



State Water Resources Control Board



Terry Tamminen
*Secretary for
Environmental
Protection*

Executive Office

Arthur G. Baggett, Jr., Chair
1001 I Street ♦ Sacramento, California 95814 ♦ 916.341.5615
Mailing Address: P.O. Box 100 ♦ Sacramento, California 95812-0100
FAX: 916.341.5621 ♦ www.swrcb.ca.gov

Arnold Schwarzenegger
Governor

July 30, 2004

Chester V. Bowling, Operations Manager
Central Valley Operations Office
Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825-1098

Dear Mr. Bowling:

OPERATIONS PLAN TO PROTECT FISH AND WILDLIFE AND OTHER LEGAL USERS OF WATER REQUIRED FOR USE OF JOINT POINTS OF DIVERSION

This letter responds to your letter dated June 30, 2004, submitting the temporary Operations Plan to Protect Fish and Wildlife and Other Legal Users of Water (Plan) relative to Stage 2 Joint Points of Diversion (JPOD) Operations by the U.S. Bureau of Reclamation (USBR) at the Department of Water Resources' (DWR) Banks Pumping Plant during July through October of 2004. In Decision 1641(D-1641), the State Water Resources Control Board (SWRCB) conditionally approved DWR's and USBR's use of each other's points of diversion in the Delta (referred to as Joint Point of Diversion or JPOD). The SWRCB approved JPOD in three successive stages with corresponding requirements to protect fish and wildlife; other legal users of water and other public trust uses. Stage 2 JPOD operations allow for the diversion/rediversion of water at either the Banks Pumping Plant or the Tracy Pumping Plant for any purpose authorized under the permits of the project diverting the water. Stage 2 diversions by USBR at the Banks Pumping Plant are limited to the amounts specified in condition 1(c)(2) of D-1641 on page 153.

USBR prepared the Plan for approval by the Executive Director of the SWRCB in response to condition 1(c)(1) (pages 152 and 153) of D-1641, which requires USBR to develop an operations plan in consultation with the California Department of Fish and Game (DFG), the U.S. Fish and Wildlife Service (USFWS), and the National Marine Fisheries Service (NOAA Fisheries) (fisheries agencies) to protect fish, wildlife and other legal users of water prior to use of Stage 2 JPOD.

You state that the Plan dated June 30, 2004, is limited to the period covering July 1 through October 31, 2004 in order to narrow its scope and to limit potential JPOD pumping to a season of very low risk to anadromous fish. Nevertheless, you state that the Plan contains all of the elements required by D-1641. You state that USBR is currently completing a new long-term Central Valley Project Operations Criteria and Plan (OCAP) and that USBR will develop much of the information needed for a long-term Plan during the OCAP process. As a result, you request consideration of the current short-term plan, which is to be followed by a long-term Plan following completion of the OCAP process later this summer. The Plan includes an introduction

and 6 sections (a-f) addressing the specific requirements included in D-1641. The following discussion addresses each of the sections included in the Plan.

Introduction: The Introduction states that the Plan is intended to avoid or minimize adverse effects to fish and wildlife during the specified four-month period. The Plan assumes current environmental, operating, and regulatory conditions will continue. The Plan relies upon an existing network of monitoring, data collection, and processing, and makes use of an existing process of coordination, evaluation and decision-making to meet the requirements of D-1641.

SWRCB Response: If environmental, regulatory, or operating conditions change or new information becomes available during the term of this Plan, I am reserving authority to make changes to the Plan as necessary to protect the environment, other public trust uses, and other legal users of water. Regardless of existing processes or funding mechanisms for those processes, USBR shall ensure that all necessary monitoring and assessment takes place in order for Stage 2 JPOD authorization. As indicated in the Plan, any changes to the required monitoring etc. are subject to my approval.

Section (a): D-1641 requires the Plan to include specific measures to avoid or minimize the effects of exports on entrainment and through-Delta survival of Chinook salmon. The plan must include monitoring of upstream environmental conditions and fish abundance as appropriate to determine vulnerability of Chinook salmon to entrainment at the Banks Pumping Plant. The Plan must include the frequency and method of data collection.

