Q + A's on Recent Bay Delta Developments

1. ***Sen. Feinstein has stated her intention to introduce a bill giving some kind of ESA waiver to water exporters, with a goal of increasing water deliveries to farmers on the west side of the San Joaquin Valley. What does EPA think of this?***

The Obama Administration has a firm policy of not commenting on bills in Congress, especially ones that have not yet been introduced.

That said, EPA and the other federal agencies have been working with the Senator's staff and other legislators and stakeholders to address the underlying problems caused by three years of drought, collapsing fisheries and unreliable water supplies. These are difficult issues that will require a comprehensive approach.

2. ***The Bay Delta Conservation Plan (BDCP) recently proposed a peripheral canal or a peripheral tunnel to bring water around the Delta. Does EPA support a "peripheral canal"?***

In August 2000, in the CALFED Record of Decision, EPA expressed its support for ***evaluating*** a peripheral canal. For all kinds of reasons, these evaluations were never completed during the past ten years. EPA believes that the work demanded of the State Board in the new State Legislation (assessing public trust needs in the Delta, etc.), when combined with the studies being prepared in the BDCP, will provide sufficient information for all stakeholders to determine whether a peripheral canal, or peripheral tunnel, is the right way to go.

Q+A's on EPA's ANPR

1. Is EPA promulgating a rule?

No, an Advanced Notice of Proposed Rulemaking (ANPR) is not a rule, or even the first step to a rule. It is more akin to a "scoping" process under NEPA, or even a "request for information" under Superfund. The purpose of an ANPR is to determine whether a rulemaking process is warranted, and what it might include.

2. Is EPA going to be promulgating a rule in the future?

The short answer is that we don't know. It will depend on what information comes to EPA in response to the ANPR, as well on the progress and status of many of the other processes considering Bay Delta issues. If the ANPR information shows that there are Bay Delta issues that implicate EPA programs under the Clean Water Act or other statutes, and those issues are not likely to be adequately addressed in other forums, then EPA might pursue a rulemaking exercise at some point in the future. EPA might also pursue other responses, such as changes in enforcement programs or guidance documents, as a response to the information developed in the ANPR.

3. Why is EPA doing this now?

The past few years have seen a significant increase in new scientific information about the Bay Delta and its water resources, from a broad array of process. These include, but are not limited to, the Pelagic Organism Decline (POD) studies, the Delta Vision process, the Bay Delta Conservation Plan (BDCP) process, several PPIC reports, and a number of biological opinions and associated independent science reviews. Most of these studies and processes implicate resources that are protected under the Clean Water Act and other EPA programs. There have not been any recent comprehensive EPA reviews of how the information being developed in these processes affect EPA's statutory missions. The ANPR is the most effective way to solicit input and develop an appropriate EPA response.

4. Does this interfere with other processes currently underway?

We appreciate that there are several efforts underway to address Bay Delta resources, including significant efforts in the BDCP process under the ESA and NCCP and, more importantly for EPA, by the State and Regional Boards under the state and federal clean water acts. We believe that any EPA actions taken in response to the ANPR will complement, rather than interfere with these other processes. In addition, should those board activities falter due to the unprecedented state budget crisis and its corresponding effects on state agency activities, EPA needs to be up to speed on the issues so that the goals of the Clean Water Act can be attained. Finally, regardless of whether EPA pursues any new initiatives as a result of the ANPR, EPA believes that the information developed in the ANPR will provide a factual basis for EPA's federal regulatory decisions (under the CWA, NEPA, and possibly other statutes) as

these other processes move forward.