

COMMENTS OF GLENN-COLUSA IRRIGATION DISTRICT  
JUNE 14, 1994 WORKSHOP  
SAN FRANCISCO BAY/SACRAMENTO-SAN JOAQUIN DELTA ESTUARY

The Glenn-Colusa Irrigation District ("GCID") has followed all of the proceedings associated with the development and review of standards for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, including the current series of workshops. For the most part, GCID's views on matters at issue have been covered by others. This workshop, however, touches on an issue which is of crucial importance to GCID.

Key Issue 3 for the June workshop reads as follows:

"What effect do upstream water projects, other than the CVP and SWP, have on the fish and wildlife resources of the Bay-Delta Estuary?"

This issue can, of course, be addressed in a number of ways. Technical as well as legal matters are implicated. The following is an initial discussion of these matters:

1. At some point in time the State Water Resources Control Board ("SWRCB") will need to decide exactly what the scope of its inquiry is. All anadromous fishery species start their life cycle upstream of the Delta. As a consequence, upstream projects may have an effect upon the "fish and wildlife resources of the delta." This, however, does not mean that beneficial uses of Delta waters are implicated.

2. If the focus of the SWRCB is to develop standards protective of the fish and wildlife resources of the Delta during each life stage, then a different analytical framework is needed than if the standard being developed is focused only on protecting beneficial uses within the Delta. Evidence on the upstream resource issues are not currently a part of the record associated with the Bay-Delta process. Better definition of the area of SWRCB concern must be provided to allow for the development and presentation of appropriate information (evidence/testimony) related to these issues.

3. Contrary to the SWRCB's written statement accompanying the Key Issue, problems associated with upstream diversions by entities other than the CVP and SWP have not been ignored by involved state and federal regulatory agencies. Indeed, as is the case with GCID's diversions, a great deal of attention has been focused on those diversions with a great deal of time and effort being devoted to the development of solutions to these problems.

4. Upstream diversions in the Sacramento Valley provide significant benefit to wildlife species that may be considered part of the "wildlife resources of the delta," depending on how that phrase is defined by the SWRCB. There are, for example, three federal wildlife refuges within GCID which are served by GCID. Within GCID and elsewhere within the Sacramento Valley, water is also utilized on private lands to create and enhance wildlife habitat. Again, defining the scope of the SWRCB's efforts will allow interested parties to understand better the context of the SWRCB inquiry. Further, at some point in time the record upon which the SWRCB's decision is to be based will need to be augmented or developed to include information on these issues.

5. Assuming that the SWRCB's question is focused, as it should, on the effects of upstream projects on the beneficial uses of Delta waters, there has been no evidence presented that these upstream diversions result in an adverse impact. Most Sacramento Valley diversions, like GCID's, are direct diversions. There is no storage-related component. How these diversions affect flow within the Delta has not been demonstrated. In fact, there is substantial return flow from these direct diversions which contribute to Delta outflow.<sup>1</sup> When the rate, location, and return flow of Sacramento Valley diversion are analyzed, it is unlikely that these diversions will be found to have an adverse impact on Delta beneficial uses.

If a problem does exist with respect to Delta outflow, there is no evidence from which the SWRCB can determine if it is the lack of water caused by GCID or some other Sacramento Valley diverter that is causing the reduction in outflow. Assuming there is a lack of water otherwise needed for Delta outflow, obligations to provide that water must be allocated pursuant to the relative priority of the diversions. In this case, GCID water entitlements are based upon the exercise of pre-1914 water rights. As a consequence, GCID's diversions, by legal right, cannot be causing any adverse effect within the Delta unless all junior diversions have been stopped and the "injury" is still occurring.

6. The SWRCB must also consider the impact of area of origin statutes. (Wat. Code, §§ 1212-1222; 10505; 10505.5.) All of these statutes have direct and significant relevance to the implementation of any standards that may

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<sup>1</sup> Historically, water flowing down the Sacramento River contributed to the development of wetland areas within what is now agricultural lands in the Sacramento Valley. These wetlands capture water from the Sacramento River and return little, if any, to the River. The "reclamation" of these lands provided return flows where no such flows historically existed. Thus, agricultural use provides a net increase in Delta outflow. It does not reduce historic flow.

be adopted. State law provides that only water that is surplus to the needs of areas or origin may be exported. As a consequence, to the extent that water is needed for Delta outflow, it must first be taken from waters surplus to the needs of areas of origin.

7. Finally, in looking at upstream projects in the context of Bay-Delta issues, there is an implication that beneficial uses in the Bay-Delta are to be provided with some kind of priority over beneficial uses of Sacramento River water. There are existing beneficial uses of this water within the Sacramento Valley that also must be protected under the very laws that compel the analysis now being undertaken for the Bay-Delta Estuary. Again, better definition and analysis of this issue must be developed before the SWRCB action reaches any conclusion on the issue.