

April 10, 2012

Dr. Jerry Meral
Deputy Secretary
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Re: Administrative Draft BDCP

Dear Dr. Meral:

Thank you for inviting comments on the February 2012 administrative draft of the Bay Delta Conservation Plan (BDCP). Although the East Bay Municipal Utility District (EBMUD) is not a formal participant in the BDCP, we fully support the BDCP's goals of improving the health of the Delta ecosystem while simultaneously providing a more reliable water supply for the Delta exporters. After reviewing the draft BDCP, we wish to offer comments in two particular areas: 1) general comments regarding Mokelumne fisheries; and 2) comments and concerns regarding the funding plan presented in Chapter 8.

Mokelumne Fisheries

Both Mokelumne origin fall-run Chinook salmon and steelhead are covered species under the BDCP, yet the BDCP consistently overlooks or minimizes impacts on the Mokelumne origin fish. Several examples:

- Lines 21-27 on pg. 3-124 state that Delta rearing "may not be a key limiting factor for spring-run, winter-run, or late fall-run salmon, or steelhead." Notably missing from that generalization is fall-run Chinook salmon, and we believe that suitable Delta rearing habitat may in fact be a limiting factor for fall-run Chinook.
- The document implies that what benefits winter-run and spring-run also benefits fall-run and steelhead. We do not necessarily believe this to be true for Mokelumne origin salmonids. It is important that the BDCP recognize that the Mokelumne origin salmonids face challenges that are different than Sacramento River origin fish, and it is misleading to make broad generalizations about all Central Valley salmonids, regardless of origin. Mokelumne salmonids face increased exposure to entrainment and predation, a longer migratory pathway, reverse flows and loss of migratory cues, and a lack of connection to floodplain habitat along major water conveyance channels.
- Chapter 3.3 acknowledges the serious fish survival issues associated with the interior Delta, but the plan's approach to mitigating the problem is Sacramento River centric – focusing entirely on keeping Sacramento River fish out of the interior Delta. The

plan fails to address Mokelumne fish, which have no alternative to traversing the interior Delta.

- Goal FRCS3, discussed on page 3-148, should include an alternative migration pathway for Mokelumne fall-run Chinook. We suggest considering a more direct pathway to the Sacramento River via Lost Slough, Snodgrass Slough, and Meadows Slough.
- Chapter 4.2.1 discusses operations of the Delta Cross Channel (DCC). The DCC can have direct and significant impacts on the Mokelumne fisheries, yet the discussion in 4.2.1 focuses entirely on Sacramento River fish impacts. For the past two years EBMUD has worked cooperatively with other responsible agencies to experiment with DCC gate closures during key fall-run migration periods. These experiments have been designed to assist returning adult salmon in their upstream migration, and although more data must be collected, the coordinated temporary DCC gate closures show potential for significant benefit to the Mokelumne fisheries. A complete discussion of these DCC operational experiments and how they could be implemented in the future should be included in the BDCP discussion.

Finance

The BDCP's approach to financing, as presented in Chapter 8, raises several significant concerns. It fails to provide firm commitments or agreements as to how funding will be obtained and repeats the error of the CALFED Finance Plan by assuming unreliable levels of State and Federal funding for BDCP projects. Past experience with CALFED demonstrates that there are many competing demands for public dollars and such funds often fail to materialize. In particular, reliance on a state water bond is questionable both in light of the likelihood of voter approval and potential revisions that may affect the amount of funding available to BDCP.

Chapter 8 tacitly affirms that all the conservation measures other than new conveyance are to be paid for with public funds. EBMUD has repeatedly requested that the BDCP process address the valid question about the responsibility of the BDCP beneficiaries to fund some portion of the conservation measures that will contribute to recovery of the covered species, as required by law. This should include restoration requirements of the existing Biological Opinions for the project operations. Thus far, no evidence has been offered to support the position that the project contractors' financial responsibility is limited to the conveyance, or that this constitutes adequate mitigation for the overall project impacts. Similarly, a failure to define "public benefits" for the purpose of BDCP denies Californians the opportunity to understand the basis for any financial obligation that may be imposed on them.

From an EBMUD perspective, we are concerned by the assertions that the export contractors will be able to fund their share of the project as described in Chapter 8. While specific cost allocations between SWP and CVP contractors have not been finalized, the costs are significant (over \$12 billion plus finance costs and operating costs) and we question whether the CVP south of Delta contractors in particular can shoulder anywhere

Dr. Jerry Meral
April, 10, 2012
Page 3

close to a 50%-50% share of costs. Because EBMUD is a CVP contractor that will not benefit from BDCP facilities, we remain concerned about who will ultimately pay for BDCP, including the capital costs. It is essential that a thorough financial feasibility assessment be conducted to determine how costs will be allocated and whether or not each responsible party can pay. Thus far, Chapter 8 does not provide enough information to determine that the BDCP is financially feasible, or that the state will not be liable if some of the exporters cannot pay their share of the BDCP.

Page 8-92 fails to fully address the costs of refuge supply water that would be conveyed through a new facility. Such costs are currently non-reimbursable, and should remain non-reimbursable in the future. However, refuge water supplied through a new conveyance would be significantly more expensive than current refuge water and the discussion does not address how those increased costs will be covered. A thorough discussion of these costs and allocations is necessary to ensure that the plan is both feasible and acceptable to stakeholders.

Again, we appreciate the opportunity to review and comment on this administrative draft BDCP and we look forward to reviewing the formal public draft when it becomes available. If you have questions about these comments, please contact Doug Wallace at 510-287-1370.

Sincerely,



Richard G. Sykes
Director of Water and Natural Resources

cc: Phil Isenberg, Delta Stewardship Council
Mark Cowin, Department of Water Resources
Charlton Bonham, Department of Fish and Game