



~ UPDATE ~
ACTION ITEM
November 3, 2010

TO: Board of Directors

FROM: Kevin Hunt
General Manager

Staff Contact: David Cordero

SUBJECT: ADOPTION OF RESOLUTION SUPPORTING ACWA POLICY PRINCIPLES ON ENDANGERED SPECIES ACT IMPLEMENTATION

STAFF RECOMMENDATION

Staff recommends the Board of Directors adopt a resolution expressing support for the policy principles adopted by the Association of California Water Agencies related to the implementation of the Endangered Species Act.

COMMITTEE RECOMMENDATION

Committee recommends adoption of the staff recommendation but requests that additional information be obtained pertaining to: 1) the composition of the ESA Implementation Task Force; 2) the process in which the Task Force developed the policy principles; 3) whether there was any communication by ACWA to its membership about the task force and the development of the policy principles; 4) whether the ACWA membership was provided an opportunity to review and comment on the draft policy principles prior to its adoption; 5) the quick, two-week turnaround for getting resolutions from its members; and 6) next steps once ACWA receives the resolutions.

Additionally, staff will convey to ACWA in a follow up letter concerns regarding the policy principals not addressing the human impacts of ESA regulation and enforcement and that the delisting of species rarely occurs. The letter will also underscore that ACWA should have actively notified and sought feedback from its members as the policy principles were being developed, rather than adopting the policy principles and later requesting resolutions from its members within a brief, two-week timeframe.

Staff obtained the following information which provides answers to many of the questions posed by the committee:

Budgeted (Y/N):	Budgeted amount:
Action item amount:	Line item:
Fiscal Impact (explain if unbudgeted):	

The ESA Implementation Task Force was established by the ACWA Board of Directors at its meeting on March 26, 2010, and was comprised of 15 ACWA Board Members (a combination of regional chairs and vice chairs, and seven-out-of-eleven committee chairs) who were appointed by ACWA President Paul Kelley, representing agricultural and urban agencies, agencies upstream of the Delta and those that rely on exports from the Delta for all or part of their water supplies.

The Task Force members were as follows:

ACWA Members

- Randy Record, Task Force Chair (ACWA Vice President, Region 9)
- Paul Bartkiewicz, State Legislative Committee Chair
- John Coleman, Federal Affairs Committee Chair, Region 5
- Martha Davis, Energy Committee Chair, Region 9
- Bill Diedrich, Region 6 Vice Chair
- Rick Gilmore, Insurance and Personnel Committee Chair, Region 5
- Paul Helliker, Region 1 Chair
- Aldaron Laird, Region 1 Vice Chair
- Eric Larrabee, Region 2 Chair
- Adrienne (Ann) Mathews, Region 7 Chair
- Gail Pringle, Region 8 Vice Chair
- Peer Swan, Region 10 Chair
- Mark Weston, Water Management Committee Chair, Region 10
- Greg Zlotnick, Groundwater Committee Chair, Region 6
- Karen Donovan, Legal Affairs Committee member

ACWA Staff

- Tim Quinn
- Mark Rentz
- Scott Hernandez
- Whitnie Henderson
- David Reynolds
- Ron Davis

The Task Force was charged with developing a draft set of policy principles for the implementation of the ESA. The Board encouraged the task force to explore opportunities to infuse ESA implementation with greater flexibility than is currently considered by the responsible agencies without compromising the ESA's underlying mission and objectives. The Board encouraged the task force to consider more comprehensive, integrated approaches that address all listed species within a given ecosystem and all the factors affecting the species' viability and habitat, while ensuring a dependable supply of water to meet human needs.

At its meeting on May 21, 2010, the ACWA Board of Directors reviewed an initial draft submitted by the Task Force. The Board recommended several changes to more clearly articulate its vision for the ESA Implementation Policy Principles. The Task Force Chair, Randy Record, was asked to reconvene the Task Force to address changes requested by the Board. ACWA Staff, in consultation with the Task Force, revised the draft principles.

Three work sessions of the Task Force were then held which resulted in the drafting of the final version of the ESA Implementation Policy Principles.

According to ACWA staff, there were three communications to ACWA members about the formation of the Task Force and the development of ESA Implementation Policy Principles in *ACWA News* following the March, May, and July 2010 Board Meetings, and no further communication occurred until two weeks ago when ACWA requested its members to pass resolutions supporting the Policy Principles. The quick two-week turnaround was requested to encourage timely adoption of resolutions or at least a notification that a resolution would be forthcoming.

