



State Water Resources Control Board

August 5, 2020

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Dear Ms. White and Ms. White:

OPERATIONS PLAN TO PROTECT FISH AND WILDLIFE AND OTHER LEGAL USERS OF WATER FOR STAGE 2 JOINT POINTS OF DIVERSION

This letter responds to your final June 25, 2020 submittal of an operations plan for the protection of fish and wildlife and other legal users of water (Fish/Water User Protection Plan, or Plan) pursuant to the requirements of State Water Resources Control Board (State Water Board or Board) Decision 1641 (D-1641) for the use of Stage 2 Joint Point of Diversion (JPOD). Your letter transmitting the Fish/Water User Protection Plan requests expedited review in order to move level 4 refuge water during the transfer period this year.

Background

D-1641 allows the Department of Water Resources (DWR) and U.S. Bureau of Reclamation (Reclamation) to use each other's points of diversion in the Delta to divert or redivert water under three stages. All stages of JPOD are subject to the following requirements or preconditions: JPOD is not authorized when the Delta is in excess conditions; JPOD cannot cause specified shifts in the location of X2; the development and implementation of an approved Water Level and Water Quality Response Plan to protect Delta water users; and compliance with all other provisions of DWR's and Reclamation's permits.

Under Stage 2 JPOD, DWR and Reclamation can divert or redivert water at each other's facilities for any purpose authorized under the specified water right permits (up to specified amounts identified in D-1641) subject to development and implementation of an approved Fish/Water User Protection Plan. The Plan is required to include certain measures to protect fish and wildlife from JPOD operations, a consultation process for evaluating potential effects of Stage 2 JPOD operations, measures to protect other legal users of water, and measures to mitigate significant effects on recreation and cultural

E. JOAQUIN ESQUIVEL, CHAIR | **EILEEN SOBECK, EXECUTIVE DIRECTOR**

resources at affected reservoirs. A prior version of the Fish/Water User Protection Plan was approved in 2007 but expired in 2008. There has not been a Fish/Water User Protection Plan in place since that time.

June 2020 Fish Protection Plan

The June 2020 Fish/Water User Protection Plan discusses two different time periods for protection of fish and wildlife – July through September when fisheries concerns in the Delta are more minimal, and October through June when fisheries concerns are more elevated. The Plan relies on the current Biological Assessments (BA)/Biological Opinions (BiOps) for operations of the Central Valley Project (CVP) and State Water Project (SWP), the Incidental Take Permit (ITP) for the SWP, compliance by Reclamation with State Water Board Water Right Order 90-5 related to Sacramento River temperature management, and compliance by DWR with the 1983 Agreement for operations on the Feather River and the new license for Oroville FERC Project No. 2100 when it becomes effective. The Plan indicates that existing consultation processes for the BA/BiOps and ITP will also be relied upon for Stage 2 JPOD operations, including consultation with the Water Operations Management Team (WOMT) for any disagreement or unresolved concerns about JPOD actions.

For the protection of other legal users of water, the Plan indicates that DWR and Reclamation will comply with the conditions of the Water Level Response Plan and Water Quality Response Plan to protect Delta water users. The Plan indicates that all allegations of harm from water users will be forwarded to the State Water Board and that if allegations of harm are contested by Reclamation and/or DWR, or if effective incremental mitigation cannot be provided in a timely manner, the issue will be immediately forwarded to the Executive Director of the Board for resolution. To protect cultural resources, the plan states that JPOD will not occur if it would cause reservoirs to be drawn down to or below historic minimum elevations. To protect recreational resources, the plan states that JPOD will not occur if DWR or Reclamation are unable to implement actions required to avoid reservoir level recreational impacts and that any unresolved disputes will be forwarded to the Executive Director of the Board for resolution.

Interim Conditional Approval of the June 2020 Fish Protection Plan

The State Water Board understands the need for expedited review of the Fish/Water User Protection Plan in order to allow for the delivery of wildlife refuge and other water supplies this year (deliveries of refuge supplies are anticipated to occur in September). However, additional time is needed to fully consider the adequacy of the Plan before final approval, particularly during the October through June time period when fisheries concerns are elevated and water transfers, which are similar to JPOD, are generally not permitted under the BiOps/ITP. Accordingly, the Plan is approved on an interim basis through September 30, 2020, subject to the conditions of D-1641 and the additional conditions below. Board staff will follow-up to further discuss issues associated with approval of the Fish/Water User Protection Plan after September.

Additional Conditions of Interim Approval:

1. State Water Board staff shall be permitted to fully participate in the Water Operations Management Team (WOMT), Sacramento River Flow Scheduling Team, and other groups that discuss Project operational effects on fish and wildlife species referenced in the Fish/Water User Protection Plan, including new groups that may be formed that discuss these issues.
2. Designated State Water Board staff shall be notified regarding the volume, timing, source, and destination of Stage 2 JPOD diversions in advance of such operations. In addition, any other information requested by State Water Board staff to ensure that Stage 2 JPOD diversions will be conducted in conformance with D-1641 requirements shall also be provided.
3. Designated State Water Board staff shall be immediately notified of any concerns related to adverse effects to fish and wildlife, other legal users of water, recreation, or cultural resources related to Stage 2 JPOD diversions.
4. All Stage 2 JPOD diversions are subject to the provisions of DWR and Reclamation's December 2019 Draft Transfer White Paper.
5. The Executive Director retains continuing authority to limit Stage 2 JPOD diversions to prevent adverse effects to fish and wildlife, other legal users of water, recreation, or cultural resources.

The staff that should be notified regarding Stage 2 JPOD operations include the Deputy Director for the Board's Division of Water Rights (Division) Erik Ekdahl (erik.ekdahl@waterboards.ca.gov), Assistant Deputy Director for the Division Diane Riddle (diane.riddle@waterboards.ca.gov), and the Division's Bay-Delta Section Program Manager Matthew Holland (matthew.holland@waterboards.ca.gov).

If you have questions regarding this matter, please contact Diane Riddle at diane.riddle@waterboards.ca.gov. Please be aware that due to the public health concerns regarding the COVID-19 virus and the resulting pandemic, many Board staff are telecommuting; therefore, the best avenue of communication at this time is via email.

Sincerely,

ORIGINAL SIGNED BY

Eileen Sobeck
Executive Director
State Water Resources Control Board