**Five Federal Agency Meeting on the Purpose and Need Statement**

**March 10, 2010**

Attendees:

Erin Foresman, Tom Hagler and Karen Schwinn, USEPA
Michael Jewell, Michael Nepstad, and Lisa Clay, USACE
Patti Idlof, USBR
Kaylee Allen and Jim Monroe, DOI
Melanie Rowland and Michael Tucker, NMFS
Mary Grim and Barbara Beggs, USFWS

Handouts:

Meeting Agenda,
2008 NOI for BDCP,
2009 NOI for BDCP,
February 25, 2010 draft list of BDCP activities to be evaluated in the effects analysis.

General Discussion:

At one time the intention of the five federal agencies was to have an identical purpose statement for both NEPA and Clean Water Act Compliance. Since that time it has become apparent that the portions of the BDCP which would be submitted for review under the Clean Water Act would not be representative of the entire range of actions considered in the EIS/EIR. It was therefore agreed that the March 10, 2010, discussion should focus on the purpose and need statement for NEPA compliance, with the intention that NEPA purpose statement would be structured such that any overall purpose statement for Clean Water Act compliance would be able to nest within it.

In addition, USBR and DOI reported that the need statement has not been developed, and what was in the NOI's should not be considered a needs statement. All agreed that the discussion of a need statement to be postponed until such time as one is developed by the contractors and submitted for federal agency review.

All agreed to start discussion with the 2009 NOI for the BDCP.

All agreed that all five federal agencies should participate in meetings between DWR and USACE on section 10/404 issues and section 408 issues.

Discussion on the Purpose Statement for NEPA:

Three components of the purpose statement in the 2009 NOI were subject to considerable discussion as follows:

A) "The operation of existing SWP Delta facilities and construction and operation of facilities for the movement of water entering the Delta from the Sacramento Valley watershed to the existing SWP and CVP pumping plants located in the southern Delta;"

This statement was considered confusing and leading one to the conclusion that the existing SWP would not be diverting any water from the San Joaquin River and eastside tributaries. It was agreed that this statement should be turned into two statements: "The operation of existing SWP Delta facilities" and "The construction and operation of facilities and/or improvements for the movement of water entering the Delta from the Sacramento Valley watershed to the existing SWP and CVP pumping plants located in the southern Delta"

B) "Reducing the adverse effects to certain listed species of diverting water by relocating the intakes of the SWP and CVP;"

This statement was found to preclude the consideration of the through-Delta alternative as it does not involve the construction of new intakes. This statement also has the effect or precluding any alternatives which do not include new intakes. As the California Governor declared that a through-Delta alternative would be considered, it was agreed to eliminate the words "by relocating the intakes of the SWP and CVP."

C) "Restore and protect the ability of the SWP and CVP to deliver up to full contract amounts, when hydrologic conditions result in the availability of sufficient water, consistent with the requirements of state and federal law and the terms and conditions of water delivery contracts held by SWP contractors and certain members of SLDMWA."

A good deal of discussion revolved around figuring out what this statement actually meant. Final consensus from the lead federal agencies was that this statement meant to say that the maximum level of exports would not exceed the full contract amount (guessed to be 7.5 million acre feet; 1.5 million acre feet above maximum historic exports). Additional discussion was that the diversions under the current biological opinion would be the no action or baseline alternative and that there would definitely be a reduced diversion alternative, although the nature of the reduced diversion alternative was not discussed. This statement was also the subject of extensive discussion with strong EPA objection and concern on the phrases "up to full contract amount" and "consistent with the requirements of state and federal law." These concerns largely focused on the recent state legislation prohibiting additional delta exports, and whether or not it was appropriate to have as a part of the purpose statement additional pumping from such an over-allocated system as the Delta. Also pending is a decision by the EPA on whether or not to elevate this statement. As the levels of pumping from the Delta is currently being discussed between the California Legislature and the Resources Agency, all agreed to allow this statement to remain unchanged until the results of those discussions are known.

No other changes to the 2009 NOI purpose statement were recommended.

Recommended Purpose Statement for NEPA:

*Purpose*

The purposes of the proposed actions are to achieve the following:

Respond to the applications for incidental take permits for the covered species that authorize take related to:

(1) The operation of existing SWP Delta facilities.

(2) The construction and operation of facilities and/or improvements for the movement of water entering the Delta from the Sacramento Valley watershed to the existing SWP and CVP pumping plants located in the southern Delta;

(3) The implementation of any conservation actions that have the potential to result in take of species that are or may become listed under the ESA, pursuant to the ESA at section 10(a)(1)(B) and its implementing regulations and policies;

(4) The diversion and discharge of water by Mirant LLC for power generation in the Western Delta.

Improve the ecosystem of the Delta by:

(1) Providing for the conservation and management of covered species through actions within the BDCP Planning Area that will contribute to the recovery of the species; and

(2) Protecting, restoring, and enhancing certain aquatic, riparian, and associated terrestrial natural communities and ecosystems.

(3) Reducing the adverse effects to certain listed species of diverting water.

Restore and protect the ability of the SWP and CVP to deliver up to full contract amounts, when hydrologic conditions result in the availability of sufficient water, consistent with the requirements of state and federal law and the terms and conditions of water delivery contracts held by SWP contractors and certain members of SLDMWA.*

*modifications to this statement not made at this time in light of current discussions on pumping levels between California legislature and the Resources Agency and EPA review.