ACWA is calling for its members to “stand together with a unified voice on the issue of ESA implementation to position ourselves to be heard going forward as we look to a new state administration along with changes in the California Legislature and Congress.” These policy principles have already been disseminated to the state and federal agencies responsible for ESA implementation and ACWA will continue to engage these agencies in discussions on this matter. ACWA also plans to brief the new administration as well as begin discussions with state and federal lawmakers in the coming months on how ESA implementation can be done differently.

SUMMARY

The Association of California Water Agencies (ACWA) developed and adopted earlier this year a unified statement and policy principles on issues related to Endangered Species Act (ESA) implementation, with a focus primarily on the Sacramento San Joaquin Delta. The policy principles call for a comprehensive, ecosystem-based approach to implementing both the state and federal ESA.

ACWA is seeking support from its members and requesting adoption of a resolution formally endorsing the policy principles that encourages state and federal agencies to develop comprehensive strategies that also consider economic and social stability. The association is calling for its members to stand together with a unified voice on ESA implementation to better position ourselves to be heard with the new state administration and with members of Congress and the State Legislature.

ACWA has requested that members submit their resolutions by Friday, November 6, 2010.

DETAILED REPORT

The federal and state Endangered Species Acts are among the most powerful pieces of legislation ever enacted to manage natural resources. Depending upon how these acts are implemented, they can both generate significant benefits and create substantial economic harm. Restrictions on water diversions to protect Delta smelt and salmon have intensified the effects of multiple dry years, resulting in significant economic disruption without a measurable improvement to the ecosystem or affected species.

ACWA believes the current situation in the Delta provides a significant opportunity to improve the implementation of the ESA. The policy principles that it has developed outline what it believes is a more effective approach to ESA implementation that incorporates the

co-equal goals of water supply reliability and ecosystem enhancement, the cornerstones of the water reform legislative package adopted by the Legislature and signed into law by the governor in November 2009.

Below are the policy principles for which ACWA is seeking resolutions of endorsement from its members.

ACWA Policy Principles for ESA Implementation

Principle 1: Comprehensive, Integrated Solutions

Federal and state agencies' implementation of the ESAs, whether listing species, designating critical habitat or developing biological opinions, should focus on comprehensive, integrated solutions that address all the factors that are or have the potential to adversely affect the viability of endangered or threatened species. Furthermore, the agencies need to promote proactive programs that embrace a comprehensive, ecosystem-based integrative methodology, as opposed to the single-species approach that characterizes current ESA implementation.

Principle 2: Co-Equal Goals

It is critical that the agencies recognize that strategies incorporating the co-equal goals of sustainable ecosystems and a reliable water supply throughout the state have the greatest likelihood for success because they provide stability and certainty, allowing a larger commitment of resources to innovative problem solving.

Principle 3: Real-Time Solutions

It is essential that the agencies enhance their capacity to utilize real-time data and scientific analysis to address both immediate and long-term solutions. Such approaches can reduce conflicts that result from competing demands for the same resources, providing greater flexibility for resource distribution that can enhance both ecosystem sustainability and water supply reliability.

Principle 4: Science

The agencies must develop and use science that adheres to the highest academic and professional standards to justify their biological conclusions and subsequent management recommendations. While we recognize "best available science" may be limited when decisions are made, the agencies must commit to processes that promote ongoing data gathering and scientific analysis combined with the ability to readily modify management practices when such scientific analysis justifies modification.

Principle 5: Adaptive Management

Adaptive management strategies recognize that often there is a need to implement actions with incomplete or imperfect information. While uncertainty should not be cause for inaction, it is vitally important to establish achievable quantified goals and track progress, increasing investments where they appear to have higher returns and reducing investments where they do not pay off. In addition, when there is credible debate about the methodologies used and conclusions reached by the agencies in developing Reasonable and Prudent Alternatives (RPAs) and other actions, an adaptive management approach should be incorporated into the implementation process associated with the actions to ensure that new science and technology is integrated into on-the-ground practices.

