September 14, 2010

Lester Snow, Secretary
Natural Resources Agency
1416 9th Street, Floor 11
Sacramento, CA 95814

Re: BDCP and Delta Plan

Dear Secretary Snow:

As you continue negotiations and move towards the completion of the Bay-Delta Conservation Plan (BDCP) public draft, the Northern California Water Association (NCWA) remains concerned with several outstanding issues that continue to emanate beyond the Bay-Delta into the Sacramento Valley. Most importantly, the BDCP provides coverage for certain actions in the Bay-Delta and the direct beneficiaries and participants in this process should be fully responsible for any obligations that ensue from these actions under the BDCP and related processes, including obligations related to flows and funding.

Flows. At the recent BDCP Steering Committee meeting, the Committee continued to review analyses relating to the February 5, 2010 “SAIC Proposed Long-Term BDCP Water Operations Analytical Range.” This includes the “analysis of NGO watershed unimpaired runoff approach as it relates to PRE’s and parties outside of BDCP.” (Page 7.) The September 3, 2010 letter to Undersecretary Scarborough from Somach, Simmons and Dunn (SSD) describes in detail both the uncertainty and the serious flaws with including this approach in the BDCP. This letter is attached for your convenience. Moreover, the Delta Reform Act of 2009 provides that water rights shall not be impaired or diminished as a result of the Act, which incorporates the BDCP and makes it the core of the Delta Plan. Accordingly, it is important that the BDCP expressly acknowledge that the parties to the BDCP—not third parties—have the full obligation to satisfy any obligations necessitated by the BDCP.

Funding. There appears to be a continuing desire to impose fees on parties outside the BDCP to pay for the implementation of the BDCP and the Delta Plan. Again, the direct beneficiaries of the BDCP (coupled with any available public funds) are obligated to pay for all the costs associated with the actions and the related conservation and mitigation measures under the BDCP and the Delta Plan.

NCWA has supported the co-equal goals for the Delta and your ongoing BDCP negotiations. We will continue to support that work if its focus remains true to the Delta and if the parties at the table respect the scope of BDCP’s Planning Area, as defined in section five of the Planning Agreement. Under that part of the Planning Agreement, BDCP’s Planning Area is the statutory Delta and conservation actions outside the Delta will occur only by “cooperative agreements or other similar mechanisms.” Under the Natural Communities Conservation Planning Act (Fish and Game Code § 2820(a)(1)), the Department of Fish and Game (DFG) will need to find that the BDCP process has been consistent with the Planning Agreement to approve the ultimate BDCP. Moreover, as the SSD letter describes, the parties to BDCP must provide
assurances that they will meet all obligations created by the BDCP, including any obligations related to flows and funding.

Importantly, while the BDCP process seeks to meet the coequal goals and provide for a sustainable Delta, numerous efforts are underway within the Sacramento Valley to maintain the Valley's regional sustainability and self-reliance. These efforts promote the state policy that the Legislature adopted last year in Water Code §85021, including providing water for farms, fish, waterfowl, recreation and the cities and rural communities throughout this special region.

We look forward to working with you and others in these efforts.

Sincerely yours,

[Signature]

David J. Guy

cc: Karen Scarborough  
Mark Cowin  
John McCamman