State Water Resources Control Board

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ELECTRONIC MAIL
May 15, 2009
Delores Brown, Chief
Office of Environmental Compliance
Department of Water Resources
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Dear Ms. Brown:

COMMENTS ON FEBRUARY 13, 2009 REVISED NOTICE OF PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT REPORT AND ENVIRONMENTAL IMPACT STATEMENT FOR THE BAY DELTA CONSERVATION PLAN

This letter responds to the California Department of Water Resources' (DWR) February 13, 2009 Revised Notice of Preparation (NOP) of a Draft Environmental Impact Report and Environmental Impact Statement (EIR/EIS) for the Bay Delta Conservation Plan (BDCP). As a responsible agency under the California Environmental Quality Act (CEQA) for this project, the State Water Resources Control Board (State Water Board) appreciates the opportunity to provide comments on the revised NOP and additional comments related to this project. Previously, the State Water Board provided comments to you on the March 17, 2008 NOP for the BDCP by letter dated May 30, 2008. The State Water Board reaffirms all of the comments in its May 30, 2008 letter and incorporates them by reference. I will not repeat those comments here.

Since the March 17, 2008 NOP was issued, additional information concerning the BDCP project has been made available. Specifically, as referred to in the revised NOP, a draft conservation plan for the BDCP was released. However, many specifics regarding the proposed project are still not available. Accordingly, the State Water Board continues to reserve the right to provide additional comments on the environmental review for the BDCP as additional information becomes available. Again, this information may be provided in writing or through participation in the BDCP Steering Committee, technical teams, workgroups, or environmental coordination team meetings.

Implementation of the BDCP will likely result in new water conveyance and habitat restoration measures. In addition to changes in water right terms and conditions to facilitate these measures, the State Water Board may need to consider changes to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta

Estuary (Bay-Delta Plan) and to water rights implementing that plan to ensure that beneficial uses are protected in light of those measures. Thus, as indicated in the State Water Board's May 30, 2008 letter, the State Water Board will have discretionary approval over aspects of the BDCP project related to potential changes to the State Water Project's (SWP) and Central Valley Project's (CVP) water rights (such as changes to the points of diversion and operational requirements) and to water right conditions associated with water quality requirements for the two projects. In order for the State Water Board to consider any water quality and water right applications or petitions related to these aspects of the project, environmental documentation must be prepared that evaluates the environmental effects of the proposed actions, identifies a reasonable range of interim and long-term alternatives that would reduce or avoid the potential significant environmental effects of the actions, and discusses the significant effects of the alternatives. Similarly, any environmental analysis associated with changes to the Bay-Delta Plan must evaluate the significant environmental impacts of any such changes and identify a reasonable range of potentially feasible alternatives to such changes. The State Water Board and BDCP lead agencies will need to continue to coordinate their activities to assure that adequate environmental documentation is prepared to address the State Water Board's and BDCP's environmental review needs.

One issue in particular that will require coordination is environmental review of the SWP's and CVP's interim and long-term exports from the Delta. As noted in the State Water Board's May 30, 2008 letter, a reduced diversion alternative should be analyzed to inform the State Water Board and others of the potential tradeoffs between delivering water for consumptive uses and protection of fish and wildlife beneficial uses. While SWP and CVP exports are not the only factor contributing to the current degraded state of the Bay-Delta ecosystem, exports remain an important factor requiring analysis. Uncertainty remains concerning the amount of water that can be diverted from the estuary without significantly impacting fish and wildlife beneficial uses. These impacts must be analyzed under CEQA before significant changes are made to the plumbing and hydrology of the Delta. In addition, independent of CEQA, the State Water Board has an obligation to consider the effect of the proposed project on public trust resources and to protect those resources.

A reduced diversion alternative should be lower than diversions allowed for in the current delta smelt biological opinion and soon-to-be released salmonid and green sturgeon biological opinions for the Long-Term CVP and SWP Operations, Criteria, and Plan. This reduced diversion alternative should be low enough to assure not only continued existence of the species, but also some level of rehabilitation for the estuary. To determine what this level should be, State Water Board staff suggests reviewing historic fisheries data and water export data to arrive at a low export level that is reflective of the quantity of water that could be diverted from the Delta with reasonable confidence of not causing significant or long term impacts to the estuary. Through environmental analysis of such an alternative and higher export alternatives, the State Water Board and other responsible agencies will have information on which to consider the various environmental tradeoffs related to export restrictions. Once the salmonid

and green sturgeon biological opinion has been finalized, staff would be willing to provide technical assistance to the BDCP environmental review team.

Combined with analyzing potential reductions in exports, an alternative for changes to Delta outflows (and potentially inflow requirements) should also be analyzed that reflects a more natural hydrograph. Current outflows and operations have tended to flatten the natural hydrograph and produce more static flow conditions in the Delta. Outflows and export regimes that support a more natural variable hydrograph should be analyzed, including both the naturally high outflow and naturally low outflow ends of the hydrograph for both the interim and long-term. One way to conduct this analysis would be to analyze the effects of providing various percentages of the unimpaired Delta inflow and outflow, and managing storage releases and exports to attempt to parallel this pattern.

As the State Water Board previously commented on the first BDCP NOP, the State Water Board is currently conducting a review of the southern Delta salinity and San Joaquin River flow objectives included in the Bay-Delta Plan. This review is not necessarily intended to address or inform the evaluation of any similar issues (i.e., salinity or other issues) that may arise during the BDCP process. Accordingly, the BDCP environmental review will need to address any southern Delta salinity or other issues associated with the BDCP project that are not addressed by the State Water Board in its water quality control planning review.

Finally, in order to assure that the environmental review and permitting activities associated with the BDCP project for which the State Water Board has regulatory authority are adequately addressed (water rights application and petitions, water quality certification pursuant to Clean Water Act section 401, and potentially others), State Water Board staff request additional focused discussions with the environmental review team on these issues.

State Water Board staff look forward to continue working with the BDCP environmental review effort for this project. If you have any questions concerning this matter, please contact Diane Riddle, Staff Environmental Scientist with the Division of Water Rights at (916) 341-5297 or driddle@waterboards.ca.gov .

Sincerely,

Dorothy Rice

Dorothy Rice
Executive Director

cc: See next page.

cc: (First Class Mail)

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