DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO CA 95814-2922

OCT 26 2012

REPLY TO
ATTENTION OF
Regulatory Division (SPK 2008-00861)

Mr. Mark Cowin
Director
Department of Water Resources
1416 Ninth Street
Sacramento, CA 94236-0001

Dear Mr. Cowin:

I am responding to your July 27, 2012, letter which requests concurrence with the overall project purpose statement for the Water Operations and Conveyance Conservation Measure 1 (CM1) of the Bay Delta Conservation Plan (BDCP). CM1 consists of the construction of new diversion facilities in the north Delta, the construction of new facilities to convey water from the diversion facilities to the existing State Water Project (SWP) water export facilities, and modifications to the operations of SWP. The overall project purpose statement for CM1, which was developed with input from my Regulatory Division staff, is intended to reflect the requirements of the U.S. Environmental Protection Agency's 404(b)(1) Guidelines.

As you know, CM1 will involve the discharge of dredged or fill material into waters of the United States under Section 404 of the Clean Water Act (CWA 404), work and structures in and affecting navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899, and modifications to Federal Projects under Section 14 of the Rivers and Harbors Act of 1899. It will therefore require Department of the Army authorization prior to the start of work. The overall project purpose statement is a necessary component for evaluating alternatives under the 404(b)(1) Guidelines for any discharges of dredged or fill material into waters of the U.S. A determination must be reached by the Corps that the proposed discharge is the Least Environmentally Damaging Practicable Alternative (LEDPA) before it can issue a permit under CWA 404.

I understand the Department of Water Resources (DWR) and the participating lead federal agencies will be evaluating various alternatives in the Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the BDCP, including different approaches to conveyance infrastructure. A reasonable range of alternatives will be analyzed at a fairly broad level. The EIS/EIR will not attempt to merge the requirements of the National Environmental Policy Act (NEPA) with CWA 404; as such, the EIS/EIR will not include an overall project purpose statement or an 404(b)(1) alternative analysis for CM1. When the Final EIS/EIR is completed, an alternative will be selected. If we agree the selected alternative would have the fewest impacts on the aquatic environment, considering all environmental factors, the Corps plans to adopt the EIS/EIR and use it to make future permit decisions on BDCP actions, including CM1.

After the BDCP has been approved under Section 10 of the Endangered Species Act by both the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, DWR will apply for Department of the Army authorization under CWA 404 to construct CM1. The application will include an overall project purpose statement and information regarding practicable alternatives for compliance with the Section 404(b)(1) Guidelines, as well as other materials required for a complete permit application. During the review process, the Corps will evaluate practicable alternatives for the alignment,

configuration and location of the components that comprise CM1 that involve discharges of dredged or fill material into waters of the U.S. and determine the LEDPA. Compensatory mitigation will be required for unavoidable impacts. To the maximum extent possible, the Corps will use the BDCP EIS/EIR to support its CWA 404 permit decision concerning CM1. However, the Corps may determine supplemental NEPA is necessary for CM1 to ensure impacts to aquatic or other environmental resources have be adequately addressed.

Based on the above approach, I agree to the following language for the overall project purpose statement for CM1:

> *The overall purpose of the project is to construct and operate modifications and improvements to the State Water Project (SWP) facilities in the Delta, as set forth in the Water Operations and Conveyance Conservation Measure 1 component of the approved Bay Delta Conservation Plan. The project includes the construction of new diversion facilities in the north Delta, the construction of new facilities to convey water from the new diversion facilities to the existing SWP water export facilities, and modifications to the operations of SWP. The project would align SWP water project operations in the Delta to better reflect seasonal flow patterns, reduce the usage of the existing SWP diversion facilities in the south Delta, and protect fish with state of the art fish screens.*

If DWR changes its approach for evaluating alternatives under NEPA and the 404(b)(1) Guidelines, the language of the overall project purpose statement will need to be revisited.

We appreciate the opportunity for early engagement on this matter and look forward to continued coordination with your staff on other matters. Please refer to identification number SPK-2008-00861 in any correspondence concerning this project. If you have any questions, please contact Mr. Michael Nepstad, Deputy Chief, Regulatory Division, at email Michael.G.Nepstad@usace.army.mil, or telephone 916-557-7262

Sincerely,

William J. Leady, P.E.
Colonel, U.S. Army
District Commander

Copies Furnished:

Ms. Karen Schwinn, Associate Director, Water Division, U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street (WTR-1), San Francisco, CA 94105
Mr. Paul Robershotte, Integrated Water Resources Planning, South Pacific Division, U.S. Army Corps of Engineers, 1455 Market Street, San Francisco, CA 95103-1399
Mr. David Nawi, Senior Advisor to the Secretary, California and Nevada, 650 Capital Mall, 5th Floor, Sacramento, CA 95814