



State Water Resources Control Board



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SEP 22 2003

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Ms. Delores Brown, Chief Mitigation
and Restoration Branch CA Department
of Water Resources 3251 S Street
Sacramento, CA 95816

Dear Ms. Cervantes and Ms. Brown:

COMMENTS ON THE PUBLIC DRAFT OF THE EWA EIS/EIR

Thank you for the opportunity to comment on the Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Environmental Water Account (EWA) dated July 2003. State Water Resources Control Board (SWRCB) Division of Water Rights (Division) staff has reviewed the document and provides the following comments.

Chapter 2

On page 2-23 the Draft EIS/EIR states "State Water Resources Control Board Decision 1641 **allows for** the following operations of the Delta Cross Channel Gates." It should be made clear that Decision-1641 (D-1641) **requires** closure of the Delta Cross Channel Gates by the U. S. Bureau of Reclamation (USBR) during the specified periods. USBR is required to determine the timing and duration of the closures after consultation with the U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NOAA Fisheries) and the California Department of Fish and Game (DFG).

The discussion of Joint Points of Diversion (JPOD) on page 2-25 of the Draft EIS/EIR states that Stage 1 JPOD approval is subject to a Water Level Response Plan that "outlines the response to changing water levels in the south Delta." The document should clarify that the purpose of the Water Level Response Plan is to ensure that water levels in the southern Delta will not be lowered to the injury of water users in the southern Delta. In addition, it should also be made clear. that under **all stages of JPOD** USBR and the Department of Water Resources (DWR) are also required to have a response plan to ensure that water quality in the southern and central Delta will not be significantly degraded through operations of JPOD to the injury of diverters in the southern and central Delta (Condition 5 on pages 150-151 and Condition 5 on page 156 of Revised D-1641).

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In the discussion of Stage 2 JPOD on page 2-25, the Draft EIS/EIR states "the Projects can divert water from either pumping plant for any of their permitted purposes up to permitted capacity." The discussion should be revised to indicate that JPOD diversions at the Banks Pumping Plant are limited under D-1641 to 13,870 acre-feet per day or three-day average diversion of 13,250 acre-feet per day, except from mid-December to mid-March when San Joaquin River flow at Vernalis exceed 1,000 cubic feet per second, during which times diversions into Clifton Court Forebay may be increased by one-third of the San Joaquin River flow at Vernalis (Condition 2 on page 153 of Revised D-1641). This is also the current limit established by the U.S. Army Corps of Engineers' (USACE) permit for the Banks Pumping Plant. Any changes to the pumping limitations established in the USACE permits would also require authorization by the SWRCB prior to increased diversions.

On page 2-25, the Draft EIS/EIR states that Stage 3 JPOD diversions are subject to completion of "an operations plan to protect aquatic resources and their habitat and protect other **legal** users of water and if they implement water barriers or other water level protection." It should be noted that D-1641 requires that water level protection under Stage 3 be adequate for diversion of water for agricultural uses. The Stage 3 water level protection requirement is not conditioned on the agricultural users having water rights.

In the first paragraph on page 2-26 the Draft EIS/EIR states that, "Prior to the CALFED ROD, the Projects were in Stage 1 and Stage 2 of the implementation process and could use Joint Point of Diversion to replace water that had been lost during pump reductions to protect fish." It should be made clear that the only implementation of the JPOD under D- 1641 before the ROD was in 2000, and that while there may have been authorization for Stage 2 type JPOD diversions since D-1641 was adopted, they were approved by the Executive Director for a short-term basis for limited specified purposes without completion of all of the requirements for Stage 2 being met. It is further stated: "It is reasonably foreseeable that without the CALFED ROD, the Project Agencies would have completed the requirements to move into Stage 3 in which they could use the Joint Point of Diversion to supply water to their contractors in the Export Service Area." It is not clear what impact the CALFED ROD has on the Project Agencies' ability to meet the requirements for use of Stage 3 JPOD. The Draft EIR/EIS should clearly explain this assertion.

Chapter 4

Please provide additional information on the basis of right for all potential water transfers, including the type of right (riparian, pre-1914/post-1914 appropriative, contract etc.), direct diversion/storage amount, the season of diversion/storage allowed under each right and the maximum quantities of water that may be transferred under each type of right. If water is diverted under a settlement contract, please indicate the nature of the underlying diversion rights as well. This information will be necessary for the Division to determine whether proposed future transfers are adequately addressed in the Final EIS/EIR.

