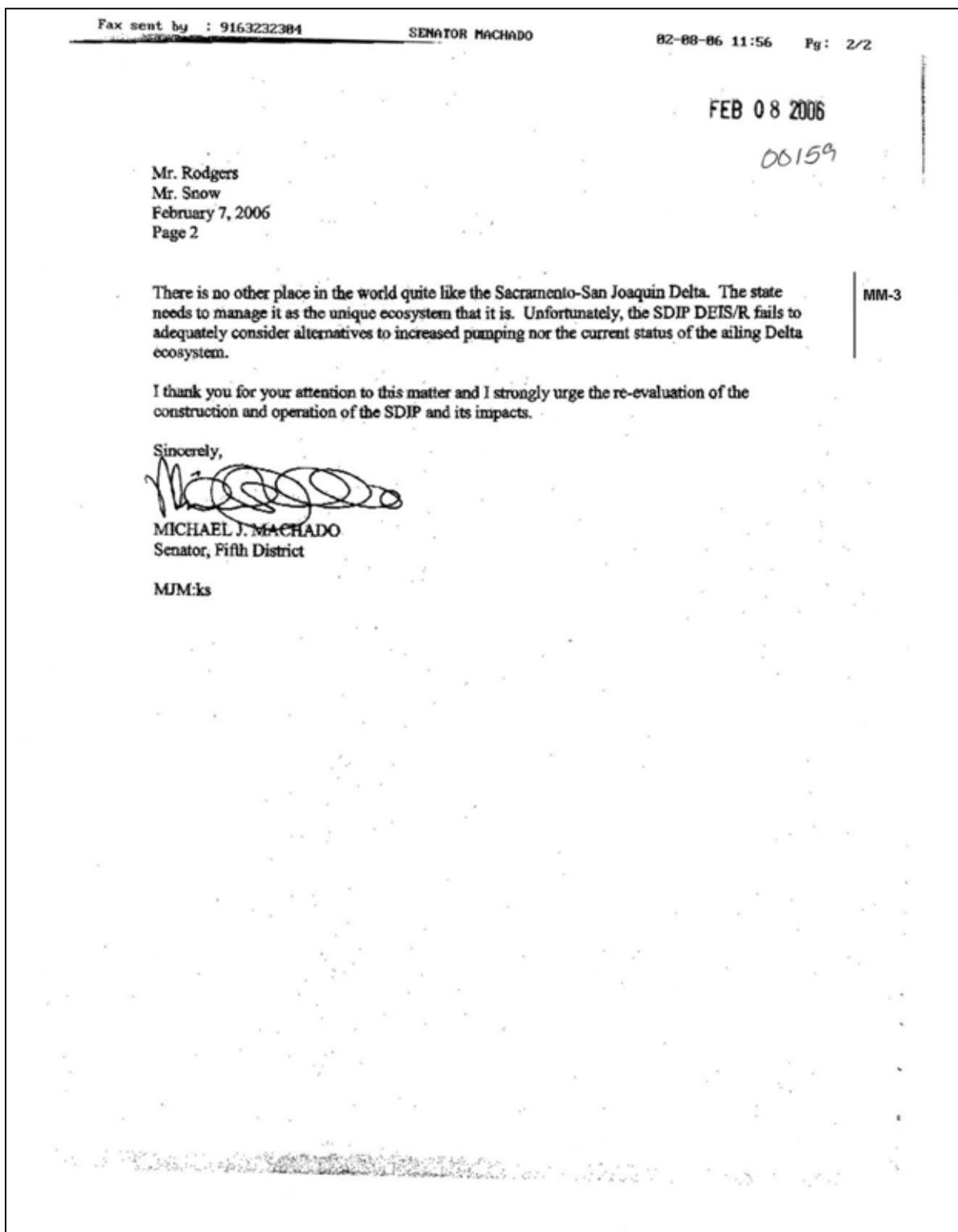


Comment Letter MM

<p>Fax sent by : 9163232384</p> <p>CAPITOL OFFICE STATE CAPITOL, ROOM 5066 SACRAMENTO, CA 95814-4900 TEL (916) 651-5005 FAX (916) 323-2304</p> <p>DISTRICT OFFICES 51 E. CHANNEL ST., ROOM 440 STOCKTON, CA 95202 TEL (209) 948-7930 FAX (209) 948-7993</p> <p>1020 N STREET, ROOM 506 SACRAMENTO, CA 95814 TEL (916) 651-1511 FAX (916) 323-2596</p> <p>1010 NUT TREE RD., #188 VACAVILLE, CA 95687 TEL (707) 454-3808 FAX (707) 454-3811</p> <p>WWW.SEN.CA.GOV/MACHADO</p>	<p>SENATOR MACHADO</p> <p>California State Senate</p> <p>MICHAEL J. MACHADO SENATOR, FIFTH DISTRICT</p> 	<p>82-88-86 11:56 Pg: 1/2</p> <p>MM</p> <p>COMMITTEES REVENUE AND TAXATION CHAIR</p> <p>BANKING, FINANCE AND INSURANCE</p> <p>BUDGET AND FISCAL REVIEW</p> <p>LOCAL GOVERNMENT</p> <p>NATURAL RESOURCES AND WATER</p> <p>TRANSPORTATION AND HOUSING</p> <p>SUBCOMMITTEE ON DELTA RESOURCES CHAIR</p> <p>BUDGET SUBCOMMITTEE #5 ON PUBLIC SAFETY, LABOR AND VETERAN AFFAIRS</p>
<p>February 7, 2006</p>		
<p>Mr. Kirk Rodgers, Regional Director United States Bureau of Reclamation, Mid-Pacific Region 2800 Cottage Way Sacramento, CA 95825</p>		
<p>Mr. Lester Snow, Director California Department of Water Resources 1416 - 9th Street Sacramento, CA 95814</p>		
<p>Dear Mr. Rodgers & Mr. Snow:</p>		
<p>I am writing in response to the Draft Environmental Impact Statement/Environmental Impact Report (DEIS/R) for the South Delta Improvements Program. The DEIS/R fails to adequately address the impacts of the project on the Sacramento-San Joaquin Delta (Delta) and further jeopardizes the entire Delta ecosystem.</p>		
<p>Given the current state of the Delta and its environment, a strong effort needs to be made to reduce water diversions. Clearly, the DEIS/R does not consider this option. Recently the California Court of Appeals invalidated the environmental documents supporting the CALFED Record of Decision because of its failure to evaluate an alternative that would reduce Delta water diversions. Also, evidence, including the update of the California Water Plan, suggests that California's future water needs can be met without increased pumping. Experience shows that decreasing reliability on Delta water increases water supply reliability. A new alternative decreasing Delta water diversions needs to be developed.</p>		
MM-1		
<p>The rapid and alarming decline of pelagic fish species in the Delta is not only a cause for concern but also indicates larger systemic problems. Investigations into the reasons for the collapse of these fish species are underway. However, the urgency with which SDIP is moving forward is worrisome, particularly because this project is specifically designed to increase pumping. It needs to be reiterated that there are issues associated with current pumping rates that have yet to be resolved. The SDIP does not address the existing problems; if anything, it potentially exacerbates them.</p>		
MM-2		
<p>FEB 08 2006 00159</p>		



Responses to Comments

MM-1

