



Beneath the Surface - CSPA Newsletter

2016: Year of the Delta

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Message from the Executive Director

Over the last several years, CSPA has relentlessly fought in the trenches of the administrative and legal arenas to protect fisheries. We've accomplished much with few resources, and I believe it fair to say that without our efforts in providing technical and legal comments on proposed policies and plans and litigating bad projects, our fisheries would much be worse off. And, according to the U.S. Department of Justice, we continue to be the most prolific and effective citizen organization enforcing the Clean Water Act in the nation.

We're going into a pivotal year that will see key decisions made about the future of the Delta and California's salmon, striped bass and other key fisheries. These decisions on the future of the Delta will irrevocably and forever impact fisheries from the Sierra's crest to the Golden Gate. Make no mistake, if the Governor and Southern California water agencies' schemes to divert increased water via tunnels under the Delta are successful, the fate of the estuary, its tributary rivers and abundant fisheries are likely sealed.

Our workload in the coming year will be unprecedented. Beyond routine participation in reviewing and commenting on proposed water discharge permits, water rights applications, hydropower licenses, biological opinions and such, CSPA is intricately involved in numerous Bay-Delta proceedings. These include: the update for the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, litigation regarding the Delta Stewardship Council's Delta Plan, the U.S Bureau of Reclamation's OCAP EIR/S and temporary water transfers, the environmental review and anticipated litigation regarding the California WaterFix and related change in point of diversion hearings, Clean Water Act 401 Certification, Army Corps of Engineers 404 dredging permit and Endangered Species Section 7 consultation. We briefly discuss several of these efforts below.

We're preparing for the long fight, but the first strategy is to stop the tunnels and secure timely and adequate flow into and through the estuary. Formal protests of the proposed



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change in point of diversion for the tunnels are due the fifth of January. We have some of the best water policy and legal minds in the state arrayed against the deep pockets of our adversaries. The more resources we have, the more effective we can be, and I encourage you to help leverage our resources with a generous [donation](#) today.

While CSPA always meets technical and legal deadlines, we've been less successful in communicating our achievements. If you haven't done so recently, please check out [our website](#) to seek what we're doing and visit our exciting new [fisheries blog](#) that is updated regularly - thanks to our tireless webmaster Denise Zitnik.

Cheers and tight lines. Bill Jennings

CSPA Launches California Fisheries Blog

A new button on the home page of CSPA's website now leads to the [California Fisheries Blog](#). The Blog makes science and basic management of California's fisheries easily understandable and accessible. Blog posts are organized by subject. Don't understand how Delta operations affect Delta smelt? Click on "[Smelt](#)" on the right side of the Blog page. Want to see specific recommendations for Sacramento Valley salmon? Hit "[Salmon](#)" and scroll through the posts starting at the top with the most recent. While, the Blog does not present formal CSPA policy, it is frank discussion of some of the most thorny and interesting topics about fish in California today. We're adding contributors and others are welcome to submit posts they propose for publication.

The Abandonment of Delta Standards & CSPA Response

CSPA [sued the State Water Board](#) in August 2015 because of its failure to comply with requirements in the federal Clean Water Act and other statutes to establish and comply with Delta water quality standards. The Clean Water Act and California's Porter-Cologne Act require water quality standards to be established and revised every three years and be sufficient to fully protect fisheries, water quality and other identified beneficial uses. Since 1978, the State Board has only revised Delta standards once, in 1995, and rubber-stamped those inadequate standards in 2006, despite the continued decline of fisheries and water quality in the Delta.

Over the last two years, the Board illegally and unilaterally, without public hearings, engaged in a pattern and practice of serially weakening those standards in order to facilitate water exports to Southern California. These actions led to collapses in fishery populations, and winter-run Chinook salmon and Delta and longfin smelt are now on the cusp of extinction. CSPA filed extensive technical comments, protests, petitions for reconsideration, and formal complaints, and testified at State Board meetings every step of the way. Our lawsuit against the Water Board was filed as soon as we were legally permitted to do so.

And the situation is dire. Last year, weakened temperature standards on the Sacramento River led to the loss of 95% of winter-run Chinook salmon, 98% of fall-run and virtually all of the spring-run that spawn in the mainstem Sacramento. Initial reports this year indicate comparable if not greater losses. In the estuary, ignored standards have brought Delta and longfin smelt close to extinction, and other pelagic species like striped bass are at historic lows.

The State Water Board was originally established as an independent watchdog regulatory agency over water rights and water quality but has been subsequently "captured" by water agencies and special interests. Consequently, CSPA believes that species survival and compliance with the law will ultimately reside with the courts. On a related note, the trial on [CSPA's lawsuit](#) against the Delta Stewardship Council's failure to comply with the 2009 Delta Reform Act and the Council's inadequate Delta Plan Environmental Impact Report is scheduled for March and May 2016.