The reference to Oroville-Wyandotte Irrigation District on page 4-6 should be changed to South Feather Water and Power.

On page 4-15, Table 4-2 seems to indicate that the Water Level Response Plan and the Water Quality Response Plan are only required for Stage 1 JPOD Diversions. The table should be revised to indicate that all stages of JPOD are subject to the Water Level and Water Quality Response Plan requirements. In addition, the statement in the first full paragraph that "The stages are not sequential, but they vary as to magnitude and required mitigation" should be revised. In effect, the various stages of JPOD do allow for incremental increases in pumping from Stage 1 to Stage 3. While Stage I JPOD diversions and rediversions may be conducted at a higher instantaneous rate under certain circumstances than Stage 2 diversions, effectively, higher total quantities of pumping are allowed under Stage 2 and even higher quantities under Stage 3 since authorization for Stage 1 JPOD pumping to recover export reductions prohibits the Projects from annually exporting more water than the individual Projects would have exported without use of the each other's pumping facilities. Stage 2 and 3 JPOD authorizations do not include such limitations. In addition, the mitigation measures for each Stage of JPOD are not differing requirements. The mitigation measures for each Stage incorporate and add to the requirements of the previous stage.

References in chapter 4 to **DWR's 2002 Water Level Response Plan for Water Level Concerns in the South Delta Under D-1 641** should be updated to reflect the current Water Level Response Plan conditionally approved on July 29, 2003.

On page 4-34, the Draft EIS/EIR states that permanent solutions such as dredging are being considered to address water level problems in the Southern Delta. It should be noted that the SWRCB's recent approval of the Water Level Response Plan requires DWR and USBR to diligently pursue approval of dredging permits from the USACE. Under the current approval of the Water Level Response Plan, JPOD operations are not authorized after October 1, 2003 unless DWR and USBR have obtained the required dredging permits.

Chapter 5

On page 5-8 the Draft EIS/EIR states that Order WR 2001-05 requires **partial implementation** of the water right requirements contained in D-1641 for meeting the water quality objectives of the 1995 Bay-Delta Water Quality Control Plan for up to **35 years**. Order 2001-05 stays the dismissal of Phase 8 of the Bay-Delta Water Right hearing for a period of 18 months. The purpose of Phase 8 was to determine the responsibility of water right holders in the watersheds of the Sacramento, Cosumnes and Calaveras Rivers for meeting the flow dependant objectives in the 1995 Bay-Delta Plan. Order 2002-12 subsequently extended the dismissal of Phase 8 until January 31, 2003. Order 2001-05 requires DWR and USBR to ensure **full compliance** with the water quality objectives specified in Tables 1 and 2 and the objectives for Delta outflow and for Sacramento River flow at Rio Vista for fish and wildlife beneficial uses as set forth in Table 3 of

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D- 1641 until the SWRCB adopts a further decision assigning responsibility for meeting these objectives. Neither DWR nor USBR has requested a resumption of Phase 8. Consequently, DWR and USBR are responsible for an indefinite period of time to ensure that the flow dependant water quality objectives are met. The Draft EIS/EIR appears to be incorrectly referring to Order 2000-10 which requires DWR to meet all of the Bay-Delta water quality objectives that the SWRCB may determine are the responsibility of water right holders in the Bear River watershed until December 31, 2035, or such time as the Bear River Agreement is terminated.

Chanter 9 Fisheries and Aquatic Ecosystems

This chapter should include a discussion of the regulatory requirements of SWRCB Order 90-05 and Decision 1644. Order 90-05 requires the USBR to meet daily average temperature requirements for the Sacramento River in order to protect fishery resources and Decision 1644 requires Yuba County Water Agency to maintain specified instream flows in the Yuba River as well as flow ramping requirements and other measures to protect fish and other public trust uses.

General

As indicated in my previous comments on the Administrative Draft EIR/EIS, while the final EIS/EIR for the EWA may be used by the Division in considering future short term and or long term water transfers under Water Code sections 1707, 1725 and 1735, due to the programmatic nature of the analyses and mitigation measures, additional site specific investigations of potential impacts to resources and other legal water users may be required for approval of individual transfers by the SWRCB to insure that specific transfers meet the requirements of the Water Code.

If you have any questions concerning these comments, please feel free to contact me at (916) 341-5297.

Sincerely,



Diane Riddle
Environmental Scientist