



US Army Corps
of Engineers
Sacramento District
1325 J Street
Sacramento, CA 95814-2922

Public Notice

Public Notice Number: SPK-1999-00715

Date: December 9, 2008

Comments Due: January 9, 2008

In reply, please refer to the Public Notice Number

TO WHOM IT MAY CONCERN:

SUBJECT: Application for a Department of the Army permit under Section 10 of the Rivers and Harbors Act for the *2009-2012 State Water Project (SWP) Delta Facility Increased Diversion to Recover Reduced Export Taken to Benefit Fisheries Resources* project.

APPLICANT: State of California Department of Water Resources (DWR), Bay-Delta Office, Room 215-25, P.O. Box 942836, Sacramento, CA 94236-0001

Attn: Mark A. Holderman

LOCATION: The project site is approximately 6 miles northwest of the City of Tracy, in Section 20, Township 1 South, Range 4 East, Latitude 37 50' and Longitude 121 33'20" in Contra Costa County, California.

PROJECT DESCRIPTION: The applicant's project purpose is to increase water diversions out of Old River into the Clifton Court Forebay (CCF) to cover water supply reductions taken to protect sensitive fisheries. The SWP would capture water provided through CALFED's Environmental Water Account (EWA) to recover water supply costs associated with previous reductions in SWP diversions undertaken to benefit Bay-Delta fishery resources. The applicant has stated this will assist with water quality and storage concerns at San Luis reservoir, which is a joint SWP and Central Valley Project (CVP) facility, operated by DWR and the Bureau of Reclamation (Reclamation) respectively.

The maximum daily diversion rate into CCF during the months of July, August, and September, in calendar years 2009, 2010, 2011 and 2012, would increase from 13,870 acre-feet (af) to 14,860 af and the maximum three-day running average diversions would be increased from 13,250 af to 14,240 af. The applicant has stated increased diversions over the three-month period would not exceed 90,000 af for either year and would not be greater than the amount of reduced diversions to protect fishery resources during the same calendar year. Similar diversions were authorized during the years 2000 through 2002. DWR has stated any action to increase/reduce exports would be offset with corresponding actions to reduce/increase exports within one year of the action and that their operations will incorporate the following procedures:

* Total increases in diversion will not exceed total reductions within the calendar year. Diversion reductions may be requested at any time; however, DWR may not participate in Fall reductions (October-December) if reductions from the previous spring (January-June) already equal or exceed 90,000 af. Reductions in any year may exceed 90,000 af; however, increased diversions in July through September may not exceed 90,000 af.

* Data from fishery monitoring programs will be evaluated in coordination with fishery agencies to ensure Delta smelt and other sensitive species will not be negatively affected by the proposed changes of operation.

* Continuation of the increased diversion will be based on review of environmental conditions in coordination with the California Department of Fish and Game (DFG), National Oceanic and Atmospheric Administration (NOAA) Fisheries and U.S. Fish and Wildlife Service (USFWS).

Implementation of this action would be contingent on meeting DWR's proposed *Conditions Governing the Use of Additional Pumping Capacity*:

1. The increased diversion rate will not result in an increase in annual water supply allocations than would occur in the absence of the increased diversion rate. Water pumped due to the increased capacity will only be used to offset reduced diversions that occurred or will occur because of Endangered Species Act (ESA) or other actions taken to benefit fisheries resources during the same calendar year.
2. Use of the increased SWP diversion rate will be in accordance with all terms and conditions of existing ESA Biological Opinions for SWP operations.
3. All three temporary agricultural barriers (Middle River, Old River near Tracy and Grant Line Canal) must be in place and operating when SWP diversions are increased. Clifton Court gate operations during periods when increased diversions are made must be such that impacts to local waters users are avoided (this may require the use of portable pumps, minor local dredging and/or permanent diversion modifications).
4. By April 1 of each year, DWR and Reclamation will develop an operations plan for the calendar year projecting when and how much SWP exports would be reduced in the spring and fall and increased during the summer (between July 1 and September 30). The joint chairs of the CALFED Operations Group will review the plan at the next CALFED Operations Group meeting and make a decision as to whether to approve the plan or to ask the Water Operations Management Team (WOMT) for a decision on the plan. The WOMT will make the final decision on plan approval if the joint chairs of the CALFED Operations Group request them to do so. DWR and Reclamation will prepare monthly updates to the operations plan as necessary to be presented at the CALFED Operations Group meetings.
5. If the operations plan for the increased SWP diversion rate during the summer has been approved by either the joint chairs of the CALFED Operations Group or the WOMT, then the SWP may increase its diversions between July 1 and September 30 in accordance with the approved operations plan. The increased diversions would not occur during any time that the "yellow light" in the USFWS Biological Opinion for Delta smelt has been triggered or is in effect.
6. Prior to the start of, or during any time which the SWP has increased its diversion rate during the period July 1-September 30 in accordance with the approved operations plan, if the combined salvage of the delta smelt 14-day running average exceeds 200, the CALFED Data Assessment Team (DAT) will convene to assess the need to modify the planned increase in SWP diversion rates. If DAT does not concur that the use of the increased SWP diversion rate should be allowed to continue, then the issue will be elevated with the intent of reaching resolution as soon as possible. If the CALFED Operations Group cannot resolve the issue, it will be elevated to the WOMT. The WOMT

will make the final decision as to whether the use of the SWP increased diversion rate should continue or be suspended.

ADDITIONAL INFORMATION: The applicant has stated the CVP and the SWP use the Sacramento and San Joaquin Rivers in the Delta to transport natural river flows and reservoir storage to their facilities in the South Delta for export to their service areas. The Banks and Tracy pumping plants are operated to meet demands in the San Joaquin Valley, southern California, the central coast and south San Francisco Bay areas. DWR asserts the EWA allows the SWP and the CVP to maximize their operational flexibility to protect sensitive Bay-Delta fisheries while ensuring there is no net water supply loss to SWP and CVP contractors. The applicant states expanding diversions into CCF and corresponding increases in pumping at Banks during the months of July, August and September would enhance the ability of the SWP to convey EWA north-of-Delta purchases at no risk to south-of-Delta SWP contractors and help alleviate water quality concerns and reduced storage levels associated with excessive drawdown of the San Luis reservoir during the summer.

The following federally listed species and/or their critical habitat are present in the permit area: the endangered winter run chinook salmon, *Oncorhynchus tshawytscha*, the threatened delta smelt, *Hypomesus transpacificus*, green sturgeon (*Acipenser medirostris*), Central Valley Steelhead, *Oncorhynchus mykiss*, and the spring-run chinook salmon, *Oncorhynchus tshawytscha*. The project area may also be considered Essential Fish Habitat for Pacific salmon.

As the lead federal agency for this project, Reclamation has determined the proposed project is contemplated under the provisions of current Biological Opinions issued by USFWS and NOAA Fisheries for existing Operations Criteria and Plan for the CVP and SWP and has received written concurrences from those agencies.

The applicant has stated they will request concurrence from DFG that incidental take of winter-run salmon and Delta smelt associated with this project is authorized under the Biological Opinions which DFG has adopted.

Based on the information provided by the applicant, no cultural resources will be affected by the proposed project.

The District Engineer has made these determinations based on information provided by the applicant and on the Corps' preliminary investigation.

Interested parties are invited to submit written comments on or before January 9, 2009. Any person may request, in writing, within the comment period specified in this notice that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing.

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water

supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership, and in general, the needs and welfare of the people.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

If additional information is required, please contact Mark Holderman, Chief of DWR's Bay-Delta Office South Delta Branch, at the above address, telephone (916) 653-7429, or William Guthrie at the letterhead address, telephone (916) 557-5269, email: william.h.guthrie@usace.army.mil.

Thomas C. Chapman, District Engineer
Colonel, Corps of Engineers