The Plan submitted by USBR states that July through September is expected to be a period of low vulnerability for Chinook salmon in the Delta and consequently, no significant impact from JPOD on Chinook salmon is expected during this time frame. The Plan proposes to use ongoing monitoring procedures established under other programs to determine if potential impacts may be resulting. Based on this information, the fisheries agencies and USBR/DWR will implement measures to avoid or minimize potential impacts. The Plan states that during October, additional monitoring will take place, as there may be concern for salmon during this period. Based on the monitoring, USBR /DWR will use established procedures to determine impacts and required mitigation.

SWRCB Response: If any disagreement occurs between the fisheries agencies and USBR/DWR concerning required measures to protect fisheries, JPOD will be required to cease until such time as I make a determination that JPOD may continue. USBR is responsible for providing full and complete mitigation for any impacts associated with JPOD diversions regardless of the availability of Environmental Water Account or other funding sources.

Section (b): D-1641 requires the Plan to include minimum survival levels for Chinook salmon. These levels will be used to trigger consultations with the fisheries agencies to establish conditions to minimize or avoid impacts of JPOD pumping at the Banks facility. The Plan is required to identify the consultation process, including the parties who will consult, how they will be notified, and a time schedule for decision making. The Plan submitted by USBR establishes minimum survival levels for the July through September time frame and relies upon

existing trigger levels from the Salmon Decision Tree for the October time frame. The Plan identifies the necessary elements for consultation and states that if the specified trigger levels are reached and no action to reduce the take of Chinook salmon can be developed, JPOD pumping will cease immediately until the daily loss density falls below the trigger levels.

SWRCB Response: Section (b) of the Plan meets the requirements of D-1641.

Section (c): D-1641 requires the Plan to include specific measures at Trinity, Shasta, or Folsom reservoirs to avoid or minimize adverse effects to Chinook salmon if monitoring indicates that such impacts are occurring either upstream or in the Delta. The Plan submitted by USBR states that existing flow, temperature and carryover storage requirements on the Trinity, Sacramento, and American rivers will remain in force. In addition, measures specified in the Salmon Decision Tree will be followed if fish monitoring indicates that significant numbers of juvenile salmon are present in the lower Sacramento River or in the southern Delta. Thresholds for determining if impacts are occurring and specific measures to avoid adverse impacts are specified in the Plan.

SWRCB Response: Section (c) of the Plan meets the requirements of D-1641.

Section (d): D-1641 requires the Plan to include operating criteria to ensure that use of JPOD does not significantly impact aquatic resources in upstream areas. The Plan submitted by USBR states that existing requirements on the Trinity, Sacramento, and American rivers will be met and specifies the requirements. In addition, the Plan states that due to the low projected carryover storage and limited cold-water pool resources in Folsom Reservoir, the primary source of water for JPOD will be Shasta Reservoir. The Plan states that modeling and monitoring will be conducted to determine if JPOD is having a significant negative impact on meeting the criteria. If modeling or monitoring indicates that there may be significant negative impacts, USBR will consult with the fisheries agencies to evaluate whether JPOD exports should be curtailed.

SWRCB Response: Based on the existing carryover storage and cold-water pool concerns in Folsom Reservoir this year, no additional releases from Folsom Reservoir to support Stage 2 JPOD during July through October of 2004 will be authorized pursuant to this approval. In addition, given the temperature concerns on the Sacramento River this year, JPOD operations involving Keswick Reservoir releases are not authorized unless the fisheries agencies determine that there will be no significant adverse impacts to reservoir cold-water pool resources in Shasta Reservoir as the result of JPOD releases. Prior to beginning Stage 2 JPOD diversions, USBR shall submit written concurrence letters to the Chief of the Division of Water Rights (Division) from the fisheries agencies stating that there are no expected significant impacts to cold-water resources in Shasta Reservoir that may result due to JPOD releases.

Section (e): D-1641 requires the Plan to include specific measures to protect other legal users of water. The Plan submitted by USBR includes procedures for notifying the public of JPOD operations and procedures for responding to any allegations of harm caused by JPOD diversions. The Plan states that if mitigation measures cannot be provided in a reasonable time frame, JPOD

operations will cease. The Plan specifies that any contested allegations of harm will be immediately forwarded to the Executive Director of the SWRCB for resolution.

SWRCB Response: Pursuant to my approval of the Plan, Stage 2 JPOD operations will not be authorized until the Executive Director makes a determination regarding any disagreements concerning allegations of harm and required mitigation.