Please see Master Response D, *Developing and Screening Alternatives Considered in the South Delta Improvements Program Draft EIS/EIR*.

MM-2

Please see Master Response B, *Relationship between the South Delta Improvements Program and the Pelagic Organism Decline*.

MM-3

Please see Master Response D, *Developing and Screening Alternatives Considered in the South Delta Improvements Program Draft EIS/EIR*.

Comment Letter SLC

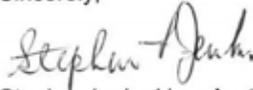
STATE OF CALIFORNIA		DEC 20 2005	00009	SLC
		ARNOLD SCHWARZENEGGER, Governor		
CALIFORNIA STATE LANDS COMMISSION 100 Howe Avenue, Suite 100-South Sacramento, CA 95825-8202		PAUL D. THAYER, Executive Officer (916) 574-1800 FAX (916) 574-1810 Relay Service From TDD Phone 1-800-735-2929 from Voice Phone 1-800-735-2922		
		Contact Phone: (916) 574-1890 Contact FAX: (916) 574-1885		
December 13, 2005				
File Ref: SCH#2002092065				
Ms. Nadell Gayou The Resources Agency 901 P Street Sacramento, CA 95814				
Mr. Paul Marshall Department of Water Resources 1416 9 th Street Sacramento, CA 95814				
Dear Ms. Gayou and Mr. Marshall:				
Subject: Draft Environmental Impact Report for the South Delta Improvements Program				
Staff of the California State Lands Commission (CSLC) has received the above referenced Draft EIR. Under the California Environmental Quality Act (CEQA), California Department of Water Resources is the Lead Agency and the CSLC is a Responsible and/or Trustee Agency for any and all projects which could directly or indirectly affect sovereign lands, their accompanying Public Trust resources or uses, and the public easement in navigable waters.				
The State acquired sovereign ownership of all tidelands and submerged lands and beds of navigable waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all the people of the State for statewide Public Trust purposes which include waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. The landward boundaries of the State's sovereign interests in areas that are subject to tidal action are generally based upon the ordinary high water marks of these waterways as they last naturally existed. In non-tidal navigable waterways, the State holds a fee ownership in the bed of the waterway between the two ordinary low water marks as they last naturally existed. The entire non-tidal navigable waterway between the ordinary high water marks is subject to the Public Trust. The State's sovereign interests are under the jurisdiction of the State Lands Commission.				
				SLC-1

DEC 20 2005 00009

Old and Middle Rivers are under the Commission's jurisdiction. The Commission and the Department of Water Resources have entered into a Memorandum of Understanding (attached) concerning DWR's use of State sovereign lands for facilities of the Central Valley Water Project and the State Water Resources Development System. Please review the MOU and, if it does qualify, please submit the information to the Commission which is set forth in the MOU. If you have questions, please contact Diane Jones, Public Land Manager, at 916-574-1843.

