

Science panel's review of California water woes prompts fight

It's political, says critics; farmers call effort vital

Matt Weiser, Sacramento Bee, 1-21-10

An elite science panel's work to clarify California's water problems has become, instead, the latest front in a battle over the Delta's endangered species.

Experts on the Sacramento-San Joaquin Delta say political meddling prompted the review by the National Academy of Sciences. It risks becoming a "sideshow," they say, that could delay real solutions to California's water woes.

Water agencies, on the other hand, say the review is essential to ensure California is on the right path because the economic stakes are so high.

The panel appointed by the academy, the nation's most esteemed science body, meets for five days starting Sunday at the University of California, Davis. It is charged with examining rules adopted by federal wildlife agencies to protect imperiled Delta fish species.

The panel's recommendations, expected in two phases over 2 1/2 years, carry no legal weight. But they could be the impetus for new regulation, lawsuits, or both.

U.S. Sen. Dianne Feinstein, D-Calif., asked for the review in response to requests from San Joaquin Valley farmers, including Stewart Resnick, owner of agriculture giant Paramount Farms. Resnick's Sept. 4 letter to Feinstein asserts that "sloppy science" contributed to the new water and species protections.

Resnick and other major water users in the San Joaquin Valley criticize the fish protections, imposed under the Endangered Species Act. They have sued and mounted public relations battles to avoid giving up water to help fish.

Several scientists who are experts on the Delta, however, charge that the review was prompted by political pressure from water users rather than a quest for truth.

Jeffrey Mount, a geology professor at UC Davis and nationally known expert on the Delta, believes the academy was asked to get involved simply because "people of great influence" don't like the rules.

"It's not a wise use of the National Academy of Sciences, in my opinion," said Mount, who served on a prior academy panel that examined Klamath River issues. "It will become a sideshow. We are setting a bad precedent that will stretch well beyond the Delta."

Holly Doremus, professor of environmental law at the University of California, Berkeley, said many critics fail to understand that perfect science is not in the Endangered Species Act's mandate. It does not, for example, require the government to guarantee that its rules will save the fish.

"Lots of people are uncomfortable with uncertain science," said Doremus, who served on two prior academy panels. "The water users really want to know that when they're giving up water, the fish will be saved. And that's an assurance that just can't be provided."

The academy panel can recommend science-based solutions that can't be attained under the law, an outcome that could complicate California's work on its water problems, Mount and Doremus said.

The rules, called biological opinions, are adopted by federal wildlife agencies, which set limits on reservoir operations and Delta water diversions to protect five species of native fish: steelhead, two runs of salmon, sturgeon and Delta smelt.

Experts appointed to the academy panel will review decades of science to determine whether the Delta fish protections are justified.

From fish behavior to urban water pollution and reservoir function, the panel must decide whether the rules are the best choices for the Delta estuary.

Their review will cost an estimated \$1.5 million, only half of which has been appropriated by Congress so far.

The Delta's state and federal water diversion projects serve 25 million Californians and 2 million acres of farmland. This water demand has contributed to a steep ecological decline, pushing numerous fish species toward extinction.

Water cutbacks triggered by the fish protections and drought last year idled nearly 300,000 acres of San Joaquin Valley farmland, a major blow to a region stressed by the poor economy.

"I think it's just time for a really good, thorough look," said Bill Phillimore, executive vice president of Paramount Farms. "If you're taking actions that have a significant economic effect on employment numbers and people's lives, you ought to make very certain that you're right."

Mount and other experts on the Delta, however, said the fish protections are rigorously tested science. They have already been reviewed by five independent science panels over the past 14 months.

The academy review, they said, is likely to be redundant or could produce irrelevant information that derails ongoing efforts to solve California's water problems.

"I would just describe this as sort of unfortunate meddling," said Bruce Herbold, a biologist at the U.S. Environmental Protection Agency who has studied the Delta for two decades. "It strikes me as desperately hoping somebody will come up with some other conclusion."

Of particular concern is the Bay Delta Conservation Plan, an effort to obtain Endangered Species Act approval for huge habitat and plumbing projects in the Delta.

The academy review won't be done until 2012, a year after expected completion of the plan. This could cause the plan to be scrapped or redrawn, Mount and Herbold warned.

Feinstein, in an e-mailed response to questions from The Bee, said the review will complement the Bay Delta Conservation Plan, not disrupt it.

"I see no reason why anyone should be afraid of a scientific review by this highly respected body," she said. "I believe it is the key to making better and more informed decisions in the Delta."

Water interests have attacked the biological opinions as flawed and filed multiple lawsuits to overturn them.

The Coalition for a Sustainable Delta, a nonprofit that represents San Joaquin Valley irrigation districts, filed separate federal lawsuits against the smelt and salmon protections. A majority of the coalition's officers work for Resnick's Paramount Farms.

"The science is so critical here that we have to ensure we get it right," said Michael Boccadoro, spokesman for the coalition. "Bringing in the highest science body in the nation to do that review is probably long overdue."

In his letter to Feinstein, Resnick provided a list of questions, prepared by Phillimore, for the National Academy of Sciences to consider. Its official charge is little changed from that list.

But most of these questions, Mount and Herbold noted, have already been asked and answered in previous independent science reviews.

For example, water agencies bitterly oppose an order for more freshwater outflow through the Delta in the fall to benefit smelt. This rule also limits Delta water exports.

Two separate independent science panels have affirmed the importance of fall flows for Delta smelt. Yet the academy panel will take up fall flows again at Feinstein's request.

"I really don't know what we're going to get from this (academy review) that's likely to be spectacularly different from what we've got now," Mount said.