

# **SOLURI MESERVE**

A Law Corporation

1822 21<sup>st</sup> Street, Suite 202  
Sacramento, California 95811

916.455.7300 (telephone)

916.244.7300 (facsimile)

www.semlawyers.com

November 4, 2010

**Sent Via Hand Delivery and Email**

BDCP Steering Committee  
c/o Karen Scarborough  
California Natural Resources Agency  
1416 Ninth Street, Suite 1311  
Sacramento, CA 95814

**RE: Willing Sellers Assurances for Habitat Acquisition**

Dear Steering Committee:

Reclamation District 999 submitted comments on September 22, 2010 regarding the need for habitat improvements to be protected in perpetuity through an endowment or other up-front binding financial commitment; as is required for other Habitat Conservation Plans ("HCP"). Up-front funding ensures that environmental benefits actually accrue as intended, and that there is adequate funding for long-term management. These comments were accepted by the Bay Delta Conservation Plan's ("BDCP") consultant, and a funding analysis was subsequently completed. While the method used for calculating that non-wasting endowment was not typical for this region, acknowledging the need to set aside funds was a significant step forward for this process.

However, recent comments at the BDCP Steering Committee meetings have raised the specter of condemnation of lands for conservation, and the intent to implement the BDCP in a combative, rather than a cooperative manner. Specifically, on October 21, 2010, during a discussion of governance and Plan implementation, a Steering Committee member asked if a "willing seller" policy would be used for acquisition of the 80,000 or more acres slated for habitat restoration and creation within the Delta. The response of California Natural Resources Agency Undersecretary Karen Scarborough, was that "willing seller" was a goal of BDCP, but refused to state categorically that condemnation would not be used for habitat restoration acres. The Potentially Regulated Entities apparently are willing only to specify that willing sellers will be relied on "to the maximum extent possible."

The assertion that police powers would be used to condemn lands not just for the BDCP's massive pumps, canals/tunnels, and powerline infrastructure, but also to condemn private lands for habitat creation and restoration that have been managed for productive agriculture for generations, is shocking. The threat of condemnation is a significant issue for reclamation districts. As the local authority responsible for protecting residents and farms from flooding, and providing water service for agriculture, we strongly object to condemnation of high value, sustainable agriculture in order to mitigate for massive impacts on the Delta from water exports and the proposed BDCP "conservation measures."

The historic reliance on willing sellers for habitat projects forms a foundation of trust between agencies that need mitigation lands and local communities. To our knowledge, none of the local HCPs allow condemnation of land for the simple reason that these lands are already managed effectively by local residents and local support is needed to maintain these conservation benefits. Willing seller requirements protect existing habitat and species, and promote a positive, collaborative approach to new land acquisitions and protective easements. As a result, reliance on "willing sellers" is universally accepted as the appropriate approach when acreage is needed for habitat conservation. Deviation from this tradition would set an unfortunate precedent and is likely to have a negative impact on the likelihood of community acceptance of not just the BDCP, but also have a chilling effect on the success of future HCPs.

Most of the terrestrial and wetland habitat in the Central Valley is in private ownership, much of which is protected by private landowners, waterfowl clubs, land trusts and local HCPs. Other protected lands, such as local state and federal wildlife refuges, suffer from a lack of adequate funding despite increasing responsibilities and threats from urbanization and other incompatible uses. Reclamation districts understand these facts because they are required on a daily basis to manage this complex landscape for multiple benefits. Unfortunately, this local understanding has not been adequately acknowledged by the BDCP.

In summary, the use of police powers to condemn sustainable agricultural lands for habitat will not just have significant local effects, but will also impair future HCP and mitigation proposals throughout the state. The burdens of the state and federal water projects cannot fairly be placed on who are currently protecting important upland habitats and managing sustainable agriculture. Condemning our sustainably managed agricultural land for habitat sends exactly the wrong message to Delta communities. We urge that the BDCP reconsider this approach, and that the environmental community join with Delta farmers in protecting habitat through a commitment to only obtain BDCP habitat lands from willing sellers.

BDCP Steering Committee

November 4, 2010

Page 3

Thank you for considering these comments. We look forward to further discussion, and resolution, of this critical issue at future Steering Committee meetings.

Very truly yours,

**SOLURI MESERVE**

A Law Corporation

By:



Osha R. Meserve

ORM/mre

cc: Board of Trustees, Reclamation District 999