SLC-2

Sincerely,



Stephen L. Jenkins, Asst. Chief
Division of Environmental Planning
and Management

enclosures

cc: Diane Jones

State of California
The Resources Agency

Memorandum

DEC 20 2005 00009

To : William F. Northrop
Executive Officer
State Lands Commission
1807 13th Street
Sacramento, CA 95814

Date : OCT 22 1979

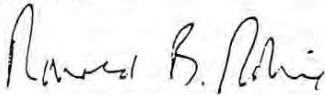
File No.:

Subject: Memorandum of
Understanding for DWR
Use of State Lands

Attention: Bob Faber

From : Department of Water Resources

Attached is a signed copy of our Memorandum of Understanding as transmitted by your memorandum of October 5, 1979. John Cape of our legal staff will work with you on developing appropriate forms and procedures for implementing the memorandum.



Ronald B. Robie
Director
8-485-6582

Attachment

OCT 25 12 30 PM '79
RECEIVED
STATE LAND COMMISSION

DEC 20 2005 00009

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
STATE LANDS COMMISSION
AND THE
DEPARTMENT OF WATER RESOURCES
FOR THE USE OF STATE LANDS
FOR FACILITIES OF
THE CENTRAL VALLEY PROJECT AND
THE STATE WATER RESOURCES DEVELOPMENT SYSTEM

The State Lands Commission (SLC) and the Department of Water Resources (DWR), in order to assure proper coordination in the process of DWR project formulation, authorization, construction and operation within the Central Valley Project (CVP) and the State Water Resources Development System (SWRDS), consider it desirable to agree upon a procedure to be followed when DWR facilities for said projects are proposed to be constructed on State lands. The parties therefore agree as follows:

I. General Understanding

Maximum coordination between SLC and DWR is necessary to achieve responsible management of the State's land and water resources.

II. Specific Objectives

SLC and DWR by this understanding will reduce potential conflicts between DWR activities in the CVP and SWRDS and other necessary uses of State lands in these areas.

DEC 20 2005 00009

III. Procedures

The following procedures will be followed by the parties to this memorandum with respect to DWR projects on State lands which are included in the scope of Water Code Sections 11130, 12931, and Public Resources Code Section 6327:

1. As provided by paragraph III, 4, below, DWR will involve SLC in the planning and project formulation process, along with representatives of other local, state, and federal agencies, within any administrative and legal constraint in order to accomplish a total public involvement in DWR programs which affect State lands.
2. For activities undertaken pursuant to this Agreement, DWR will act as the lead agency and be responsible for coordinating all input required under NEPA or CEQA.
3. Comments prepared by SLC and other local, state, and federal agencies will be considered by DWR in the development of final plans for projects which will use State lands.
4. Except for emergency projects, DWR will submit to SLC, at least 90 days prior to use of State lands or the start of construction of a facility on State lands, a "Notice of Proposed Use of State Lands". This notice will include,

DEC 20 2005 00009

(a) a general plan of the facility to be constructed; (b) if available, specific right of way maps and legal descriptions of State lands DWR proposes to use for the facility; (c) the proposed operational criteria for the project; and (d) the expected duration of the use of the State lands affected by the project. For emergency projects DWR will notify SLC of all emergency actions and, if feasible, such notice will be provided prior to such actions. Such notice will describe the nature of the emergency, the action to be taken, or the facility to be constructed, the State lands affected, and the expected duration of the emergency use. For the purposes of this Agreement "Emergency" is defined as an unforeseen condition or circumstance which calls for immediate action to protect life or property. It includes but is not limited to circumstances resulting from earthquake, flood, and drought.

5. SLC will review DWR's notices submitted pursuant to paragraph 4 above and within 30 days advise DWR of any known, existing, or proposed facilities which may be in conflict with DWR's planned use. SLC will also recommend to DWR any restrictions or limitations on

DEC 20 2005 00009

DWR's use of the State land which it deems necessary for the health and safety of the public and preservation of the public trust or preservation of natural resource values and protection of the environment.

IV. Cooperation and Periodic Review

SLC and DWR agree that they will cooperate and mutually assist each other in all appropriate ways necessary to promote maximum effectiveness of the foregoing procedures. Periodically, the parties will review the procedures and consider revisions as desirable to promote the objectives identified in the memorandum.

V. Retained Leasing Power

DWR agrees that SLC may retain the authority to lease any land that is the subject of this agreement on the condition that said leasing is made after due notice to DWR and is not incompatible with the use to be made by DWR. DWR and its agents, contractors and cooperating entities may use the land as agreed but may not allow other public or private entities to use the land or facilities, described in this agreement, for purposes other than those included under Section 11130 and 12931 of the Water Code, without the consent of SLC.

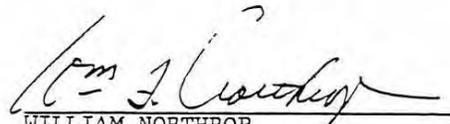
DEC 20 2005 00009

VI. Liability for Damages or Injury

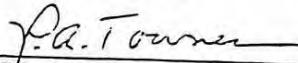
DWR hereby agrees to indemnify and hold SLC harmless from liability for property damage or personal injury arising from DWR's design, construction, and operation of activities on State lands pursuant to this memorandum and from the acts of DWR's employees, agents and contractors, excepting any damage or injury caused by the negligence or willful misconduct of SLC and its employees, agents, or contractors.

