



December 5, 2011

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Osha R. Meserve, Representative
Local Agencies of the North Delta
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Dear Osha and Melinda:

This is in response to your letter of November 4. We disagree that BDCP will result in the harm to the Delta that you describe in your letter. We also disagree that NDWA was the only Delta stakeholder on the Steering Committee. Contra Costa Water District is also a Delta stakeholder who participated.

Comments not being considered

In Chapter 7 alone, there are many changes requested by your two organizations. Similarly, a variety of requests for changed procedures you have both made have been implemented, including the latest modifications to the public meeting process.

Washington DC Briefings

Washington DC trips are organized by supporters of BDCP. BDCP staff attends in support of these briefings.

MOA on Collaboration and Funding of BDCP

With respect to your concern about how your comments on documents will be addressed, we can assure you that they will be considered fully and fairly, as will the comments of all others who provide them.

Lead Agency meetings

These are attended only by the lead agencies, not by the contractors. They are not open to the public.

BDCP Environmental Coordination Team (BECT) meetings will start soon, and will include lead agencies, cooperating agencies, and responsible agencies. I understand that the NDWA has been granted cooperating agency status with respect to the EIS.

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Employment report

Since the report was prepared by the Metropolitan Water District, it was not subject to state review or approval. We understand that the question of job gains or losses in the Delta will be considered in a subsequent report on the Delta habitat program. If you have any evidence that the method of analysis in the report was in any way flawed, we would be interested in receiving it. We have also provided a forum for the University of the Pacific to present their views in a public meeting. We do not view the University of the Pacific report to the Delta Protection Commission to be in conflict with the MWD study. If you have evidence to the contrary, we could arrange to present that at a public meeting.

Dr. Sunding is also preparing a separate report on the economic benefits of BDCP as a whole. It will be made available for public comment when it is prepared.

Lack of peer reviewed science

As you know, an Independent Science Board panel recently met to review the Effects Analysis Framework, and will also review the roll up. Other science consultation continues.

Phasing

This question is under active consideration, and no decisions have been made yet.

Positive fish screens in South Delta

Contra Costa Water District has also suggested this idea, and it is under consideration.

Entrainment

We disagree that the analysis shows that entrainment in the South Delta is not a problem, or that entrainment in the North Delta is an equally severe problem.

Take coverage

We are actively considering take coverage for other Delta diverters, especially in Solano County. That is unrelated to the question of additional SWP/CVP take. We disagree that any project will result in additional take, unless species are increased in number, which may result in additional take but also would demonstrate that the project made a substantial contribution to recovery.

Use of eminent domain

We disagree that eminent domain is inappropriate for this project. DWR has statutory authority for the BDCP and recent legislation (2009 Delta Reform Act) directs DWR to analyze various conveyance options to better meet the co-equal goals of water supply reliability and ecosystem improvements, while considering the Delta as a Place. The work necessary to gather information to analyze the potential options for BDCP has been funded, and encumbered, through agreements with state and federal water

contractors who support the planning phase of the BDCP. The use of eminent domain in the project planning phase is appropriate given recent state court decisions and that the information is necessary for analysis in the permitting process. If only a permitted project is legally authorized, it would be impossible to use eminent domain to gather data to apply for that permit, and therefore impossible to obtain the permit.

While the EIR/S may not be legally deficient if the data gained through eminent domain is not obtained, such data will improve the information on which decision-makers will rely on when approving the proposed project. In addition, the Corps of Engineers requirements for completion of design do require those data be collected.

Process serving

We have asked the Department of Justice to correct these procedures.

Regarding your requests at the end of the letter, we have the following responses:

Written disposition of all comments on the BDCP by Delta stakeholders

We cannot agree to this request. If we divert the consultants working to prepare documents for BDCP to answering a large backlog of comments dating back almost 6 years, they would never complete their main tasks in a timely manner. We have directed the consultants to consider a wide variety of comments received, and they will do so, but they cannot prepare written responses to all of them.

Review of task orders, draft documents and all documents made available to the state and federal water contractors

This request is too general. If there are specific documents you wish to see, please let us know what they are.

Convening of regular (at least monthly) Cooperating Agency meetings with all cooperating agencies

This is being done.

Access to all meetings where decisions are made

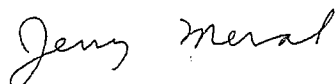
Many decisions made by state and federal agencies are subject to public review through the processes established by the NCCPA, ESA sections 7 and 10, CEQA, and NEPA. However, many meetings between just state and federal agencies are not open to the public. The state and federal agencies who will be making decisions regarding BDCP permitting will obtain the maximum amount of public input before making any decisions

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Rescind signatures of and provide an open and transparent process for public input and comment to the first Amendment to the MOA, which puts entirely too much decision-making authority in the water exporters despite the fact that BDCP is a public project with significant local impacts

See response to comment above and I refer you to the federal white paper on the MOA published on the BDCP website.

Sincerely



Jerry Meral

cc. John Laird, Secretary of CA Natural Resources Agency
David Hayes, Deputy Secretary U.S. Department of the Interior