

San Francisco
Water Power Sewer
Services of the San Francisco Public Utilities Commission

May 25, 2011

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

Re: BDCP – Upstream Water Suppliers

Dear Dr. Meral:

A broad coalition of upstream water suppliers have provided letters to you and the previous administration expressing concern about how the Bay-Delta Conservation Plan (BDCP) may be ultimately implemented and how our respective regions could be affected. The BDCP is a voluntary permitting program undertaken by those who depend on exports from the Delta. Accordingly, while we all have vital interests in the Bay-Delta watershed, none of us anticipates any direct benefits from the BDCP. Therefore, upstream water suppliers should not be expected or required to contribute resources to enable BDCP to succeed or to mitigate in any way for the impacts of the BDCP.

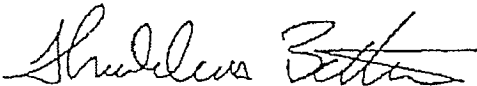
We are committed to continuing independent work in our regions that focuses on regional sustainability, local water supply reliability, and environmental protections, as well as the related funding mechanisms to accommodate our own actions. These actions will continue with or without the BDCP, and we are confident that the Delta will benefit from our actions upstream.

Our path forward is based upon our regions continuing to rely upon our own water supplies and our own funding mechanisms to implement our local actions. While we have heard verbal commitments that the implementation of the BDCP will not adversely affect our regions, we need to reach a formal and binding agreement with the administration and BDCP beneficiaries. Accordingly, we propose to discuss with you at your earliest convenience the enclosed "Bay-Delta Conservation Plan: Respecting Upstream Water Self-Sufficiency" with the goal of reaching agreement with the Brown Administration on the terms set forth in this letter.

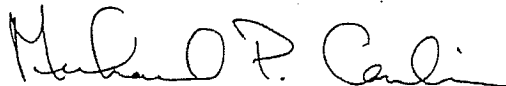
As part of our commitment to work collaboratively with all parties to address the water supply and environmental needs of all of California, the undersigned upstream water suppliers commit to carry out our local actions and projects (including water supply and environmental projects) and support water transfers between willing sellers and buyers. For the BDCP, we support a finance plan where (i) the direct beneficiaries of the BDCP pay for facilities and related mitigation measures and (ii) upstream water suppliers are not required to pay for facilities, the related mitigation, restoration, physical improvements, nor fund any federal or state agency activities.

We believe this type of agreement and our mutual commitment will be vital to the success of the BDCP and our regions' ability to actively participate in this process. We look forward to working with you.

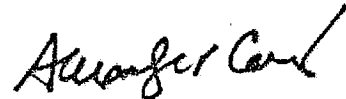
Sincerely yours,



Thaddeus Bettner
General Manager
Glenn-Colusa Irrigation District



Michael Carlin
Deputy General Manager & COO
San Francisco Public Utilities Commission



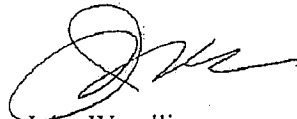
Alex Coate
General Manager
East Bay Municipal Utility District



David Guy
President
Northern California Water Association



Allen Short
General Manager
Modesto Irrigation District



John Woodling
Executive Director
Regional Water Authority

cc: Secretary Laird
Deputy Secretary Hayes

THE BAY-DELTA CONSERVATION PLAN: RESPECTING UPSTREAM WATER SELF-SUFFICIENCY May 2011

A BDCP Overview

The Bay-Delta Conservation Plan (BDCP) is an ongoing and voluntary effort to reconcile Delta export limitations by improving conveyance of water through the Delta, while implementing conservation measures to improve habitat in the Delta. The BDCP is a high priority for both the state and federal administrations. The Secretary for Natural Resources in the December 2010 *Highlights of the BDCP* summarized the program as follows: "For the first time ever, we have assembled a strategy that integrates water flows and quality, habitat restoration, and other ecological actions to help reverse the decline of the Delta's native fish, plant and wildlife species. We have identified water conveyance facilities that can help secure water supplies for 25 million Californians—against seismic risk, levee failure, and climate change." The BDCP has a laudable objective to provide a 50-year permit for "Potentially Regulated Entities" (PREs)—the water agencies and contractors that export or divert water directly from the Delta—to operate the State Water Project (SWP) and Central Valley Water Project (CVP) without conflicting with the laws pertaining to endangered and threatened species. The State Water Resources Control Board (SWRCB) on April 19, 2011 sent a letter to the BDCP proposing a range of flow alternatives that includes 1.5 million acre-feet of additional outflow to the ocean as a project alternative for BDCP to analyze. The process for incorporating the BDCP in the Delta Plan is described in Water Code §85320.

