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

REPLY TO
ATTENTIO
N OF

October 26, 2012

Regulatory Division (SPK 2008-00861)

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, 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 would result in 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, and will therefore require Department of the Army authorization prior to starting work. The overall project purpose statement is necessary for evaluating alternatives under the 404(b)(1) Guidelines and a determination must be reached by the Corps that the proposed project is the Least Environmentally Damaging Practicable Alternative (LEDPA) before it can issue a permit under CWA 404.

To comply with the 404(b)(1) Guidelines, I understand the Department of Water Resources (DWR) will take a tiered approach to evaluating alternatives for CM1 in the Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the BDCP. The EIS/EIR will analyze a reasonable range of alternatives for CM1 at a fairly broad "tier 1" level. The EIS/EIR will not attempt to merge the requirements of the National Environmental Policy Act (NEPA) with CWA 404 nor would it include a CWA 404 overall project purpose statement for CM1. When the Final EIS/EIR is issued, DWR will choose an alternative that meets its needs and has the least environmental impact. DWR will request concurrence from the Corps. If we agree the

selected alternative would have the fewest impacts on the aquatic environment, considering all environmental factors, the Corps would adopt the EIR/EIS and indicate at that time we agree the selected "tier 1" alternative from the Final EIS/EIR for CM1 is likely to contain the LEDPA. 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 would apply for Department of the Army authorization under CWA 404 to construct CM1. The application would include the overall project purpose statement, as stated below, in addition to other materials required for a complete permit application. During the review process, the Corps would complete a 404(b)(1) analysis, limiting the evaluation of practicable alternatives to those within the footprint of the Final EIS/EIR CM1 alternative selected by DWR and agreed to by the Corps. The Corps review would be focused on avoidance and minimization within the selected alternative from the Final EIS/EIR, ultimately arriving at a LEDPA in our permit decision document for CM1. Compensatory mitigation would be required for unavoidable impacts.

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 methodology for analyzing alternatives to comply with the 404(b)(1) Guidelines or the Corps does not agree that the Final EIS/EIR selected alternative is likely to contain the LEDPA, 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

cc:

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