Dated: October 19, 1979

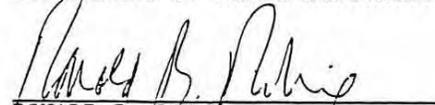
STATE OF CALIFORNIA
STATE LANDS COMMISSION


WILLIAM NORTHROP
Executive Officer

Approved as to legal form
and sufficiency:


J.A. Townes
Chief Counsel, Department
of Water Resources

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES


RONALD B. ROBIE
Director

Responses to Comments

SLC-1

DWR and Reclamation are aware that portions of the SDIP, including Stage 1 components, are located on, or would affect, properties under the jurisdiction of the SLC.

SLC-2

DWR will submit the notice as required by the Memorandum of Understanding (MOU).

Comment Letter SWRCB



Alan C. Lloyd, Ph.D.
Agency Secretary

State Water Resources Control Board

Division of Water Rights

1001 I Street, 14th Floor • Sacramento, California 95814 • 916.341.5300
P.O. Box 2000 • Sacramento, California 95812-2000
Fax: 916.341.5400 • www.waterrights.ca.gov



Arnold Schwarzenegger
Governor

February 7, 2006

SWRCB

Mr. Paul Marshall
SDIP EIR/EIS Comments
CA Department of Water Resources
Bay Delta Office
1416 Ninth Street
Sacramento, CA 95814

Feb 07, 2006 00134

Dear Mr. Marshall:

SOUTH DELTA IMPROVEMENTS PROGRAM DRAFT ENVIRONMENTAL IMPACT STATEMENT/ ENVIRONMENTAL IMPACT REPORT

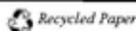
The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) provides the following comments on the South Delta Improvements Program (SDIP) Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) prepared by the Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (USBR). The State Water Board/Division has water rights authority concerning the proposed project through issuance of water right permits/licenses to DWR for the State Water Project (SWP) and USBR for the Central Valley Project (CVP) and other water right holders that may transfer water under Stage 2 of the proposed project. In addition, the State Water Board/Division has water quality authority through implementation of the 1995 Water Quality Control Plan for the San Francisco Bay-Sacramento/San Joaquin Delta Water Quality Control Plan (1995 Plan) in Decision 1641 (D-1641) and 401 water quality certification authority pursuant to the Clean Water Act (CWA) and California Code of Regulations Title 23 section 3855(b).

Executive Summary

The first full paragraph on page ES-2 states that the baseline condition for the EIR/EIS for Stage 1 of the project is the "existing operational rules, including the permitted limit for SWP pumping at CCF." It is unclear which "permitted limit" the EIR/EIS is referring to. The U.S. Army Corps of Engineer (USACOE) permits allow diversions of 6,680 cubic feet per second (cfs) (except from mid-March to mid-December when higher diversions may be allowed), but the water right permits for the SWP allow diversions of 10,300 cfs. The EIS/EIR should clarify the pumping limits under the various permits/license for this project and should specify the conditions currently constraining operations, including the USACOE permits and satisfaction of conditions for use of Joint Points of Diversion (JPOD). This issue should also be clarified in the last paragraph on page ES-3 and the first paragraph on page ES-4.

SWRCB-1

California Environmental Protection Agency



Feb 07, 2006 00134

Mr. Paul Marshall

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February 7, 2006

What does "nonjurisdictional riparian habitat" mean on page ES-5? Whose jurisdiction is the EIS/EIR referring to? Is it referring to the USACOE under CWA section 404? Does the statement mean that land is going to be purchased that is riparian to something other than a water of the US or a tributary thereto? If so, using the word "riparian" makes this confusing.

SWRCB-2

What is the "avoidance and credit system" that is referred to on p. ES-6?

Chapter 1

The description of the Environmental Water Account (EWA) on page 1-11 is so unclear that a reader who is not already familiar with the EWA would have difficulty understanding it. The discussion in Appendix B on page B-4 is more understandable.

SWRCB-3

The discussion of the purpose of the Vernalis Adaptive Management Plan (VAMP) on page 1-14 appears to be somewhat inconsistent with the VAMP study design. The EIS/EIR states that "The purpose of the VAMP is to identify the true fall-/late fall-run Chinook salmon smolt and Delta smelt populations and survival in the lower San Joaquin River and improve aquatic habitat conditions in the Delta for fall-/late fall-run Chinook salmon and Delta smelt." However, the stated purpose of the VAMP is to determine the relative effects of flows in the San Joaquin River and exports in the Delta with a fish barrier at the Head of Old River on the passage and survival of Chinook salmon smolts through the Delta. In addition, the VAMP is designed to provide environmental benefits on the lower San Joaquin River during the April/May pulse flow period. The VAMP study is not designed to assess Delta smelt populations or to specifically protect Delta smelt.

SWRCB-4

While Table 1-6 includes the 1994 Bay-Delta Accord and Order 95-6, it does not include the 1995 Water Quality Control Plan for the 1995 Plan. The 1994 Accord and the 1995 Plan are not synonymous and should be listed separately. In addition, Order 95-6 should be listed with the 1995 Plan and not the 1994 Bay-Delta Accord.

