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Cc: []
From: CN=Karen Schwinn/OU=R9/O=USEPA/C=US
Sent: Mon 8/2/2010 6:51:55 PM
Subject: #6 --- SPK Regulatory Additional Information, Analyses, and Completed Processes Needed Prior to the USACE Permit Decision

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----- Forwarded by Karen Schwinn/R9/USEPA/US on 08/02/2010 11:48 AM -----

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Date: 08/26/2009 11:51 AM
Subject: SPK Regulatory Additional Information, Analyses, and Completed Processes Needed Prior to the USACE Permit Decision

The purpose of this email is to provide the Bay Delta Conservation Plan's (BDCP) BDCP Environmental Compliance Team (BECT) information, analyses, and processes which appear necessary to support the USACE permit decisions for those components of the BDCP for which the applicants are seeking permits and which constitute complete projects based upon my current understanding of the BDCP.
The USACE has jurisdiction over the BDCP under section 10 of the Rivers and Harbors Act of 1899 (section 10), section 14 of the Rivers and Harbors Act of 1899 (section 408, so called as it's also listed as 33 USC 408), and section 404 of the Clean Water Act (section 404).
The topics within this email are specific to section 10 and 404 permit decision needs.
The USACE is a cooperating agency under the National Environmental Policy Act for the Environmental Impact Statement/Environmental Impact Report (EIS/EIR) which is being prepared for the BDCP by the BECT. I am looking forward to working with the applicants to ensure the EIS/EIR prepared for the BDCP is adequate in both process and content to support the permit decisions of the USACE. I expect the topics discussed below will be further discussed at the next BECT meeting or another meeting to ensure the right information, analyses, and processes are incorporated into the EIS/EIR to support the permit decisions of the USACE. Without the right information, analyses, and processes incorporated into the EIS/EIR, additional NEPA processes and documentation would be necessary for completion of the permit decisions of the USACE.
Additional Information, Analyses, and Completed Processes Needed Prior to the USACE Permit Decision
1) A conformity determination under section 176(c) of the Clean Air Act.

2) A final mitigation plan approved by the USACE.
3) All public and stakeholder comments received on or after the date of publication of the Notice of Intent (February 13, 2009) by any of the lead or cooperating agencies on any component of the BDCP at any forum or during any process must be collated, considered, and responded to. This would include public comments received as part of compliance with the Natural Communities Conservation Plan Act.
4) An alternative analysis under section 404(b)(1) Guidelines.
5) A review of the aquatic invasive species analysis by the California Department of Boating and Waterways and/or the USACE Engineering Research and Development Center. The USACE will coordinate this review.
6) Completion of the section 7 consultations under the Endangered Species Act with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS). Please note that the biological opinions must be specific to the USACE permit decision. The USACE will initiate this consultation.
7) Water quality certification or waiver in accordance with section 401(a)(1) of the Clean Water Act.
8) Coastal Zone Management Act consistency determination or waiver in accordance with section 307(c)(3)(A) of the Coastal Zone Management Act.
9) Completion of consultation with the NMFS under section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act. The USACE will initiate this consultation.
10) Demonstration of compliance with Section 106 of the National Historic Preservation Act.
11) A review of the analysis of all the impacts to navigation due to structural and operational changes, and likely changes in the patterns of recreation and commercial navigation and associated secondary impacts by the U.S. Coast Guard and applicable Port Authorities. The USACE will coordinate this review.
These last three points have been discussed internally at the USACE; but SPK Regulatory is uncertain as to their applicability. They are included here to help frame the conversations with the USACE section 408 POC and the applicants.
1) A signed memorandum of understanding with the USACE to ensure the engineering feasibility and that no unacceptable increase in flood risk is promoted by the BDCP's proposed changes to the 1957 Operations and Maintenance Manual (O&M manual) of the SRFCP. The costs of changing the O&M manual shall be borne by the applicants.

2) 100% level designs for those for those components of the BDCP for which the applicants are seeking a section 408 permit.
3) An independent external peer review (safety assurance review) for those for those components of the BDCP for which the applicants are seeking a section 408 permit. The applicant is responsible for the development of a plan for an appropriate level of review which includes design and construction phases and follows the standards of the National Academy of Sciences.
Mike

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