

Memorandum

Date: APR 30 2010

To: 1. Dean F. Messer *DFM 4/30/10*
 2. David A. Sandino *DS 4/30/10*
 3. Gerald Johns *GJ 5/3/10*
 4. Raphael A. Torres *RT 5/3*
 5. Mark W. Cowin *MWC 5/4*

From: Robert Cooke, Chief, State Water Project Analysis Office
 Department of Water Resources

Subject: *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 decisions below with regard to your consideration of the Monterey Plus proposed project which is the Monterey Amendment and the Settlement Agreement.

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 SWP contractors, and certified by CCWA in October 1995. Following CCWA's certification of the EIR, the Department and all but two of the SWP contractors approved most of the principles of the Monterey Agreement and authorized execution of an amendment to the long-term water supply contract. This amendment is known as the Monterey Amendment and included the transfer of the Kern Water Bank (KWB) Lands. In 1995 and 1996, acting pursuant to their respective authorities, the Department and these SWP contractors executed the Monterey Amendment (virtually identical amendments were separately executed by the Department and each SWP contractors) and the Department and Kern County Water Agency executed contracts transferring the KWB Lands.

In 1995, the CCWA's EIR for the Monterey Agreement was subject to judicial challenge. In 2000, the Third District Court of Appeal ordered that the EIR be decertified on the grounds that the Department should have been the lead agency and that the EIR was, in part, inadequate. In May 2003, the parties to the litigation negotiated a settlement agreement, which was confirmed by Superior Court order on remand 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 the parties agreed to certain additional elements (Settlement Agreement). In approving the

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Settlement Agreement and issuing its related orders, the Superior Court did not invalidate the Monterey Amendment or the Department's approval of the Monterey Amendment. The Department has been operating pursuant to the Monterey Amendment since 1996 and implementing the Settlement Agreement and the Court

Order approving the Settlement Agreement since 2003. The Monterey Amendment and the Settlement Agreement together comprise the proposed project (Monterey Plus).

The Department 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.

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 Director Snow in a letter dated August 13, 2009. Director Snow 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.

On February 1, 2010, Director Snow certified 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)*, attached as Exhibit A. The Final EIR includes the Draft EIR (DEIR), the Final EIR, (FEIR), and related appendices.

CEQA requires that public agencies like the Department make a number of determinations when approving a proposed project which could have a significant impact on the environment. The DEIR states on page 1-1 that this EIR will be used by the Department, as lead agency, and the contractors, as responsible agencies, to evaluate the environmental impacts of the proposed project and to decide whether to continue operating under the proposed project or to decide whether to implement one of the alternatives to the proposed project (including a no project alternative). On page 4-6, the FEIR states: "The DEIR states that '[A]s part of its overall consideration, the Department will also review legal, economic and social impacts. Once the EIR is complete, the Department will consider all options available to it under the law. Upon completion and certification of this EIR, the Department will make written findings and decisions and file a Notice of Determination.' In making its decision, the Department will consider the opinion in *PCL v. DWR*, the Superior Court's Order on remand in *PCL v. DWR*, and other appropriate legal sources".

Your decisions below with regard to the proposed project complete the review and consideration required by CEQA, *PCL v. DWR*, the Settlement Agreement, the Superior Court's Order on remand in *PCL v. DWR* and other appropriate legal sources.

If you make the decisions set forth in this memorandum, please have your office call Nancy Quan, Supervising Engineer, at (916) 653-0190 for distribution. If you have any questions or need additional information about the EIR or the proposed project, please call me at (916) 653-4313 or Katherine Spanos, Senior Staff Counsel, at (916) 653-6295.

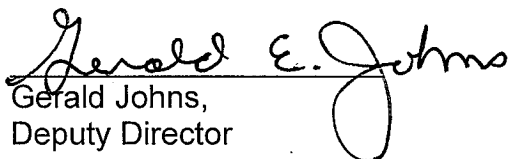
APPROVAL RECOMMENDED

We recommend that, after reviewing and considering the attached final EIR, you make the decisions below.



