November 23, 2009

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Mr. Lester A. Snow
Director
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236-0001

Re: 2010 Pelagic Organism Decline Studies

Dear Mr. Snow:

The purpose of this letter is to request that the Department of Water Resources (DWR) remove future Pelagic Organism Decline (POD) studies funded by the State Water Project from the existing Interagency Ecological Program (IEP) management structure. If DWR is not willing to make this change, the State Water Contractors (SWC) request that continued SWP POD studies be terminated and not included in the 2010 and future SWP Statements of Charges. This letter follows up on a February 2008 letter that we sent to DWR raising general concerns and requesting a dialog on future DWR participation in IEP studies.

As background, the SWC, DWR, the Department of Fish and Game and various other organizations agreed to a Statement of Principles for "Regulatory Commitments-User Contributions" ("UOP Principles") in December 2005. The purpose of this statement was to defi ne voluntary financial contributions that would be made by the SWC and other Delta export users. In return for the financial contributions, State and Federal regulatory agencies (including the Department of Fish and Game, the U.S. Fish and Wildlife Servic e, and the National Marine Fisheries Service) agreed to support implementation of key near term water supply, water quality, ecosystem and levee actions. Additionally, regulatory agencies committed to work on development of one or more Habitat Conservatio n Plan/Natural Communities Conservation Plan(s). DWR, the SWC and other agencies initiated efforts for the Bay -Delta Conservation Plan in response to the December 2005 principles, which is actively being pursued.

One of the user contributions provided for in the December 2005 UOP Principles was a $4 million per year contribution for POD studies for calendar years 2006 and 2007. This $4 million contribution was cost -shared half and half between the State Water Project (SWP) and the Central Valley Project (CVP). Based on discussions with DWR staff, the SWC understand that, due to delayed initiation of the POD studies, about $3.4 million of the $4 million provided by the SWP for POD studies in calendar years 2006 and 2007 was actually spent as of December 3 1, 2007, leaving about $600,000 unspent. Since that time, the remaining $600,000 has been spent, along with additional budgeted amounts of $5.3 million in 2008, $6.8 million in 2009 and $5.1 million in 2010 (these amounts include only the USBR and DWR portions of the POD funding.) Clearly, the original commitment to POD studies made through the UOP Principles has been fully met and as of some date in 2008, DWR was under no obligation to continue providing those funds.

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Since 2008, the SWC have become increasingly concerned about the direction taken by many IEP studies. While the IEP formerly pursued several avenues of investigation regarding causes of the Pelagic Organism Decline, and has been responsible for recently completing ma ny important analyses of impacts of other stressors, the most recent IEP request for scopes of study was strongly directed towards reviewing flow related issues, regardless of their importance relative to other potential stressors. Looking at the manageme nt structure of the IEP, and the dominance of Federal Agencies in that structure, it appears that the IEP is moving in a direction towards pursuing efforts that seem aimed at supporting the recent OCAP biological opinions, regardless of whether they are the most scientifically justified. The SWC and SWP contractors are not willing to continue to provide discretionary funding for POD studies under the current IEP direction.

As an alternative to funding POD studies under IEP management the SWC support fundi ng an equivalent amount of studies to identify POD impacts under separate management by DWR, with consultation from SWP Contractors.

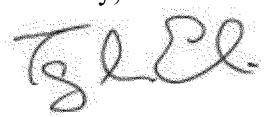
As a closely related issue to POD studies, the SWC are also concerned with the balance of recent level of USBR and DWR funding for mandated monitoring and studies as required by Water Rights Decision 1631 and other regulatory mandates. From 2006 through 2010, IEP budgets included $32.3 million of funding by DWR while the USBR provided $23.5 million. As you are aware, the Coordinated Operation Agreement (COA) of 1986 between the State of California and the United States Department of Interior includes the following provision – "The United States and the State agree to share the equally the cost of those monitoring activities, including the analysis of the collected data." The recent historical contributions to meet these mandated monitoring activities have not been shared equally. We are aware that the United States has provided additional funds in recent years for POD studies as compared to the mandated monitoring. However, we believe that this does not relieve the United States from complying with the required monitoring funds under the COA. We also believe that continued funding from the United States for POD studies not required by mandates do not provide a basis for an unequal distribution of mandated monitoring costs, as has been occurring on a con sistent basis. We expect that DWR will work diligently to obtain equal funding from the United States for mandated monitoring costs as specified in the COA.

In summary, the SWC have taken the following positions as regards to IEP funding:

- The SWC support continued collection of current funding levels, if those funds are managed directly by DWR, separate from the IEP management and with input from SWP contractors.
- DWR should obtain equivalent funding from the United States for mandated monitoring and studies as provided by the COA, taking legal action as necessary to obtain the funding.
- If DWR is unwilling to make the two changes identified above, POD funding from DWR through the IEP should be terminated as of January 1, 2010.

We look forward to discuss ing the question of continued IEP POD funding with you. If you have any questions about our concerns and request for a briefing, please contact me at (916) 447-7357.

Sincerely,



Terry Erlewine
General Manager