SWRCB-5

The description of D-1641 on page 1-27 is very poorly worded and is not entirely accurate. The following corrections should be made:

1. The EIS/EIR states, "D-1641 is the water rights decision implementing the 1995 Delta Water Quality Control Plan (WQCP) objectives, including the water quality standards on the San Joaquin River and Mokelumne River and Cache and Putah Creeks." D-1641 does not implement any water quality standards. Instead, D-1641 implements certain flow dependant water quality *objectives* included in the 1995 Plan. In addition, there are no water quality standards or objectives on the Mokelumne River, Cache Creek, or Putah Creek. DWR negotiated with parties on the Mokelumne River and Cache and Putah creeks to provide certain flows from those water sources to help meet the flow dependant

SWRCB-6

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February 7, 2006

- objectives in the Delta. D-1641 includes the required flows for the Mokelumne River, however, these flows are not water quality standards.
2. The EIS/EIR should make clear that the Sacramento Valley Water Management Agreement (SVWMA) is a negotiated agreement between Sacramento Valley water users and DWR and USBR to which the State Water Board is not a party.
 3. In the first sentence on page 1-28, instead of saying the State Water Board "incorporated" certain requirements in the 1995 Plan, the EIS/EIR should state that the State Water Board "took into consideration" the requirements of the other agencies.
 4. In the first bullet on page 1-28 "water year classifications," should be replaced by "export limits" in describing the requirements. In context, it is currently unclear, since the classification is just a part of the requirement.
 5. In the second bullet on page 1-28, standards should be changed to objectives.
 6. The last bullet on page 1-28 stating that Delta inflow does not include rainfall is not entirely correct. Delta inflow includes streamflows into the Delta, which result from precipitation. This bullet should be rewritten to be more clear.
 7. Another bullet should be added discussing the export limitations included in D-1641 that are based on San Joaquin River flows.
 8. Another bullet should be added on page 1-28 discussing the Delta Cross Channel Gate operating criteria.

SWRCB-6

Chapter 2

In the discussion of Joint Points of Diversion (JPOD) in Chapter 2, the EIS/EIR states that D-1641 subjects use of JPOD to a plan to protect fish, wildlife, and other legal users of water. The EIS/EIR should clarify that D-1641 approved JPOD in stages subject to various terms and conditions prior to use (see D-1641, pages 150-153 and 155-158), not only a plan to protect fish, wildlife, and other legal users of water. Under Stage 1, USBR can use Banks Pumping Plant¹ to serve the Cross Valley Canal contractors and Musco Olive, to support a recirculation study, and to recover export reductions taken to benefit fish. Under Stage 2 JPOD, USBR can use the Banks Pumping Plant for any purpose authorized under its permits, except that the total pumping at Banks cannot exceed the current limits of the USACOE permit. Under Stage 3, USBR can use the Banks Pumping Plant up to the physical capacity of the pumping plant. The EIS/EIR should discuss the conditions for all stages of JPOD since increased pumping to 8,500 cfs at the Banks Pumping Plant for the benefit of the USBR's contractors is contingent upon use of Stage 3 JPOD. To date, DWR and USBR have submitted the required plans for use of JPOD up to Stage 1, including a Water Level Response Plan and a Water Quality Response Plan. However, DWR and USBR still must submit an operations plan to protect fish and wildlife and other legal users of water for Stage 2 JPOD. In addition, DWR and USBR must also submit a Water Quality

SWRCB-7

¹ D-1641 also approved JPOD use by DWR of USBR's Tracy pumping plant subject to similar conditions. However, the SDIP primarily involves use by USBR of DWR's Banks Pumping Plant.

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Mr. Paul Marshall

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Response Plan for Stage 3 JPOD and meet the further requirements for Stage 3 JPOD for an operations plan to protect aquatic resources and their habitat and other legal users of water if pumping rates will exceed the limits of the current USACOE permits. Further, Stage 3 JPOD requires DWR and USBR to protect water levels in the southern Delta adequate for diversion of water for agricultural uses. D-1641 specifies that this requirement may be satisfied through construction and operation of three permanent tidal barriers (currently referred to as gates) in the southern Delta as proposed in the SDIP.

Chapter 5

The following comments pertain to Table 5.1-1 regarding the CALSIM II model assumptions for the SDIP baselines and operational scenarios:

1. Why are the minimum flows below Lewiston Dam less in the 2001 baseline than the preferred alternative in the Trinity EIS?
2. For the Yuba River the EIS/EIR indicate that Decision 1644 flows are used. The EIS/EIR should indicate whether those are the interim flows or the long-term flows.
3. For the American River, the EIS/EIR utilizes Decision 893 flows, which are much lower than actual flows maintained by USBR and which are likely to be replaced in the future as a result of ongoing work by the Water Forum. As such the EIS/EIR should utilize the Water Forum flows in the 2020 level analysis.
4. Does the base case for exports assume relaxation of the export/inflow ratio pursuant to the requirements of D-1641? The EIS/EIR should specify.

SWRCB-8

If the modeling for the SDIP regarding JPOD pumping and water transfers (including EWA water transfers) does not do so already, it should assume that these diversion will only be allowed when DWR and USBR are in compliance with all of their permit and license conditions (including meeting the southern Delta electrical conductivity objectives and the San Joaquin River flow objectives) pursuant to the requirements of D-1641 (page 150 and 156) and the April 2005 Water Quality Response Plan (page 6), which subjects transfers to the requirements of the Water Quality Response Plan. While a revised Water Quality Response Plan will be required for Stage 3 JPOD diversions, the Division assumes that transfers will continue to be subject to the conditions of the Water Quality Response Plan.