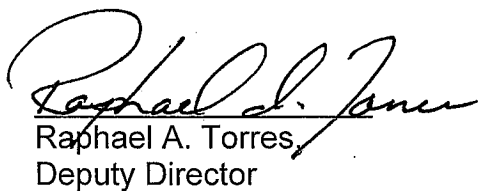
Dean F. Messer,
Chief, Division of Environmental Services

Date 4/30/10



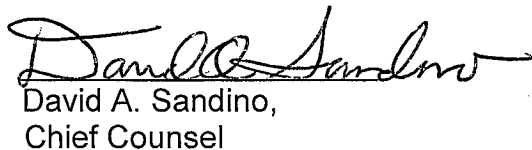
Gerald Johns,
Deputy Director

Date 5/3/2010



Raphael A. Torres,
Deputy Director

Date 5/3/2010



David A. Sandino,
Chief Counsel

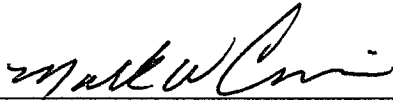
Date 4/30/10

Director Decisions Regarding the Monterey Plus Proposed Project

If, after review and consideration of the EIR, you decide that the Department should continue operating under the Monterey Plus proposed project - the Monterey Amendment and the Settlement Agreement - you should indicate that decision by signing the following statements in the manner prescribed by Sections 15091-15094 of the CEQA Guidelines:

1. *Section 15091(a) of the CEQA Guidelines states: "No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of the those significant effects, accompanied by a brief explanation of the rationale for each finding".*

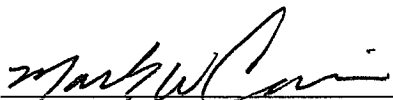
I adopt the Findings and Determinations, attached as Exhibit B, which meet the requirements of CEQA Guidelines Section 15091. To the extent that these findings conclude that various mitigation measures are feasible and within the Department's responsibility and jurisdiction, I direct the Department to implement these measures, thereby incorporating them as part of the proposed project.



Mark W. Cowin, Director

2. *Section 15093(b) of the CEQA Guidelines states: "When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record".*

I adopt the Statement of Overriding Considerations, attached as Exhibit C, which meets the requirements of CEQA Guidelines Section 15093.



Mark W. Cowin, Director

3. *Section 15091(d) of the CEQA Guidelines requires the agency to "also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects".*

I adopt the Mitigation, Monitoring and Reporting Program, attached as Exhibit D, which meets the requirements of CEQA Guidelines Section 15091(d).



Mark W. Cowin, Director

4. *CEQA Guidelines Sections 15092(a) and (b) describe what an agency must do when it decides whether and how to approve or carry out a project.*

After considering the final EIR, including the project alternatives, as well as other issues raised during preparation of the EIR, and in conjunction with making findings under CEQA Guidelines Section 15091, I direct the Department to carry out the proposed project by continuing to operate under the existing Monterey Amendment to the State Water Project long-term water supply contracts (including the Kern Water Bank transfer) and the existing Settlement Agreement entered in *PCL v. DWR* (including the Attachment A amendments to the State Water Project long-term water supply contracts) in accordance with the terms of those documents as previously executed by the Department and the other parties to those documents;

I have determined that the Department has eliminated or substantially lessened all significant effects on the environment where feasible as shown in the findings under CEQA Guidelines Section 15091;

In addition, I have determined that any remaining significant effects on the environment found to be unavoidable under CEQA Guidelines Section 15091 are acceptable due to overriding considerations as described in CEQA Guidelines Section 15093.



Mark W. Cowin, Director

5. *CEQA Guidelines Section 15094 states that "[t]he lead agency shall file a notice of determination within five working days after deciding to carry out or approve the project".*

I will sign the Notice of Determination (NOD), attached as Exhibit E, which meets the requirements of Section 15094 and direct Department staff to file the NOD with the Office of Planning and Research within five working days and to keep a copy of the NOD with the project administrative record.



Mark W. Cowin, Director

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Attachments

Exhibit A: 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)

Exhibit B: 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) – Findings and Determinations

Exhibit C: 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) – Statement of Overriding Considerations

Exhibit D: 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) – Mitigation, Monitoring, and Reporting Program

Exhibit E: 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) – Notice of Determination