



State Water Resources Control Board



Winston H. Hickox
Secretary for
Environmental
Protection

Executive Office

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MAR 12 2002

In Reply Refer to:
NW:360:A005626, A005630

Mr. Carl A. Torgersen, Chief
SWP Operations Control Office
Department of Water Resources
3310 El Camino Avenue, Suite 300
Sacramento, CA 95821

Mr. Chester Bowling, Operations Manager
Central Valley Operations
Bureau of Reclamation
3310 El Camino Avenue, Suite 300
Sacramento, CA 95821

Dear Mr. Torgersen and Mr. Bowling:

APPROVAL OF WATER LEVEL RESPONSE PLAN REQUIRED BY DECISION 1641

This letter responds to the Water Level Response Plan (Plan) that you submitted to me by letter dated January 28, 2002. The Department of Water Resources (DWR) and the Bureau of Reclamation (USBR) prepared the Plan in response to Conditions 1(a)(3) and 2(a)(5), on pages 150 and 155 respectively, of State Water Resources Control Board (SWRCB) Decision 1641 (D-1641). In D-1641, the SWRCB conditioned the SWRCB's approval of the DWR's and the USBR's use of each other's points of diversion in the southern Delta (known as Joint Point of Diversion, or JPOD) on several requirements, including a requirement that water levels in the southern Delta are not lowered to a point where local agricultural diversions are impaired by use of the JPOD. The DWR and the USBR may conduct JPOD operations after the Executive Director of the SWRCB has approved all required submittals, including a water level response plan. The DWR and the USBR are required to implement the response plan once approved.

The Plan you submitted on January 28, 2002, will replace the plan approved temporarily by the acting Executive Director of the SWRCB on October 6, 2000. The temporary plan was originally approved for a period of one year and I extended the approval for a period for an additional three months by letter dated October 10, 2001. I have received and reviewed comments from the South Delta Water Agency (SDWA) regarding this proposed Plan.

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As you point out, this Plan addresses only water level impacts due to the incremental effects of JPOD operations and water transfers. The Plan provides a process by which the incremental effects of JPOD and water transfers will not increase any ongoing harm to local diversions. This represents a major departure from the previous plan. In that plan, JPOD operations were to cease if water levels were deemed inadequate at specified locations, regardless of the cause.

The temporary plan that was in effect commencing October 2000 unquestionably provided a higher level of protection to southern Delta diverters, but the SWRCB did not require the DWR or the USBR to meet that level of protection as a condition of approving JPOD operations. The environmental analysis supporting Phase 6 of the Bay-Delta Water Rights Hearing, and the specific language in D-1641, makes it clear that the Plan was intended only for the incremental impacts of JPOD approval. The proposed Plan accomplishes that goal and is therefore, in my judgement, adequate.

The SDWA complained of impacts to water levels due to the DWR's and the USBR's ongoing operations during the Bay-Delta Water Rights Hearing. The SDWA filed a complaint on March 10, 1999, raising this issue. On February 25, 2000, the SWRCB informed the SDWA that a hearing would be scheduled to consider this matter provided that the SDWA first provide prima facie evidence to support the claim. The SDWA did not respond and the complaint was dismissed. The SDWA could at any time file another complaint and the SWRCB would consider holding a hearing subject to the same conditions.

The SDWA's letter dated February 5, 2002, which responds to this Plan, expressed a number of general and specific objections. First, the SDWA stated that any plan should be an integrated component of an integrated South Delta Water Management Plan. CALFED is developing such a plan. The comprehensive South Delta Water Management Plan is not, however, a condition of approval of the JPOD.

SDWA's second area of concern is whether JPOD operations should be allowed when water levels are inadequate for agricultural diversions, regardless of the cause. As discussed above, the SWRCB conditioned the approval of the JPOD upon avoidance of incremental impacts to water levels caused by JPOD operations, but not upon actions to prevent the impacts of non-JPOD operations.

Finally, the SDWA objects to a number of specific parts of the proposed Plan. I have reviewed these objections. In response, my approval of the JPOD is conditioned upon the DWR and the USBR implementing the following additional provisions:

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1. The DWR and the USBR shall implement modifications needed to protect agricultural diversions by water right holders in the southern Delta if the diversions are susceptible to low water levels. Such modifications are required only if the diverters demonstrate to the satisfaction of the Chief of Division of Water Rights that they have a valid right to the water during the period when water levels due to JPOD operations may be too low.
2. This Plan is based on the facilities, Clifton Court Forebay (CCF) operational criteria, and the regulatory restrictions on exports that exist as of autumn 2001. If facilities, CCF operations or export restrictions change, then the DWR and the USBR must consult with the Executive Director of the SWRCB to determine whether the Plan requires changes and further approval. I am retaining continuing authority over my approval of the Plan for the purpose of requiring changes as needed to meet the conditions in the water rights of the DWR and the USBR on use of the JPOD and to protect the public welfare, protect public trust uses, and prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of the water involved.
3. Condition II in the Plan provides that if an action covered by the Plan is proposed, and if the criteria in Condition I in the Plan are not met, the action may still occur if the DWR and the USBR determine that no diversions will occur at a location and during a period when the action will have an incremental effect on water levels (Condition II(c)). If the DWR or the USBR acts based on this condition, the DWR or the USBR must demonstrate to the SDWA and the SWRCB that it has communicated with the potentially affected diverters prior to the action and that the diverters have no plans for diversions during the period the diversions will occur.
4. The DWR and the USBR shall meet all of the applicable commitments in the proposed Plan.

Under the proposed Plan, the DWR and the USBR commit themselves to work in good faith with local diverters to provide portable pumps, or to make physical modifications to specific diversions where water level problems have been experienced. The Plan also commits them to implement a site-specific dredging program to benefit agricultural diversions, subject to their securing the necessary regulatory permits. Continuing approval is contingent upon these commitments being met.

With the above conditions, the proposed Plan meets the requirements of D-1641 and I approve it subject to the foregoing conditions and the commitments in the Plan. I reserve continuing authority to modify the Plan as may be needed, or to terminate my approval of the Plan.

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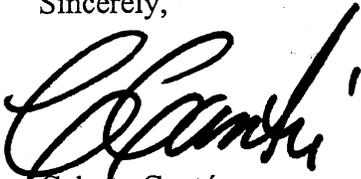
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If any party objects to my decision, they may submit a petition of reconsideration in accordance with sections 768 and 769 of Title 23 of the California Code of Regulations. A petition for reconsideration must be submitted in writing within 30 days from the date of this letter to:

Mr. Arthur G. Baggett, Jr., Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100.

If you have questions, please contact Barbara Leidigh, Senior Staff Counsel, at (916) 341-5190, or Nick Wilcox, Chief of the Bay-Delta Unit, at (916) 341-5424.

Sincerely,



Celeste Cantú
Executive Director

cc: Mr. Curtis Creel
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