialized, was constructed. Colorado recognized that its waters were over-appropriated and resolved the imbalance during the 1970s. Water supply reliability will remain elusive until the state brings water rights and water supplies into balance.
8. **The bills fail to provide the 19 million Southcoast residents producing half of the state's economic output with short-term relief from water shortages.** Kern County Water Agency, serving less than 1% of the state's economy, receives equal allocations of water as the Metropolitan Water District, serving approximately half of the state's economy. Repeal of the Monterey Agreement and reestablishment of the Urban Preference would better protect half the state's population and economy from endemic water shortages.
9. **The Delta Stewardship Council lacks adequate Delta representation.** Any governing body for the Delta needs to have adequate regional representation, as do other regional entities established to protect areas of state and national significance; i.e., Colorado, Lake Tahoe, Salton Sea. Approximately half of the membership of the Stewardship Council should represent Delta interests.
10. **The bills cede oversight responsibility and fiscal due diligence to a politically appointed council.** Surrendering authority to implement and fund whatever project the Stewardship

Council and BDCP agree upon is an abdication of legislative and fiscal responsibility. The Legislature should retain continuing oversight and ultimate approval for authorizing and funding any alternative conveyance project.

11. **The bills fail to require the Delta Plan and the Bay-Delta Conservation Plan to evaluate reductions in Delta export as an alternative to an isolated facility.** The public deserves and needs to understand the consequences, advantages and real costs to the California economy of reduced or no-export scenarios. Evaluating the environmental benefits and economic effects of reduced exports is likely to produce unexpected results.
12. **The bills fail to require the Delta Plan and the Bay-Delta Conservation Plan to independently evaluate options for Delta levee protection.** The Contra Costa Water District's analysis of the BDCP peripheral canal studies reveals that during drier years 50-75% of water exports must come from the south Delta. They also show that, with minimum outflow standards in place, a peripheral canal would export less than 4,500 cfs half the time and a 15,000 cfs sized facility would be dry three times more often than it would be full. As through Delta exports will continue to be necessary, the bills should require a comprehensive study of the costs and feasibility of raising the height of in-Delta levees to accommodate increases in sea level and fortifying them to seismic-no fail standards. The Legislature should insist that experts with no stake in the results conduct this evaluation.
13. **The bill package fails to clarify how the Stewardship Council and Watermaster will further enforcement and compliance with existing laws.** Pelagic and salmonid fisheries have collapsed and water shortages have occurred because of a failure to comply with and enforce the broad array of applicable state and federal laws. If the Legislature and Administration lacks the will, creativity or authority to enforce existing laws, no new laws or layers of bureaucracy will restore Delta fisheries, meet water quality standards or equitably and reliably deliver water to those who need it. A Watermaster appointed by political appointees and answerable to the State Water Board is not likely to significantly deviate from Administration policy. It would be far more effective to completely sever the quasi-administrative from the quasi-judicial functions of the State and Regional Water Board.
14. **The bills fail to adequately define private and public benefits.** For too long, the public has had to shoulder an unreasonable financial burden imposed by the construction of dams and diversions for the benefit of private entities. The costs of ecosystem restoration should be borne by those who directly benefit from Delta exports and upstream diversion.
15. **The bill package fails to explain how relying upon the same agencies that caused the crisis to solve the crises will produce a different result.** Restoration is unlikely to be achieved by placing the fate of the Bay-Delta estuary in the hands of the architects of its collapse. A strong amply funded independent peer-review process must have an important role in making critical operational and strategic decisions concerning the Delta.

The preceding comments represent some of our concerns. We are preparing more detailed comments but will find it difficult to complete them given the present legislative schedule. As noted above, we urge that you continue consideration of this package next year. CSPA is

committed to cooperatively working with you in establishing adequate instream flows, identifying goals and protective standards that will restore fisheries and water quality, strengthening the State Board's ability to fulfill its statutory responsibilities, promoting regional self-sufficiency and establishing a Delta conservancy.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings". The signature is written in a cursive, flowing style with some loops and flourishes.

Bill Jennings, Executive Director
California Sportfishing Protection Alliance