State Water Board Accelerates Hearings on Water Rights for Delta Tunnels

On October 30, 2015, CSPA submitted [extensive detailed comments](#) on the supplemented and "partially recirculated" environmental document for the Delta Tunnels, now without habitat restoration and glibly branded the "WaterFix." These comments followed [hundreds of pages of comments](#) we submitted on the original BDCP environmental document. We excoriated the document's lack of alternatives, improper description of existing degraded conditions, failure to require screening for existing intakes, failure to analyze water quality impacts, myriad legal defects, and impenetrable presentation. If it is finalized, CSPA is prepared to litigate the failure of the WaterFix environmental document to comply with state and federal law.

Immediately following the close of the comment period, the State Water Board issued a notice of hearing to modify water rights so that the Bureau of Reclamation and Department of Water Resources can begin construction of the Delta tunnels. These hearings will take place throughout 2016. They will begin with the opportunity for water users to object and claim that they will be "injured" because the Tunnels will deprive them of water and water quality. The Water Board has blocked out 34 days for the water users' evidentiary hearings alone. Because CSPA has riparian water rights, we will be the only fisheries organization participating in the initial phase of the proceeding.

The hearing notice says that the second phase of the water right proceeding addressing environmental, fisheries and public interest issues will take place later in 2016, after the environmental documents have been finalized and endangered species consultations have been completed so that they can be included as exhibits in the hearing record. In November, CSPA joined several other groups in sending a [letter to the State Water Board](#) telling the Board that it must produce its own environmental document, because the WaterFix environmental document is irreparably and fundamentally flawed and fails to address numerous issues related to a change in the point of diversion. The letter also points out that the Board must establish revised and legally protective water quality standards before it schedules hearings on the WaterFix project. While we're prepared to contest the order of the proceedings, we must still prepare for hearings, which means organizing technical experts and attorneys and long nights for CSPA staff.

Cart Before the Horse: State Board Drags on Delta Flow Requirements

The future of the Delta is not only dependent on defeating the Tunnels. The Delta is already dying for lack of inflow and outflow. The update of the Bay-Delta Water Quality Control Plan is the opportunity to increase these flows. In 2010, the State Water Board issued a [Delta Flow Criteria Report](#) that said protection of the Delta's fisheries and public trust resources require substantial increases in flow. Unfortunately, the Board has been slow as molasses in developing new Delta water quality and flow criteria, as it has been quick to accommodate the interests of those pushing for the tunnels.

The Board did such a horrendously bad job in its 2012 environmental document for Phase I of the Bay-Delta Plan Update (flow in the San Joaquin River and tributaries and south Delta salinity) that it had to scrap it and start over. We've been waiting for a revised document for three years and understand that one may be forthcoming this spring. Considering the technical deficiencies in the previous document, CSPA expects to expend considerable resources in responding to the new Phase I environmental document and in advocating for a decision that actually protects fish. This still leaves Phase II (Sacramento River and Delta flow) and Phase III (incorporation into water rights permits).

Meanwhile, through our Hydropower and Bay-Delta Plan campaigns, CSPA has continued advocating for increased Delta Flow. Most recently, in an [October 2015 letter](#) to the chair of the State Water Board, CSPA led a broad coalition of 87 environmental, fishing, and tribal organizations in supporting the use of a percentage of unimpaired flow as the basis for winter and spring flow requirements into and through the Delta. This approach is at the center of the Board's 2010 Delta Flow Report but is under strenuous attack by water agencies.

As noted above, CSPA believes that adoption of new Delta standards must precede any

consideration of the WaterFix tunnels. Otherwise, approval of WaterFix will prejudice and undermine efforts to secure greater flow and more protective water quality standards. If the Water Board first approves the WaterFix tunnels, it is not likely to subsequently adopt new flow and water quality standards that will make less water to fill them up.

CSPA Holds Polluters Accountable and Makes Them Fund Environmental Improvement

According to a recent State Water Board report, CSPA conducts approximately half of the Clean Water Act citizen enforcement actions in California and the U.S. Department of Justice says that CSPA is the leading citizen enforcer in the entire nation. This year we have successfully sued the state and regional water boards over inadequate waivers of waste discharge requirements regarding pollutant discharges from irrigated agriculture and recently prevailed in a lawsuit against the Central Valley Regional Water Quality Control Board concerning a legally inadequate waste discharge permit for the Sacramento Regional Wastewater Treatment Plant.

Over the last several years, more than \$5.9 million in mitigation penalties from more than 100 successful CSPA citizen actions have been distributed to more than 95 worthy environmental organizations to protect fisheries and water quality in Northern and Central California. In October and November 2015, CSPA has settled six lawsuits that resulted in substantive and procedural environmental site improvements to reduce pollution and almost \$400,000 in mitigation funding being directed to the Rose Foundation for distribution to worthy grant applicants to protect fisheries and water quality. However, CSPA is precluded by law from benefiting directly or indirectly from mitigation funding resulting from its citizen enforcement actions. We depend upon contributions from our members to support our efforts.

Please Join or Renew, and Above All Donate to CSPA Today.

CSPA resources are stretched to the maximum and extensive resources will be required to fight for salmon and other Delta-dependent fisheries this year.

Please support CSPA generously today.