Proposed Regulatory Approach to Permitting BDCP Activities Under Section 404 of the Clean Water Act

DWR, and potentially the other Authorized Entities, will need to obtain multiple Section 404 permits to implement many of the actions that will be required by the BDCP. These actions comprise a comprehensive, integrated conservation strategy that will have been designed to achieve the co-equal goals of providing for the conservation and management of aquatic and terrestrial species within the delta and improving the supply and reliability of delivery of water conveyed through the Delta through the State Water Project (SWP) and the Central Valley Project (CVP).

The following sets out a proposed regulatory framework to support a Section 404 permitting process for all future BDCP actions that require such authorizations. It reflects the desire of the BDCP permittees, the Corps, and EPA that Section 404 permitting decisions be made in the context of the overall BDCP and that such decisions take into account the interrelated and interconnected nature of the actions that comprise the BDCP.

Approach to a "Regional" 404(b)(1) Alternatives Analyses for the BDCP

1. Basic and Overall Project Purpose Statement for the BDCP

- The basic and overall project purpose statement for the BDCP should convey the concept that the Plan is dependent on the implementation of a comprehensive set of actions that are designed to meet the co-equal goals for conservation and water supply and that ensure compliance with the federal ESA and the State's NCCP Act.

2. Regional or "Off-Site Alternatives Analysis of the BDCP

.

- Alternatives considered pursuant to the Section 404(b)(1) Guidelines would be analyzed in the context of their consistency with the BDCP. Alternatives that were not consistent with the overall project purpose would be considered to be impracticable.
- Under this approach, the Corps would first undertake a 404(b)(1) alternatives analysis that would consider alternatives to the proposed BDCP that would have less impact on waters of the U.S. This analysis would provide the basis for a determination by the Corps of a "regional" or "off-site" LEDPA for the collective actions reflected in the BDCP.
- The "regional" or "off-site" 404(b)(1) analysis would evaluate the range, or a subset

of the range, of alternatives that have been identified for analysis in the BDCP EIS.

- Those alternatives would be analyzed under the 404(b)(1) Guidelines, on a regional or Plan Area scale, to determine their environmental impacts and practicability in light of overall project purpose of the BDCP.

3. On-Site Alternatives Analysis of Individual BDCP Actions

- Under the regional or off-site LEDPA approach, individual actions reflected in the regional LEDPA would not later be subject to an off-site alternatives analysis upon initiation of a Section 404 permitting processes for those specific actions. Rather, these projects would automatically be considered to be in the most suitable general location.
- Individual actions, however, would still be subject to the (b)(1) analysis with respect to on-site alternatives. Thus, those projects would be required to avoid and minimize impacts to waters of the U.S. to the maximum extent practicable, in light of the overall project purpose.
- Subsequent purpose statements would be prepared for individual BDCP actions on a project-by-project basis, and would "tier-off" the purpose statement for the regional alternatives analysis
- For those individual actions, the overall project purpose statement would incorporate by reference the overall project purpose statement for the overall BDCP program.

Relationship between 404(b)(1) Alternatives Analysis and BDCP EIS

- The 404(b)(1) alternatives analysis developed to support a "regional" LEDPA determination would be developed as a stand-alone document. However, the (b)(1) analysis would need to be consistent with the EIS analysis. As such, the development of both documents would need to be closely coordinated and information and analysis routinely shared.
- Upon its completion, the "regional" (b)(1) alternatives analysis would either be integrated in the EIS or serve as an appendix to the environmental documents.
- The overall project purpose statement for the Section 404(b)(1) process may differ from the purpose and need statement that is being developed by the federal NEPA lead agencies for the purpose of the BDCP EIS.