SWRCB-9

Page 5.1-2 states that the SDIP operational alternatives will not modify the water quality and flow objectives for the Delta that the SWP and the CVP are responsible to meet. The EIS/EIR should specifically state as part of the project description that DWR and USBR will not increase diversions pursuant to the SDIP unless they are in compliance with the various terms and conditions of their water right permits (and USBR's license) for diversion and use of water, including water quality and flow requirements.

SWRCB-10

The discussion of appropriative rights on page 5.1-5 should include a discussion of pre-1914 appropriative rights. Further, in addition to the discussion concerning the State Water Board's

SWRCB-11

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Mr. Paul Marshall

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February 7, 2006

ability to reserve jurisdiction over water right permits and licenses, the EIS/EIR should state that the State Water Board has continuing authority to revise water right permits and licenses for certain purposes, even if the State Water Board has not reserved jurisdiction.

SWRCB-11

Under the discussion of the 1995 WQCP on page 5.1-7, it is not correct to refer to "...the State Water Board and Reclamation's final EIR for implementation [of the 1995 Plan]..." The State Water Board prepared the EIR for implementation of the 1995 Plan. USBR's environmental document had nothing to do with implementation of the 1995 Plan. It was solely for the purpose of supporting USBR's petition to change its place and purpose of use. Further, there were two separate environmental documents and not one joint document as the EIS/EIR appears to state-

SWRCB-12

The EIS/EIR should include a description of the types of transfers that may occur pursuant to Stage 2 of the proposed project, including the associated regulatory requirements that must be satisfied for the various transfers to occur. Due to the programmatic nature of the analyses concerning water transfers included in the EIS/EIR, any transfers conducted pursuant to Stage 2 of the proposed project requiring approval by the State Water Board may require additional analyses beyond those included in the EIS/EIR to determine that specific transfers meet the requirements of the California Water Code, including no injury to other legal users of water and no unreasonable effects on fish, wildlife, or other instream beneficial uses of water.

SWRCB-13

Chapter 5 should specifically discuss how the proposed project will comply with the requirements for using all three stages of JPOD included on pages 150 through 153 of D-1641, including compliance with the response plans to protect water levels, water quality, and fisheries and other legal users of water, and the further requirements for use of Stage 3 JPOD.

SWRCB-14

The EIS/EIR states that water levels may be reduced to less than 0 feet mean sea level under certain operational scenarios at various sites. While the EIS/EIR states that these impacts are expected to be less than significant due to the characteristics of the pumps, the EIS/EIR should include contingency mitigation if water level impacts are identified.

SWRCB-15

Chapter 6

Chapter 6 identifies significant impacts to Delta smelt from reduction in food availability and states that the impacts will be mitigated to be less than significant by minimizing entrainment losses of Delta Smelt associated with increased SWP pumping. It is unclear how minimizing entrainment of Delta smelt will fully mitigate food supply impacts. Though Delta smelt would presumably experience less direct mortality from entrainment due to the mitigation, they would continue to experience the effects of reduced food supplies, which may lead to mortality. While ensuring that X2 does not move upstream substantially may provide some level of mitigation for these food supply impacts, there may still be impacts from Stage 2 operations related to water moving too quickly through the system for proper phytoplankton and zooplankton production.

SWRCB-16

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February 7, 2006

The EIS/EIR should address this potential impact. Specifically, the State Water Board is concerned how any JPOD diversion would affect this issue.

The EIS/EIR does not appear to discuss the effects of permanent operable gate operation on juvenile and adult steelhead migration. The EIS/EIR should discuss this issue.

SWRCB-17

The EIS/EIR should discuss how the proposed project will affect USBR's ability to meet the daily average temperature target of 56 degrees Fahrenheit on the Sacramento and Trinity rivers. While the EIS/EIR does provide estimates of Chinook salmon and Steelhead temperature survival indices for the Sacramento River, it is not clear what the actual change in temperature would be under the proposed project and how those changes would affect USBR's ability to meet the temperature target.

SWRCB-18

Regarding entrainment impacts from Stage 2 of the project on fall-/late fall-run Chinook salmon from the San Joaquin River Basin, due to the uncertainty regarding appropriate mitigation for significant impacts, the State Water Board will require additional information concerning the efficacy of the proposed mitigation measure or additional mitigation for this impact prior to approval of the plan to protect aquatic resources for use of Stage 3 JPOD.

SWRCB-19

The EIS/EIR should specify how mitigation measures MM-1, MM-2, and MM-3 will minimize entrainment related losses of fish species caused by increased diversions. The State Water Board will require additional specific information regarding how entrainment related losses of fish species will be reduced prior to approval of the plan to protect aquatic resources for use of Stage 3 JPOD.

SWRCB-20

The mitigation measures for significant entrainment impacts rely on EWA assets that have not yet been acquired. The EIS/EIR should specify that if the EWA does not have sufficient assets to support any necessary mitigation, alternative mitigation will be provided or additional diversions will not be allowed. Approval of the plan to protect aquatic resources for use of Stage 3 JPOD will likely require such measures or equivalent mitigation.

