Advanced Notice of Proposed Rulemaking for Water Quality Challenges in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary

Frequently Asked Questions

February 10, 2011

Q. What action is EPA is taking? What is the purpose of the ANPR?

A. EPA has issued an Advanced Notice of Proposed Rulemaking (ANPR). The ANPR is part of an effort by EPA to assess the effectiveness of current water quality programs designed to protect aquatic species in the Bay Delta Estuary. Water quality in the Bay Delta Estuary and its tributaries is impaired, contributing to the current ecological and water supply crisis. The ANPR:

1. Identifies the key water quality issues affecting Bay Delta aquatic resources and summarizes current research for each of these issues, including ammonia, selenium, pesticides, emerging contaminants and other parameters restricting estuarine habitat and the migratory corridors of anadromous fish (i.e., salinity, dissolved oxygen and temperature);
2. Explains the current status of regulatory efforts under the federal Clean Water Act and the State's clean water laws; and
3. Solicits public input on specific scientific and policy questions.

Q. What effect does the ANPR have on those that discharge pollution to the Bay Delta Estuary? Does this ANPR mean that EPA is proposing to regulate freshwater flows or fish passage through the Delta?

A. The ANPR has no regulatory effect. No new rules are proposed. The ANPR solicits public input on how EPA can achieve water quality and aquatic resource protection goals in the Bay Delta Estuary.

Q. What are the next steps? Will EPA propose new water quality regulations?

A. EPA will review the public responses to the ANPR, along with the significant scientific information developed about Bay Delta Estuary aquatic resources. We will synthesize all available information and develop a strategic proposal on how to use EPA's

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authorities and resources to achieve water quality and aquatic resource protection goals in the Bay Delta. We will collaborate with the State and Regional Water Boards, as well as with other agencies and stakeholders, to assure that our collective efforts are effective and efficient.

It is too early to say if EPA will propose new regulations to improve Delta water quality. Depending on the information received in response to the ANPR, as well as ongoing collaboration with the State and Regional Water Boards, EPA will develop a proposal to address the issues of concern. This could include proposing new regulations in the future.

Q. What are the most serious water quality issues in the Delta?

A. The ANPR focuses on water quality issues linked to both the long-term and recent abrupt declines of Bay Delta Estuary fish populations. Scientific investigations identify multiple contaminants as potentially contributing to the aquatic ecosystem degradation, including ammonia, selenium, pesticides, pharmaceutical and personal care products, and the interactive effects of these multiple contaminants with one another and with physical and biological stressors. In addition, water export operations in the Delta alter water quality parameters, such as salinity, that are important to the habitat of aquatic species.

Q. How does this ANPR relate to the Sacramento Regional Wastewater Treatment Plant permitting action and other actions before the Regional and/or State Water Board?

A. Although the ANPR discusses many of the issues being addressed in ongoing regulatory forums (such as the Sacramento Regional WWTP NPDES permit), the ANPR explicitly takes no position on these other regulatory activities. Any new information presented in or developed as a result of this ANPR will be available to other regulatory processes.

Q. How does this ANPR and its results relate to the Bay Delta Conservation Plan (BDCP)?

A. The BDCP is being developed as a habitat conservation plan under the federal Endangered Species Act and the state Natural Community Conservation Plan Act and is targeted to address primarily the impacts of the State and Federal water export facilities on endangered and threatened species. The BDCP is expected to include proposals for changing how water is diverted and conveyed through the Bay Delta Estuary to the state and federal water export pumping facilities in the south Delta. The EPA's responsibilities under the Clean Water Act to protect designated uses, such as estuarine

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habitat, fish migration, and threatened and endangered species, overlap with ESA requirements being addressed in the BDCP. Some actions taken pursuant to the BDCP will need to comply with both the ESA and Clean Water Act. To that end, EPA will ensure that any action it might take as a result of this ANPR will be closely coordinated with other federal and state actions related to the BDCP, any biological opinions on water operations affecting the Bay Delta Estuary, and any other actions requiring ESA compliance.

Q. How does this ANPR relate to the Biological Opinions on the operations of the water export facilities written by the US Fish and Wildlife Service and NOAA-Fisheries?

A. The ESA Biological Opinions on the operation of the state and federal water projects address some of the same issues considered in the ANPR, but they necessarily focus on only ESA-listed species and water project operations. Given this species-specific, project-specific approach of the ESA, the Biological Opinions do not contain measures to address either the broader issues of ecological community health or the larger array of factors affecting both endangered species and the community of which they are a part. The ANPR extends to questions about other stressors, such as selenium, pesticides, and ammonia, and also asks for comments on broader aquatic habitat conditions affecting the entire spectrum of aquatic species, including those protected under the ESA.

Q. How does this ANPR relate to the Interim Federal Action Plan of December 2009?

A. EPA committed to complete this ANPR and public solicitation process in the Interim Federal Action Plan (IFAP) for the California Bay Delta Estuary developed by six federal agencies. The IFAP describes various actions federal agencies committed to undertake, with the State of California to investigate and mitigate the impacts of all stressors on the imperiled native species and the Bay Delta Estuary aquatic ecosystem, to encourage smarter water use, to help deliver drought relief services and to ensure integrated flood risk management. Specifically, EPA's role in this initiative is to "assess the effectiveness of the current regulatory mechanisms designed to protect water quality in the Delta and its tributaries." This ANPR is the start of this assessment.

Q. How does this ANPR relate to the ongoing National Academy of Sciences (NAS) review?

A. The NAS is tasked with identifying potential actions that reverse the ecological decline of the Bay Delta Estuary and result in fewer restrictions on water exports. The ANPR addresses certain stressors identified by the NAS (e.g., pesticides, ammonia) that are

within the jurisdiction of the Clean Water Act. EPA will synthesize information provided through the ANPR with existing information in an effort to optimize the efficient implementation of EPA authorities and programs to protect Bay Delta Estuary water quality and aquatic resources. We will provide this information to NAS as they continue their evaluation.

Q. Does EPA's ANPR indicate that the State water quality programs are insufficient?

A. No. The State and Regional Water Boards are actively addressing the Bay Delta Estuary aquatic resource decline. Both state and federal clean water laws envision a continued re-evaluation of regulatory requirements in light of new information about the resources. In July 2008, the Water Boards adopted a Strategic Workplan for guiding their Bay Delta Estuary activities. EPA continues to support many of the significant activities in that Workplan through technical and financial assistance. Over the next few years, the Water Boards will take various actions, including multiple point-source permit renewals, new state standards for the Southern Delta and lower San Joaquin River, and Total Maximum Daily Loads (TMDLs) for pesticides in the Central Valley. EPA will consider public responses to the ANPR in prioritizing EPA activities that complement existing state programs as well as new initiatives resulting from recent California legislation.

Q. How is this action different from EPA's Delta rule-making in early 1990's?

A. EPA formally disapproved California's water quality standards in the Bay Delta estuary in the early 1990's after determining they were not sufficiently protective. As required under Clean Water Act Section 303, EPA then proposed and promulgated replacement water quality standards, which were ultimately incorporated into the historic state-federal-stakeholder agreement on Delta protections (the "Bay-Delta Accord") and, where appropriate, into the state water quality control plans.

EPA is not taking formal action under any statute in its ANPR. Instead, EPA is asking for public input on a range of specific topics and statutory authorities that may be relevant to the serious decline in the Bay Delta Estuary aquatic resources. The purpose of today's action is to solicit public comment regarding the best way for EPA to implement its regulatory and non-regulatory programs in the Bay Delta Estuary to address aquatic resource concerns.