

Questions for Oral Argument
Narrative Standard re Salmon; Implementation EIR

No. JC 4118, State Water Resources Control Board Cases

Oral Argument: 9:00 a.m., Wednesday, August 28, 2002

Judge Roland Candee, Presiding

Narrative Standard

To what extent has the Board used narrative standards in other water quality plans? How have these standards been implemented?

Is the narrative standard concerning salmon entirely a flow-dependent measure?

SWRCB and EPA both have a three-year cycle for reviewing water quality standards? What effort, if any, is underway to revise the 1995 Plan and standards regarding salmon?

Details of Salmon Requirement

Each party: Please define “salmon-doubling” in terms of the methodology and numbers the Board will utilize to determine whether the standard has been met.

What indication is there that the SWRCB adopted a salmon-doubling requirement for each tributary stream in the Delta, rather than for the Delta as a whole?

The Pacific Coast Federation and the State Water Contractors disagree on whether there is *any* evidence of salmon production during the 1967-1991 period and the flows necessary to achieve salmon doubling. Please concisely summarize the evidence in the record, if any, concerning these issues. If there is no baseline information, how will the Board monitor and evaluate progress toward the salmon objective?

Pacific Coast Federation includes Table 3 in its reply brief, discussing salmon production from 1995-1997. Since this data precedes D1641, how does it affect the Court’s review of that decision?

Is there other evidence in record indicating that Alternative 2 of Implementation EIR, apparently the closest alternative to resulting D1641, will provide any more than a 2.35% increase in smolt survival? Is there evidence indicating what this level of smolt survival means in terms of the salmon-doubling standard?

Does the federal Working Paper concerning flow requirements have any independent legal significance for this case, other than as one evidentiary document in the administrative record?

Board Authority

What is the range of measures within the Board’s jurisdiction that could be ordered to achieve the narrative standard regarding salmon?

Racanelli strictly limits the type of actions that can be undertaken in a water rights proceeding. Is it proper for the Board to adopt phased or equivalent measures of protection as the result of such hearings? What is the authority (including authority from other California administrative law proceedings) for doing so?

As the result of the water rights modification process, is the Board barred from specifying a phased schedule for implementing the ordered measures?

Pacific Coast Federation appears to read the Program of Implementation following the 1995 Water Quality Plan as requiring the SWRCB to adopt flow and operational requirements, as well as other measures within its authority, to meet the salmon standard. Reply Brief at 3-4. Why can't this language be read to include measures undertaken by other agencies?

In its reply brief (p. 32), Central Delta cites California Water Code § 1736 for requirement that the SWRCB must find no harm to instream beneficial uses to approve flow modifications under D1641. Why does this section, which on its face applies to long-term transfers, govern the Board's authority to modify permits?