Chapter 8

On page 8-12 and 8-13, the EIS/EIR states that CWA Section 401 certifications are typically processed by the Regional Water Quality Control Board (Regional Water Board) with local jurisdiction and that for the purposes of this project, USBR will obtain certification from the Central Valley Regional Water Board. However, for the SDIP, an application for a Section 401 Water Quality Certification needs to be submitted to the Executive Director of the State Water Board pursuant to California Code of Regulations Title 23 section 3855(b) because the project is associated with a water supply project. The application needs to demonstrate that this project has no impact on water quality, whether short-term (e.g. impacts from construction activities) or long-term (e.g. effects of new dredged channel geometry or long-term barrier/pumping

SWRCB-21

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February 7, 2006

operations). A certified SDIP EIS/EIR would need to be part of that application. To support a Section 401 Water Quality Certification, the SDIP EIS/EIR would need to address concerns raised in these comments and raised by the Regional Water Board in their comments on the SDIP EIS/EIR and any other substantive relevant comments raised by other parties.

The last paragraph on page 8-21 discusses the parameters included in the Water Quality Control Plans and Basin Plans for the project area. This list should also include dissolved oxygen, chlorides, and flow, which are water quality objectives included in the 1995 Plan.

The first paragraph on page 8-22 states that the project has the potential to affect water quality in the Central Valley region and the San Francisco Bay region, which are governed by the Central Valley Regional Water Board and the San Francisco Bay Regional Water Board, respectively.

The EIS/EIR should also discuss the water quality objectives for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary that are governed by the State Water Board and the Division through the 1995 Plan and its implementation in D-1641.

The first paragraph on page 8-27 under the 1995 Plan states that the State Water Board reviews the Water Quality Control Plan every three years. The EIS/EIR should instead state that the California Water Code at section 13240 requires periodic review of water quality control plans and that the federal CWA, at section 303 (c) requires a triennial review of state water quality standards as defined in the Act.

SWRCB-21

The first paragraph on page 8-27 under the 1995 Plan also states that the 1995 Plan ordered DWR and USBR to meet the salinity and flow objectives in the 1995 Plan. This is incorrect. Instead, following adoption of the 1995 Plan, the State Water Board adopted Order 95-6 (and subsequently Order 98-9 which continued the temporary terms and conditions included in Order 95-6) which approved petitions by DWR and USBR to temporarily change their water rights in order to implement objectives in the 1995 Plan while the Water Board prepared a long-term water right decision to implement the plan. D-1641 is the long-term water right Decision that implements parts of the 1995 Plan and places responsibility on DWR and USBR to meet specified water quality and flow objectives.

Chapter 10

On page 10-16 and 10-17, the EIS/EIR states that the Central Valley Regional Water Board adopted an amendment to the Basin Plan and that the State Water Board has not taken final action on this issue. The discussion should be updated to state that the State Water Board adopted Resolution 2005-0087 on November 16, 2005 approving an amendment to the Water Quality Control Plan for the Central Valley Region to incorporate a Total Maximum Daily Load (TMDL) for the control of salt and boron discharges into the lower San Joaquin River.

SWRCB-22

Feb 07, 2006 00134

Mr. Paul Marshall

- 8 -

February 7, 2006

Thank you for the opportunity to comment on the SDIP EIS/EIR.

If you have any questions concerning these comments, please contact Diane Riddle of my staff at (916) 341-5297.

Sincerely,

ORIGINAL SIGNED BY DIANE RIDDLE FOR

Gita Kapahi
Chief Bay-Delta/Special Projects Unit

cc: Les Grober
Central Valley Regional Water Board
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Responses to Comments

SWRCB-1

The text in the Executive Summary has been revised per your comment, to clarify the existing diversion limits for CCF.

SWRCB-2

Nonjurisdictional riparian habitat refers to habitat that is not considered jurisdictional tidal or freshwater wetlands or shallow water habitat (under Corps rules); it is adjacent to the south Delta channels and above high water level.

The avoidance and credit system is the alternative mitigation for fish entrainment impacts that would be implemented by DWR if an expanded EWA is not authorized and funded. Please see Master Response E, *Reliance on Expanded Environmental Water Account Actions for Fish Entrainment Reduction*.

SWRCB-3

The description of the EWA in Chapter 1 of the SDIP Draft EIS/EIR is only an introduction to EWA actions and operational procedures. A more thorough description of EWA is provided in Section 5.1 and in Appendix B of the SDIP Draft EIS/EIR. The reference has been added to the text in Chapter 1.

SWRCB-4

The description of the purpose and function of the VAMP has been revised in Chapter 1 of the SDIP Draft EIS/EIR; VAMP is not designed to benefit delta smelt.

SWRCB-5

Table 1-6 of the SDIP Draft EIS/EIR has been revised per your comment.

SWRCB-6

The summary of D-1641 in Chapter 1 of the SDIP Draft EIS/EIR is only an introduction to these complex rules for SWP and CVP Delta operations. More

discussion of D-1641 is provided in Section 5.1. The suggested corrections to the description in Chapter 1 have been made.

