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ENVIRONMENTAL PROTECTION

State Water Resources Control Board

December 19, 2011

Gerald H. Meral, Ph.D.
Deputy Secretary
Bay Delta Conservation Plan
California Natural Resources Agency
1416 9th Street, Suite 1311
Sacramento, CA 95814

Dear Dr. Meral:

This letter responds to your request for an explanation of how the State Water Resources Control Board's (State Water Board) Bay-Delta planning process will mesh with the Bay Delta Conservation Plan (BDCP) and its environmental documentation. In addition to this letter, please refer to the State Water Board's comments on the Notices of Preparation for the BDCP dated May 30, 2008, and May 15, 2009.

The BDCP serves as a natural community conservation plan (NCCP) under the state's Natural Community Conservation Planning Act and as a habitat conservation plan (HCP) under Section 10 of the federal Endangered Species Act (ESA). In order to implement the BDCP, participating entities will potentially need various approvals from the State Water Board or Regional Water Quality Control Boards, including water rights permits, changes to existing appropriative water rights, and Clean Water Act water quality certifications for various elements of the BDCP, including water conveyance facilities and habitat restoration. Also, in accordance with state and federal law, the State Water Board will likely need to amend existing water quality objectives and the program of implementation in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta (Bay-Delta Plan) as well as the water right terms and conditions of the Departments of Water Resources (DWR) and the U.S. Bureau of Reclamation (USBR) implementing the Bay-Delta Plan, to allow the changes to flow and water project operational requirements that are envisioned as part of the BDCP. Accordingly, the State Water Board will use the environmental and other analyses prepared in support of BDCP to consider those changes and other requested actions. While regulatory requirements imposed through the HCP and NCCP processes and other requirements or permits issued by other agencies in connection with the implementation of the BDCP will inform the State Water Board's decision-making, the Board has an independent duty to make its own findings and it will not be bound by other agencies' requirements or permit terms in its own decision-making.

The State Water Board is also planning to consider other changes to the Bay-Delta Plan outside of the BDCP project that may be needed to protect beneficial uses. DWR has agreed to assist

the State Water Board by preparing additional analyses of potential changes to the Bay-Delta Plan. The State Water Board will use the BDCP analyses, DWR's additional analyses, and will prepare any other analyses needed to inform potential changes to the Bay-Delta Plan.

The State Water Board's review of the Bay-Delta Plan will also be informed by its "Final Report on Development of Flow Criteria for the Sacramento – San Joaquin Delta Ecosystem" (Report). However, that Report only contains the State Water Board's determinations as to the flows that protect public trust resources (fisheries) in the Delta under the narrow set of existing circumstances analyzed in the Report. Accordingly, in its review of the Bay-Delta Plan, the State Water Board will also consider other information including: competing beneficial uses of water, new scientific information, habitat conditions at the time, environmental effects, economics, and other policies of the State.

The State Water Board plans to consider potential changes to the Bay-Delta Plan and water right requirements implementing that plan over the next two and a half years. The State Water Board plans to complete its current review of potential changes to the San Joaquin River flow objectives for the protection of fish and wildlife and water quality objectives for the protection of southern Delta agriculture by September 2012. Adoption and implementation of San Joaquin River flow objectives is of critical importance to the protection of ecological resources and reliable water supplies in the San Joaquin River watershed and the Delta. State Water Board staff has completed a draft report that describes the scientific basis for San Joaquin River flow objectives. The scientific basis for the flow objectives, however, is only one of the factors that the Board will consider for adoption of flow objectives that will reasonably protect beneficial uses. (See Water Code section 13241 identifying factors to be considered in setting water quality objectives.) The Board will also consider the environmental documentation prepared for the review and adoption of any new flow objectives, including an evaluation of the water supply and economic costs. These environmental, water supply, and economic analyses will serve an important function in informing the State Water Board's decision-making and will allow the Board to carry out its responsibility to balance the competing uses for water. Concurrent with the San Joaquin River flow effort, the State Water Board intends to initiate and complete its review and update of other portions of the Bay-Delta Plan, including Sacramento River flows, Delta outflows, and water project operational requirements, by June 2013.

The State Water Board has been working with DWR to analyze an enhanced ecosystem protection alternative for the BDCP that results in reduced south of Delta diversions. Preliminary model results show that this alternative would result in increases to mean annual Delta outflow of approximately 1.6 million acre-feet per year for the February through June period at a cost of approximately 1.5 million acre-feet per year on average reduction in south of Delta diversions relative to the no action alternative. This alternative will allow DWR and other lead agencies, and the State Water Board, to evaluate a sufficiently broad range of alternatives to inform their respective processes. As this enhanced ecosystem alternative results in a large negative water supply effect, it provides an alternative to the BDCP's preferred alternative that will assist in analyzing the project's effects. It is therefore useful to evaluate the tradeoffs that need be considered to achieve the two coequal goals required by the Delta Reform Act. Similar to what the State Water Board is doing for the evaluation of San Joaquin River flow objectives, an evaluation of the water supply and economic effects of the enhanced ecosystem BDCP alternative would be useful for the Board's decision-making. Ideally, this evaluation of the water supply and economic effects of the enhanced ecosystem alternative could be performed in conjunction with an analysis of the costs and effects of obtaining alternative water supplies. As this information will be useful to inform the BDCP and the Board's decision-making, I propose that our staffs work together on this element of the BDCP.

I believe all of the State Water Board's activities discussed above are critical to the success of the BDCP. In closing, I would like to emphasize that the State Water Board encourages water users to work with fishery agencies and other stakeholders to bring agreements on flows and habitat improvements to the Board to include as part of its regulatory process. Please let me know if you have any further questions concerning this matter.

Sincerely,

Thomas Howard

Thomas Howard
Executive Director