Section (f): D-1641 requires the Plan to include specific measures to mitigate for significant effects on recreational and cultural resources at affected reservoirs. The Plan submitted by USBR includes specific criteria under which impacts to recreational and cultural resources will be deemed to occur. The Plan states that mitigation will be provided for any impacts or JPOD will not occur. The Plan states that any allegations of harm will be forwarded to the Executive Director of the SWRCB within 72 hours and any unresolved disputes shall be forwarded to the Executive Director for resolution.

SWRCB Response: JPOD diversions will be required to cease upon receipt of any allegation of harm to recreational or cultural resources until such time as mitigation is provided or the Executive Director of the SWRCB makes a determination that JPOD diversions may commence again.

In summary, based on my review of the proposed Plan, I approve the June 30, 2004, Plan subject to the following conditions:

1. USBR shall meet all of the conditions stated in the Plan dated June 30, 2004 as specified in this approval of the Plan. My approval of this Plan expires on November 1, 2004. USBR is responsible for ensuring that all required monitoring, modeling, coordination, consultation and other measures included in the Plan are met prior to and during JPOD diversions regardless of traditional funding sources for the various activities. If any of the required monitoring, modeling or other measures are not performed as needed to determine and avoid potential impacts to fish and wildlife and other legal users of water, JPOD diversions shall cease.
2. Any disagreement between USBR/DWR, and the fisheries agencies, other legal users of water, recreational water users, or parties representing cultural resources shall be immediately brought to the attention of the Executive Director for resolution. Stage 2 JPOD diversions shall cease until such time as the Executive Director makes a determination regarding any allegations of harm and any necessary mitigation for such harm.
3. No additional releases from Folsom Reservoir on the American River are authorized to provide water for Stage 2 JPOD diversions during July through October of 2004. Prior to releasing water from Shasta Reservoir on the Sacramento River to provide water for Stage 2 JPOD operations, USBR shall submit written concurrence from DFG, USFWS, and NOAA Fisheries indicating that there are no expected significant adverse impacts to cold-water resources in Shasta Reservoir that may result from Stage 2 JPOD diversions.

Any JPOD diversions shall be consistent with any recommendations from DFG, USFWS, and NOAA Fisheries.

4. This approval is based on the continuation of the facilities, Clifton Court Forebay (CCF) operational criteria, and regulatory restrictions on exports that exist as of the date of this letter. If facilities, CCF operations or export restrictions change, then USBR shall consult with the Chief of the Division to determine whether the Plan requires changes and further approval.
5. I retain 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 USBR on use of 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.

With the above conditions, the proposed Plan meets the requirements of D-1641 and is approved, subject to USBR meeting the above conditions and the commitments in the Plan.

If any interested party objects to my decision, the interested party may submit a petition for 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 any questions regarding this matter, please contact Diane Riddle, Environmental Scientist, at (916) 341-5297, or Barbara Leidigh, Staff Counsel IV, at 341-5190.

Sincerely,

ORIGINAL SIGNED BY

Celeste Cantú
Executive Director

cc: See next page.

cc: Carl A. Torgersen, Chief
SWP Operations Control Office

California Dept. of Water Resources
3310 El Camino Ave., Suite 300
Sacramento, CA 95821

James Lecky
National Marine Fisheries Service
501 West Ocean Blvd., Suite 4200
Long Beach, CA 90802-4213

Contra Costa Water District
P.O. Box H2O
Concord, CA 94524

Michael Aceituno
National Marine Fisheries Service
650 Capitol Mall, Suite 8-300
Sacramento, CA 95814-4706

Diana F. Jacobs
Deputy Director
California Dept. of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, CA 95814

Jim Smith
U.S. Fish and Wildlife Service
10950 Tyler Road
Red Bluff, CA 96080

Wayne White
Field Supervisor
U.S. Fish and Wildlife Service
2800 Cottage Way, Suite W-2605
Sacramento, CA 95825

Wayne White
Field Supervisor
U.S. Fish and Wildlife Service
2800 Cottage Way, Suite W-2605
Sacramento, CA 95825

Dante John Nomellini
Central Delta Water Agency
P.O. Box 1461
Stockton, CA 95201

Gregory Gartrell

bcc: Board Members, Celeste Cantú, Harry Schueller, Vicky Whitney, Jim Kassel, Gita Kapahi,
Barbara Leidigh, Andy Fecko

DKR:llv 07/26/04

U:\Herdrv\DRiddle\2004 fish plan approval 2.doc

Control: 2899