SWRCB-7

The summary of Joint Points Of Diversion (JPOD) requirements in Chapter 2 of the SDIP Draft EIS/EIR is only an introduction. DWR and Reclamation understand and follow the approval process for each Stage of JPOD. Additional details about the JPOD are not considered necessary for purposes of the SDIP Draft EIS/EIR analysis.

SWRCB-8

Table 5.1-1 of the SDIP Draft EIS/EIR is a summary of the CALSIM model assumptions. As described in the section, these assumptions for minimum flows are more fully documented in the CALSIM 2001 Benchmark studies. The Trinity flows are described in 5.1-10. The Yuba flows are not actually simulated in CALSIM; these are fixed monthly inflows from another model, and are therefore not changed by the SDIP alternatives. The American River water forum flows are not included in the 2020 simulations because they were not applicable when the modeling was completed. The relaxation of E/I in February of drier years is included in the CALSIM model.

SWRCB-9

Actual operation of JPOD and water transfers will meet all applicable water quality and fisheries conditions, as specified in D-1641. The various EC objectives are assumed to be satisfied in the CALSIM and DSM2 modeling evaluation of the baseline and alternatives. All D-1641 objectives and conditions are assumed to be satisfied during future water transfers.

SWRCB-10

DWR and Reclamation will fully comply with all water quality and flow requirements in D-1641. An environmental commitment has been added to Chapter 2 of the SDIP Draft EIS/EIR per your comment.

SWRCB-11

The discussion of water rights in Section 5.1 of the SDIP Draft EIS/EIR is only a summary. DWR and Reclamation recognize the continuing authority of the State Water Board to revise water rights permits and licenses.

SWRCB-12

This mistake in referring to the EIR for the 1995 Water Quality Control Plan (WQCP) has been corrected.

SWRCB-13

The possible need for additional approval from State Water Board for future water transfers is recognized and mentioned on page 5.1-53.

SWRCB-14

The details of JPOD requirements are not considered necessary for the SDIP Draft EIS/EIR evaluation of water supply and management. DWR and Reclamation will fully comply with all State Water Board approval requirements.

SWRCB-15

The possible effects of the SDIP on local water diversions are accurately described. Stage 1 of SDIP will include channel dredging, pump intake extensions, and operable gates to improve water levels. No significant effects on water supply were identified, and none are expected. No contingency mitigation is necessary.

SWRCB-16

Entrainment loss of zooplankton (food) is unknown and not separable from the impacts on smelt or other fish. The assumption was made that smelt and their prey (zooplankton) coexist in the water column. Hence, reducing entrainment of smelt should have a concomitant beneficial impact on zooplankton as well. The majority of delta smelt rearing is assumed to occur in the vicinity of X2. Therefore, maintaining existing patterns of X2, as required in D-1641, is assumed to protect the majority of delta smelt food resources. JPOD is a very small portion of total pumping and has no more effect than other pumping.

SWRCB-17

Effects of proposed operations on steelhead are discussed under Impact Fish-56. There is no specific information available on impacts of gate operations for steelhead. Because of this, impacts were assumed to be similar to those on Chinook salmon. The new tidal gates will be open much more of the time and are assumed to be an improvement over temporary barrier conditions.

SWRCB-18

The CALSIM modeling suggests that very small changes in Sacramento River flows will result from any SDIP alternative. Therefore, changes in temperature management below Keswick will not be changed substantially. The spawning and incubation life stages of winter-run Chinook salmon are most sensitive to temperature above 56°F. Potential temperature impacts in the Sacramento River were analyzed relative to the survival indices for Chinook salmon and steelhead (Table 6.1-7 of the SDIP Draft EIS/EIR) and the life history patterns (Table 6.1-2). Results of the analysis of temperature impacts in the Sacramento River are summarized in Table K.2A-3. The expected change in temperature in the Sacramento and Trinity Rivers as a result of the proposed SDIP operations is very small.

SWRCB-19

The role of the State Water Board in approving future JPOD operations using increased pumping limits is recognized. Assessment of Stage 2 impacts and mitigation needs will be addressed further during the Stage 2 deliberations. The proposed mitigation for entrainment impacts is an expanded EWA (or avoidance and credit system). Please see the discussion in Master Response E, *Reliance on Expanded Environmental Water Account Actions for Fish Entrainment Reduction*.

SWRCB-20

Fish MM-1, MM-2 and MM-3 are similar and designed to mitigate significant impacts on fall-/late fall-run Chinook salmon (MM-1), winter-run and spring-run Chinook salmon (MM-2) and delta smelt (MM-3) related to entrainment caused by increased SWP pumping. All three rely on the strategy of limiting SWP pumping in excess of 6,680 cfs during periods when fish protection actions to reduce exports are being taken by EWA managers. DWR mitigation of pumping in excess of 6,680 cfs will not exceed that provided by the EWA. Details of these mitigation measures will be explored during Stage 2 deliberations. Please see the discussion in Master Response E, *Reliance on Expanded Environmental Water Account Actions for Fish Entrainment Reduction*.

SWRCB-21

The CWA Section 401 Water Quality Certification application will be submitted to the Executive Director of the State Water Board.

SWRCB-22

Revisions to Chapter 10 of the SDIP Draft EIS/EIR were completed per your comment.