



**Terry Tamminen**  
*Secretary for  
Environmental  
Protection*

# State Water Resources Control Board

## Division of Water Rights

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**Arnold Schwarzenegger**  
*Governor*

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Gregory Gartrell  
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Contra Costa Water District  
P.O. Box H2O  
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Dear Mr. Bowling, Mr. Torgersen, and Mr. Gartrell:

### WATER QUALITY RESPONSE PLAN PURSUANT TO DECISION 1641

This letter is in regard to the Water Quality Response Plan required for Joint Points of Diversion (JPOD) operations pursuant to State Water Resources Control Board (SWRCB) Decision 1641 (D-1641). Prior to use of JPOD, D-1641 (condition 5 on pages 150 and 151 and condition 5 on page 156) requires the California Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (USBR) to develop a response plan acceptable to the Chief of the Division of Water Rights (Division) to ensure that water quality in the southern and central Delta will not be significantly degraded. D-1641 requires DWR and USBR to obtain input from Contra Costa Water District (CCWD).

On July 31, 2003, DWR and USBR submitted a draft Water Quality Response Plan for Stage 1 and Stage 2 of JPOD to the Division, with a copy to CCWD. DWR and USBR proposed the following in their plan: to meet existing water quality objectives already contained in their permits; to supply CCWD with seasonal forecasts of use of Central Valley Project (CVP) and State Water Project (SWP) Delta export facilities for JPOD and other water transfers; to meet with CCWD to determine necessary compensation for any reduction in the quantity of water CCWD is able to divert under its own water rights due to any changes from excess to balanced conditions caused by JPOD operations; and to assess carriage water costs to third party water transfers in order to maintain required water quality objectives and prevent injury to SWP and CVP water supplies. DWR and USBR state that they do not believe they should be required to provide any additional carriage water for JPOD operations above that required to meet water quality objectives. DWR and USBR argue that if the water quality objectives are being met there are necessarily no significant impacts on CCWD's water quality.

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CCWD provided comments expressing its concerns with the plan. CCWD asks that the SWRCB require DWR and USBR to protect all of CCWD's Delta diversions from all water quality degradation due to DWR's and USBR's use of JPOD. CCWD proposes that the plan require the release of enough carriage water into the Delta during JPOD pumping to prevent any significant degradation of water quality at CCWD's intakes. CCWD requests that the plan be modified to require DWR and USBR to provide carriage water in the amount of 20 percent of all JPOD diversions and that JPOD be delayed for seven days following a change from balanced to excess flow conditions in the Delta.

Following discussions with Division staff, DWR and USBR withdrew the July 31 draft of the Water Quality Response Plan in order to further revise the plan prior to final submission to the SWRCB. On October 9, 2003, Division staff met with representatives from DWR, USBR and CCWD to discuss a revised draft of the Water Quality Response Plan (for Stage 1 and Stage 2 JPOD). The draft response plan discussed at the October 9 meeting is substantially the same as the plan submitted on July 31, 2003 (with the exception that additional background information was included). Due to the similarities in the plans, CCWD indicated that its previous comments on the July 31 plan also apply to the October 9 plan, and CCWD provided additional legal arguments.

During the October 2003 meeting, Division staff agreed to take CCWD's and DWR/USBR's arguments under consideration and to provide additional guidance to the parties. The following discussion addresses the issues raised by CCWD and DWR/USBR and provides further direction to DWR and USBR regarding preparation of a revised water quality response plan.

In Order WR 2000-02, the SWRCB revised D-1641 by requiring the preparation of the water quality response plan. The SWRCB found in Order WR 2000-02 that the response plan will "ensure that the salinity levels at CCWD's intakes are protected from the effects of the JPOD." The condition does not absolutely prohibit increases in salinity. It leaves to the discretion of the SWRCB's Chief of the Division of Water Rights the decision on what constitutes a "significant" degradation of water quality that will cause "injury" to water users in the southern and central Delta.

CCWD argues that the condition requires DWR and USBR to prepare a plan for releasing enough water to prevent any resultant degradation of water quality at CCWD's Old River and Rock Slough intakes whenever either project uses JPOD. CCWD argues that this is required even if the water quality would be better than the water quality objective.

DWR and USBR are responsible for preventing significant degradation of water quality in the southern and central Delta when they operate under JPOD. Significant degradation may occur in the absence of violations of water quality objectives in cases where the degradation impairs a senior water right of water of a usable quality. The interactions between the factors that affect the quality of water available to CCWD are complex, and the SWRCB has never received adequate information to quantify the impacts. Consequently, DWR and USBR in cooperation

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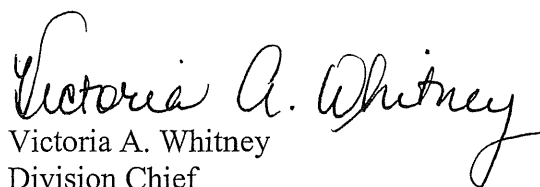
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with CCWD are directed to conduct modeling analyses to determine the impacts on water quality at CCWD's intakes due to implementing JPOD at times when CCWD is authorized to divert water under its own water rights. DWR and USBR should analyze the potential impacts by comparing hydrological conditions absent JPOD under SWRCB Decision 1485 criteria to conditions that occur with JPOD under D-1641 criteria. DWR and USBR are directed to use the information derived from the modeling analysis to prepare a draft Water Quality Response Plan with recommendations to the SWRCB regarding whether any modeled impacts would be significant and regarding the appropriate mitigation, if any, for the impacts. DWR and USBR are not required to propose mitigation for impacts that may occur to water quality when CCWD is diverting under its CVP contract or rediverting transferred water as long as the water quality objectives will be met.

If you have any questions concerning this matter, please contact Barbara Leidigh, Staff Counsel IV, at (916) 341-5190 or Diane Riddle, Environmental Scientist, at (916) 341-5297.

Sincerely,

  
Victoria A. Whitney  
Division Chief

cc: Curtis Creel  
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cc: (Continuation page.)

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