

Memorandum

Date: February 1, 2010

To: David A. Sandino
Chief Counsel

Lester A. Snow
Director

From: Ralph A. Torres
Deputy Director
Department of Water Resources

Subject: Review and Consideration of Certification of the final Environmental Impact Report (EIR) for the Monterey Amendment to the State Water Project (SWP) Contracts (Including Kern Water Bank Transfer) and Associated Actions as Part of a Settlement Agreement (Monterey Plus) – State Clearinghouse Number 2003011118

The purpose of this memorandum is to request certification of the final EIR for the Monterey Plus Project

Background

In 1994, the Department and a group of State Water Project (SWP) contractors negotiated a set of principles designed to modify the long-term SWP water supply contracts. This set of principles came to be known as the Monterey Agreement. As an action covered by the California Environmental Quality Act (CEQA), the Monterey Agreement was the subject of an Environmental Impact Report (EIR) prepared by the Central Coast Water Agency (CCWA), a joint powers agency composed of two water contractors, and certified by CCWA in October 1995. In 1995 and 1996, following CCWA's certification of the EIR, the Department and most of the SWP contractors incorporated most of the principles into a contract amendment which is known as the Monterey Amendment.

In 1995, the EIR for the Monterey Agreement was subject to judicial challenge. Ultimately, the EIR was ordered decertified on the ground that the Department should have been the lead agency. In May 2003, the parties to the litigation negotiated a settlement agreement, which was confirmed by Court order on June 6, 2003, whereby the Department committed to a process for including the plaintiffs and contractors in the development of a new EIR on the Monterey Amendment and agreed to certain additional elements (Settlement Agreement). The Monterey Amendment and the Settlement Agreement together comprise the proposed project. The Department has been operating the SWP pursuant to the Monterey Amendment since 1996 and

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implementing the Settlement Agreement and the Court Order approving the Settlement Agreement since 2003.

The Department has independently prepared a new EIR which reviewed, analyzed and discussed the proposed project's potential environmental impacts and other issues raised in the scoping meetings and in public comments. In addition, the EIR has benefited from the advice and recommendations of the EIR Committee established by the Settlement Agreement. The EIR Committee included four SWP contractor representatives and four plaintiff representatives. More than 24 meetings were held, including a number of meetings to discuss input into the CALSIM II modeling to make it more useful for the EIR. Both the SWP contractor and the plaintiff representatives on the EIR Committee provided input into the scope, contents and conclusions of the EIR.

In many instances, the Committee input resulted in changes to the EIR.

Following publication of the DEIR, public hearings were held and comments received from multiple parties. Department staff and consultants have expended considerable effort preparing comprehensive responses to the 631 comments received on the DEIR. The FEIR now includes those comments and responses, and completes the evaluation process required by CEQA.

The Settlement Agreement provides a process whereby members of the EIR Committee may choose to refer "mediation issues" to the Director for his consideration and, thereafter, to a mediator for non-binding advice. Plaintiffs referred a number of issues to you in a letter dated August 13, 2009. You responded to the letter with a decision dated October 15, 2009. Thereafter, the SWP contractors and the plaintiffs elected to not refer any mediation issues to the mediator.

This concludes the review process for the EIR short of a final decision by you to certify or not certify the EIR. As required by Section 15091(e) of the CEQA Guidelines, the custodian and location of the EIR and other documents or other materials which constitute the record of the proceedings upon which your decision is based are as follows:

Mitigation Restoration Branch
Division of Environmental Services
Department of Water Resources
3500 Industrial Blvd.
West Sacramento, CA 95691

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Recommended Action

The attached Environmental Impact Report (EIR) for the Monterey Amendment to the State Water Project (SWP) Contracts (Including Kern Water Bank Transfer) and Associated Actions as Part of a Settlement Agreement (Monterey Plus) is submitted for your review and consideration. The EIR includes the draft EIR (DEIR), the final EIR

(FEIR) and related appendices, including the comments received on the DEIR. CEQA requires public agencies like the Department to make a number of determinations before approving a proposed project which could have a significant impact on the environment. The first step is certification of the EIR. Following the certification of the EIR, the Director of the Department or his authorized designee can decide whether to approve the proposed project consistent with the requirements of CEQA. Staff will be providing recommendations with regard to approval of the proposed project at a later date.

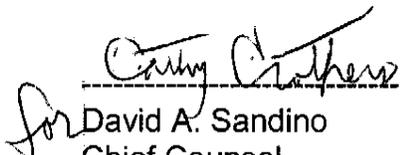
After signing and dating this memorandum, please call Michael Hendrick, Senior Environmental Scientist at (916) 376-9745 for distribution. If you have any questions or need additional information about the EIR or the proposed project, please call me at (916) 653-3927 or Katherine Spanos at (916) 653-6295.

Director Decision

Section 15090(a) of the CEQA Guidelines states that "[p]rior to approving a project the lead agency shall certify that: (1) The final EIR has been completed in compliance with CEQA; 2) The final EIR was presented to the decision making body of the lead agency and that the decision making body reviewed and considered the information contained in the final EIR prior to approving the project; and (3) The final EIR reflects the lead agency's independent judgment and analysis".

If after review and consideration of the EIR you determine that it meets the requirements of CEQA, you should indicate that decision by signing the following statement:

EIR CERTIFICATION RECOMMENDED

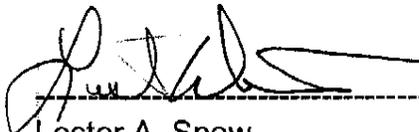


David A. Sandino
Chief Counsel

Feb. 1, 2010

Date

I certify that the final EIR has been completed in compliance with CEQA, that the final EIR was presented to me in my capacity as the Department's decision making body, and that the final EIR reflects the Department's independent judgment and analysis. I have reviewed and considered the information contained in the final EIR prior to approval of the project.



Lester A. Snow
Director

12:15 pm Feb 1, 2010

Date