The Upstream Position

Since the inception of the BDCP process, water suppliers that divert water upstream of the Delta have been actively following the BDCP process. Importantly, these entities are not seeking regulatory benefits under BDCP, will not be covered by the approvals and permits issued for the BDCP and will not rely upon the BDCP to receive their water supplies. Nonetheless, upstream water suppliers have supported the state's co-equal goals and have encouraged success in the formulation of the BDCP and related actions to help resolve the challenges in the Delta and to provide stability to California's water system. The support for the BDCP and our ability to help the BDCP process succeed, however, are premised upon respecting and declaring that water rights, supplies and regional self-sufficiency in areas upstream of the Delta will be fully honored.

Upstream water suppliers have consistently and clearly articulated this position for the past five years in various letters and at Steering Committee meetings. Most recently, a large Northern California Coalition has sent letters to the Natural Resources Deputy Secretary. The theme in all correspondence has been that the direct beneficiaries of the BDCP should be fully responsible for any new obligations, including obligations related to flows and funding. The PREs must be responsible for mitigating all of the impacts of the BDCP. Despite these efforts, the SWRCB letter to the BDCP suggests alternatives for significant additional delta outflow, but does not identify who would be responsible for meeting new outflow requirements--parties to the BDCP or upstream water suppliers. Upstream water suppliers have not received acknowledgement or concurrence from the BDCP, the state or federal agencies that our water rights, supplies and self-sufficiency will be respected and honored, and that the PREs will be solely responsible for mitigating all of the impacts of the BDCP.

The Legislative Foundation for Respecting Upstream Regions

The Legislature in the 2009 Delta Reform Act expressly recognized that areas upstream of the Delta should be protected in this process and should not be adversely impacted.

- **Coequal goals:** The state's coequal goals call for "providing a more reliable water supply for California" (not just the export areas receiving the benefit of BDCP). (Water Code §85054.)
- **Water rights protections:** The Legislature expressly recognized that water rights and area of origin provisions shall not be impaired or diminished as a result of the BDCP and the related actions in the Delta Plan. (Water Code §85031.)
- **Regional sustainability:** Delta solutions, such as the BDCP, should not interfere with upstream efforts to maintain or promote regional water sustainability and self-sufficiency. (Water Code §85021.)

The Need to Address Redirected Impacts Upstream

While the 2009 comprehensive water package acknowledged water right priorities and the need for regional self-sufficiency, the legislation was silent on potential redirected impacts from the implementation of the BDCP. While the PREs (export water users) in the BDCP process are now seeking 50-year permits from the federal and state agencies to provide more certainty for their water exports and environmental restoration, the SWRCB letter and other discussions surrounding the BDCP suggest a strong possibility that BDCP implementation will redirect impacts to upstream water suppliers and affect our water rights, supplies and self-sufficiency. Water suppliers upstream of the Delta now seek assurances containing the points below to ensure, clarify, and direct that the BDCP will respect our water rights and our existing water supplies will continue to be regionally sustainable and self-sufficient to meet the water needs for farms, cities, fish, birds, wildlife and recreation.

- 1) Unless and until the SWRCB adopts new basin flow objectives for the Sacramento-San Joaquin River-Bay Delta, the agencies and water right licensees or permittees responsible for meeting D-1641 will continue to meet the obligations as set forth in the D-1641, as amended in 2005.
- 2) If and when the BDCP PRE's file a petition for change in point of diversion pursuant to Water Code section 85086(c)(2), the water agencies and users who are the direct beneficiaries of the BDCP shall be solely responsible for meeting and supplying water for water quality, fish, recreation, and public trust resources as part of the SWRCB approval for the new point of diversion.
- 3) Once the amount of flows needed to fully implement the BDCP have been determined and the responsibility for meeting those flows has been assigned to the direct beneficiaries of the BDCP, the SWRCB may, to the extent necessary, proceed with any necessary additional water quality or water rights proceedings consistent with existing law.

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