



February 7, 2006

FEB 07 2006 00158

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Mr. Lester Snow, Director  
California Department of Water Resources  
P.O. Box 942836  
Sacramento, CA 94236-0001

RE: Comments on the South Delta Improvements Program Environmental  
Impact Statement/Environmental Impact Report

Dear Mr. Snow:

The Kern County Water Agency (Agency) appreciates the opportunity to comment on the South Delta Improvement Program Draft Environmental Impact Statement/Environmental Impact Report (EIS/R). The Agency commends the Department of Water Resources (DWR) for issuing the EIS/R and supports implementing the project.

The EIS/R provides a solid analytical foundation and a well-reasoned basis for determining the project's potential environmental impacts. The following comments are made to assist DWR in identifying areas where the EIS/R can be clarified or strengthened.

**Staged Decision Process**

The EIS/R attempts to lay out a staged decision process intended to reduce the potential for environmental impacts by allowing a decision on the second stage of the project to occur after additional scientific data on the Delta's pelagic fisheries becomes available. This approach is a positive feature of the project but may be misleading to some stakeholder groups. The EIS/R provides the environmental analysis for both stages of the decision process. Comments or challenges to the second stage of the project will necessarily be based on the analysis in the EIS/R. Because much of that analysis does not distinguish between Stage 1 and Stage 2 of the project, stakeholders pursuing judicial challenges to the Stage 2 decision may seek to retroactively invalidate the Stage 1 decision by attacking the environmental analysis common to both decisions. The Department should clarify that the Stage 1 decision will not be revisited during the deliberations leading to a decision on Stage 2.

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FEB 07 2006 00158

### **Accelerated Installation of Operable Gates Does Not Require Separate Mitigation**

The CALFED Bay-Delta Record of Decision (CALFED ROD), dated August 28, 2000, was certified based on a comprehensive package of actions that included Stage 1 and Stage 2 of the EIS/R. In support of that certification, the environmental analysis performed for the CALFED ROD determined that increased pumping as described in Stage 2 of the EIS/R could precede installation of permanent operable barriers (now called operable gates and referred to as Stage 1 in the EIS/R) and precede portions of the CALFED Ecosystem Restoration Program.

The EIS/R determination that Stage 1 requires mitigation separate from Stage 2 is inconsistent with the CALFED ROD. The CALFED ROD requires the installation of the gates prior to increasing pumping to 10,300 cfs, but not prior to increasing pumping to 8,500 cfs. The EIS/R does not adequately explain why the same operable gates which the CALFED ROD required to mitigate for pumping at 10,300 cfs, but not 8,500 cfs, are now required to provide mitigation for Stage 1 implementation when pumping will remain at current levels with very limited water quality, water level and fishery impacts. The EIS/R should provide an analysis of the changed water quality, water level and fishery impacts that make the environmental analysis of the CALFED ROD invalid for the purposes of Stage 1 of this EIS/R. This same analysis is applicable to Stage 2.

### **Existing Mitigation Not Credited Toward Potential Project Impacts**

The EIS/R does not recognize the existing mitigation measures already in place to mitigate the potential environmental impacts that might result from implementation of Stage 1 or Stage 2.

Some actions have already been taken, or are proposed to be taken, that would provide mitigation in excess of that provided by the 1995 amendment to the 4 Pumps Agreement. These mitigation actions, which include the following, should be credited toward any mitigation obligation for Stage 1 and Stage 2 of the EIS/R.

- Implementation of the CALFED ERP (over 400 projects with expenditures exceeding \$1 billion).<sup>1</sup>
- 50% of the “windfall” water available to the SWP under the CVPIA was dedicated to the EWA by the CALFED ROD. This water serves to support the ROD determination that impacts of the Conveyance Program are already mitigated by the ERP.<sup>2</sup>
- Providing 500 cubic feet per second (cfs) of pumping capacity July through September when pumping above 6,680 cfs is available which results in:
  - Up to 60 TAF before SWP contractors may benefit; plus
  - 30 TAF after 200 TAF has been provided for beneficial export uses.

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<sup>1</sup> The CALFED MSCS states that the Multi-Species Conservation Strategy (MSCS) for the CALFED program “. . . addresses the potential adverse and beneficial effects on plant and animal species of all Program actions, including ERP actions and other Program actions such as levee system integrity, water storage, and water conveyance actions. Based in large part on the ERP, the MSCS’ premise is that the Program as a whole, including all program elements, will improve and increase aquatic and terrestrial habitats and improve ecological functions in the Bay-Delta. The ERP, therefore, serves two purposes: 1) to achieve Program objectives for ecosystem restoration; and 2) to enable actions from all Program elements to be completed in compliance with FESA, CESA, and NCCPA.”

<sup>2</sup> See Footnote 1.

Mr. Lester Snow, Director  
California Department of Water Resources  
February 7, 2006  
Page 3 of 3

FEB 07 2006 00158

The EIS/R fails to consider or discuss how these existing mitigation activities are credited toward the potential environmental impacts of Stage 1 and Stage 2. As a result, it is likely that Stage 1 of the project is over mitigated and possible that Stage 2 also is over mitigated.

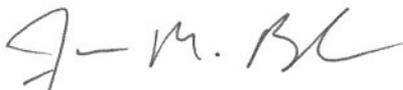
**Unbalanced Implementation of the CALFED Program Provides Surplus Mitigation**

Recent review of the CALFED Program by the Department of Finance indicates that implementation of the CALFED ERP has outpaced implementation of other programs, including the conveyance program. This differential in implementation is a significant factor in the general consensus that the CALFED Program is unbalanced. The advanced degree of implementation for the ERP also results in greater environmental benefits to the South Delta ecosystem than originally anticipated when the CALFED ROD was certified. As a result, the "trajectory of recovery" exceeds what was included in the environmental analysis of the CALFED ROD because the conveyance projects were not implemented on schedule. The EIS/R does not adequately explain why greater than expected implementation of environmental programs under the CALFED ERP as compared to implementation of the CALFED Programs included in the EIS/R does not reduce the mitigation necessary for Stage 1 and Stage 2 projects.

The Agency participated in the preparation of comments on the EIS/R submitted by the State Water Contractors, Inc. by letter dated February 7, 2006. The Agency agrees with and supports those comments and hereby incorporates them by reference.

The Agency appreciates the opportunity to comment on the EIS/R. If you have any questions regarding these comments, please contact Mr. Brent Walthall of my staff.

Sincerely,



James M. Beck  
General Manager

cc: State Water Contractors, Inc.