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To: Regional Director, MP Region
Attn: MP-100
Assistant Regional Director, US Fish and Wild life
Service, Portland

From: Operations Manager, Central Valley Operations
Office

Subject: Baseline Condition of the Bay-Delta Estuary,
December 15, 1994

At the request of the Federal Ecosystem Directorate (ClubFed) a group of Federal representatives was convened to define the "baseline" condition, assumed to be in place following the Principles For Agreement On Bay-Delta Standards Between The State of California and The Federal Government (Bay Delta Accord).

On June 6, 1996 representatives from the Environmental Protection Agency, US Fish and Wildlife Service, National Marine Fisheries Service, and Bureau of Reclamation met to discuss the baseline condition of the Bay Delta Accord. Representing the agencies were Bruce Herbold (EPA), Mike Thabault and Jini Scammell-Tinling (FWS), Gary Stern (NMFS), and myself (BOR). George Barnes of the California Department of Water Resources (DWR) was also contacted to provide his input as to the project simulation modeling conducted at the time of the Accord. Mr. Barnes provide extensive input for this memo.

ISSUE: In response to April-May fishery actions proposed by the FWS, the State Water Project (SWP) and Central Valley Project (CVP) operators reduced exports for a 30 day period with the understanding that water could be made up through a combination of the no net loss provisions of the Bay-Delta

and CVP provides the use of a joint point of diversion between the CVP Tracy pumping plant and the SWP Banks pumping plant. The joint point of diversion may be used to facilitate fishery benefits that may not otherwise be accomplished individually. Further the joint point of diversion allows for the make up of any water supply lost as the result of providing fishery benefits. Such make up of water supply is provided as long as the total annual water supply is not exceeded and the make up operation causes no significant impact to water quality or fish and wildlife.

The simulation model analysis that supported the estimates of water supply impacts for the Bay-Delta Accord was conducted by DWR using the SWP and CVP as surrogate projects. Following adoption of a proposed water quality control plan by the SWRCB, the EPA reviewed the model analysis and subsequently withdrew it's own proposed standards under the Clean Water Act. This withdrawal was, in part, based upon analysis of the December 1994 studies illustrating the anticipated habitat conditions of the estuary afforded by the Bay-Delta standards. For the purposes of the EPA withdrawal the 1994 impact analysis was determined to be the "baseline" condition of the estuary for bench marking any future water quality or environmental comparison.

In December 1994 and April 1995 the NMFS and FWS respectively, issued Biological Opinions to the DWR and BOR for the winter-run chinook salmon and Delta smelt. These two opinions were issued in consideration that the proposed standards would provide sufficient protection for the listed species. In issuing the 2 opinions the NMFS and FWS acknowledged that the proposed Bay-Delta standards offered adequate protection for the listed species against the operation of the CVP and SWP.

During April and May of 1996 the CVP and SWP participated in fishery actions for the protection of Delta smelt and to enhance San Joaquin salmon migration that resulted in the loss of export pumping capability. The CVP and SWP operators agreed to those actions with the understanding that through operational flexibility the water could be made-up at another time of the year. This understanding was

consistent with the Accord, reoperation provisions under CVPIA, and language within WR95-6. The project operators, in analyzing 1996 operations forecasts projected that the CVP water supply could be made up with CVP water being pumped at the SWP Banks pumping plant during October. SWP supplies can be made up through existing flexibility of the Banks pumping plant during the month of November. At question is the determination if making up the water in the October-November period will result in a change to the baseline condition, envisioned by some parties of the Bay-Delta Accord, causing significant environmental impacts to water quality, fish, or wildlife.

DISCUSSION: The project operators view that the Bay-Delta standards provide the upper limit of the "baseline" operations of the CVP and SWP. For example, the DWR studies supporting the Bay-Delta Accord did show that in the fall the modeled inflow/export ratio was generally well below the proposed standard of 65%. However, the 65% inflow/export ratio was proposed as the appropriate standard for protection of the environment and may be achieved in a very few years. Actual operations of the CVP and SWP will deviate considerably from modeled simulated operations. As long as the CVP and SWP operate within the limits of the Bay-Delta standards and in a manner consistent with the historic manner and flexibility the baseline condition is not violated. Two variations to the baseline condition are recognized. First, the Bay-Delta Accord acknowledged the desire to use added flexibility of the projects to compensate for water loss caused by ESA take limits or special actions to protect listed species. Second, the SWRCB granted permit WR95-6 to the CVP and SWP the joint point of diversion to make up water losses created from other operations benefiting fish and wildlife. Use of the joint point was intended to be limited by the Bay-Delta standards but did require that no significant impact to the environment be caused. Flexibility remained for each project to use its own respective full range of operations to make up any water losses in addition to share facilities as appropriate.

Future operations of the CVP and SWP can not be interpreted as the past operations limited by the standards. Rather the

projects will use their full flexibility with the bounds of the standards, including the full range granted by the SWRCB.

FWS in reissuing the biological opinion for the Delta smelt, following the SWP and CVP adoption of the proposed standards, assumed a baseline condition. The baseline condition assumed represents the operation of the SWP and CVP as historically carried out using each projects independent capability and flexibility yet limited by the new Bay-Delta standards. The historic operation included the allowance of approximately up to 200,000 acre-feet of non-SWP or -CVP water transfers approved on an annual basis. It is FWS view that the December 1994 studies illustrated habitat protection provided under the range of historic operations that could be expected in the Delta under differing hydrologic situations.

EPA view remained similar to FWS for the purpose of ensuring that the standards are complied with. A view of EPA is that the baseline condition defined within the December 1994 simulation model could be used in addressing any long-term modifications to SWP or CVP operations and in addressing proposals offered by other parties. Proposals such as long-term water transfers and Delta wetlands would be addressed against the baseline conditions of the December 1994 simulation model. As future projects or operations come on line the baseline would be redefined. Interim proposed operating changes carried out by the SWP or CVP would be compared against annual forecasted operations without the proposed operating changes. The magnitude of the change would be used to measure the significance of the impacts.

CONCLUSION: The baseline condition of the Bay-Delta estuary under the assumptions of the Bay-Delta Accord can best be described as those conditions that would exist under the operations of the CVP and SWP within the historic and independent flexibilities and capabilities, and limited by the Bay-Delta standards. Two variances are allowed to the historic operations as limited by the Bay-Delta standards.

First, the Bay-Delta Accord recognized and subsequently adopted by the standards is the no net loss provision to accommodate the take provisions and special actions under ESA. Second, WR95-6 allowed a variance over historic conditions by granting the joint point of diversion capability for use in making up lost water supplies, caused by related reductions in exports to benefit fish and wildlife, if no significant environmental impacts result.