

SOLURI MESERVE
A Law Corporation

1822 21st Street, Suite 202
Sacramento, California 95811
(916) 455-7300 (telephone)
(916) 244-7300 (facsimile)

MEMORANDUM

TO: BDCP Steering Committee

FROM: *mm* Osha Meserve, Counsel for Reclamation District 999

DATE: November 19, 2009

RE: Disposition of Comments from Reclamation District 999 and Other Interested Parties

This memorandum follows up on discussions at the October 22, 2009, Steering Committee meeting regarding the issue of disposition of comments on BDCP work products. Throughout the BDCP process, interested observers have been encouraged to comment in writing on draft BDCP written materials as a means to convey their concerns. Pursuant to this direction, Reclamation District 999 ("District") and others have expended resources to develop detailed written comments regarding their concerns and suggestions on how to improve the BDCP. While comments by Steering committee members are being responded to (e.g., October 22, 2009 Disposition Summary), no responses have thus far been provided to comments from interested observers.

According to the Natural Communities Conservation Planning Act ("NCCPA"), a process for public participation during plan development and review must be established to ensure that interested persons, including landowners, have an adequate opportunity for input. (Fish & Game Code, §§ 2810, subd. (b)(9), 2815.) Moreover, under the National Environmental Policy Act ("NEPA"), an Environmental Impact Statement must be conducted "in cooperation with State and local governments" and other agencies with jurisdiction by law or other special expertise.¹ In addition to being legally required, a greater understanding of and accommodation for local concerns is essential to the success of the BDCP since the project will directly impact thousands of acres of private property, as well as numerous waterways, within the Delta.

As has been discussed by the District and others, the BDCP process has been unsatisfactory in that there has been no formal process whereby the District's and other local concerns are actually addressed. In addition to comments submitted directly to the

¹ 42 U.S.C., §§ 4331, subd. (a), 4332, subd. (C)(iv).

Steering Committee, numerous important comments were also provided at the Delta Workshops held in September 2009. While these comments were duly summarized in the BDCP Delta Workshop Report, there is no indication that these comments are actually being considered and/or will receive any response. Moreover, the Delta Workshop comments raised many detailed issues that are not adequately reflected in the three generic "Delta Concerns" listed in the November 19, 2009, Steering Committee BDCP Remaining Issues handout.

Thus, the District requests that formal disposition be provided to all written comments from interested observers as well as the issues raised in the September 2009 Delta Workshops. Doing so would both effectuate legal requirements under the NNCPA and NEPA, as well as send a message to the affected communities that their participation is meaningful.

Thank you for your attention to this matter.