Principle 6: Managing Within Highly Altered Ecosystems

Science-based implementation strategies must reflect the fact that we are pursuing species recovery within highly altered ecosystems. This is generally the case in California's rivers and watersheds, particularly in the Delta. The Delta has been dramatically altered over the past two centuries as water ways were dredged and realigned, wetlands were converted to farmland, minerals were mined and timber harvested, and water and other infrastructure was constructed. While the co-equal goals seek substantial and sustainable improvements for the ecosystem, in most cases, it is simply not possible or desirable to restore ecosystems to their historical natural state.

Principle 7: Accounting for Climate Change

The ESA never anticipated environmental regime changes of the magnitude we are likely to experience as a consequence of climate change. Climate change is already reshaping California's hydrology, and these changes are expected to intensify in coming decades. Without developing and adopting more flexible approaches to the administration of the ESA, these dynamic changes to ecosystems will make the existing statutory mandates of the act highly impractical or impossible to implement.

ACWA urges the responsible federal and state agencies to assess their implementation of the ESA in the context of climate change. ESA implementing agencies should ensure that water resource managers have the necessary flexibility and discretion to respond to regulatory mandates in a manner that is achievable and practical, given the magnitude of changes attributable to climate change.

While the changes associated with climate change present great uncertainty, they also serve as a reminder that the planet's ecosystems are not static, but are constantly changing over time. Measures taken to protect endangered species should be implemented in a manner that reflects and accounts for these ecosystem dynamics.

Principle 8: Flexible Implementation

The agencies should recognize that the ESA provides them with significant discretion to develop and implement strategic options to improve a species' viability. This flexibility and discretion should be utilized as a first principle rather than as a last resort in the face of legal or other challenges. Given often-limited available data and/or uncertain scientific analysis, as well as the range of temporal, geographic and demographic variability of species and the ecosystem(s) on which they depend, the agencies should promote local and regional strategies that can address such variability most efficiently and effectively.

Attachment: 1) Resolution Support ACWA Policy Principles on ESA

RESOLUTION NO. _____

**RESOLUTION OF THE BOARD OF DIRECTORS OF
MUNICIPAL WATER DISTRICT OF ORANGE COUNTY
SUPPORTING THE ASSOCIATION OF CALIFORNIA WATER AGENCIES
POLICY PRINCIPLES ON IMPLEMENTATION OF
STATE AND FEDERAL ENDANGERED SPECIES ACT**

WHEREAS, Endangered Species Act (ESA) implementation activities in California – particularly in the Delta – have had a major impact on water deliveries in recent years. Restrictions on water diversions to protect Delta smelt and salmon have exacerbated the effects of multiple dry years, resulting in significant economic disruption without a measurable improvement to the Delta ecosystem or affected species; and

WHEREAS, the current situation in the Delta provides a significant opportunity to improve the implementation of the state and federal ESA; and

WHEREAS, the current approach of trying to protect aquatic species through a single action only – restricting water diversions from the south Delta – is not working for either ecosystem sustainability or water supply reliability; and

WHEREAS, local water agencies support the goals of the ESA but believe that the state and federal agencies have greater discretion to develop comprehensive strategies that also consider economic and social stability; and

WHEREAS, the timing is critical to make sure the new state administration and the Obama administration understand the importance and broad support among the water community for co-equal goals; and

WHEREAS, the Association of California Water Agencies Board of Directors adopted policy principles in July on ESA implementation issues developed by a diverse group of ACWA members; and

WHEREAS, these policy principles outline a more effective approach to ESA implementation that incorporates the co-equal goals of water supply reliability and ecosystem enhancement that are the basis of California law; and

WHEREAS, these policy principles identify the direction ESA implementation must take to meet the needs of species and the state's communities, farms and businesses in the 21st century; and

WHEREAS, we recognize that California's water future rests on linking commitment to restoration and supply reliability; and

WHEREAS, we urge senior management at the ESA implementing resource agencies to use these principles to implement a more integrated and diversified approach; and

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of the Municipal Water District of Orange County believes the principles developed by ACWA can help move the dialog on a path that leads to constructive improvements in ESA implementation at the state and federal levels; and

BE IT FURTHER RESOLVED, that the Municipal Water District of Orange County Board of Directors supports the association's policy principles on "Implementation of State and Federal Endangered Species Acts."

Adopted on this Third day of November, Two Thousand Ten.

Joan C. Finnegan
Board President