

Mr. Mark Cowin, Director
Department of Water Resources
1416 Ninth Street
Sacramento, CA 95814

Subject: Supplemental Scoping Comments on the February 13, 2009, Revised Notice of Preparation of a Draft Environmental Impact Report and Environmental Impact Statement for the Bay Delta Conservation Plan

Dear Director Cowin:

This letter provides supplemental scoping comments to the California Department of Water Resources (DWR) on its February 13, 2009, Revised Notice of Preparation (NOP) of a Draft Environmental Impact Report and Environmental Impact Statement (EIR/S) for the Bay Delta Conservation Plan (Revised NOP). The Delta Stewardship Council (the Council) previously submitted scoping comments on June 28, 2010.

The June 28 letter outlined preliminary comments and issues identified by the Council and it noted that future letters from the Council would contain more detailed comments and discussion of relevant points. This letter builds upon comments previously submitted by the Council. The Council is a new state agency, established February 3, 2010, and is statutorily designated a "responsible agency" regarding development of the BDCP EIR/S (Water Code Section 85320(c)). As such, we look forward to continuing to work with you and your staff to clarify the Council's role as a responsible agency during the development of BDCP and corresponding EIR/S in order to assist the BDCP in meeting the statutory criteria for incorporation into the Delta Plan and to assure the public benefits associated with BDCP are eligible for state funding (see Water Code Section 85320(b)).

As noted in the Council's previous comment letter, the co-equal goals for the Delta, as defined in Water Code Section 85054, must be prominently reflected in the fundamental structure of the BDCP and corresponding EIR/S. The Revised NOP includes the following project purpose and objectives for BDCP:

1. To be granted incidental take permits for the covered species that authorize take related to:
 - a. The operation of existing SWP Delta Facilities and construction and operation of facilities for the movement of water entering the Delta from the Sacramento Valley watershed to the existing SWP and Federal CVP pumping plants located in the southern Delta;
 - b. The implementation of any conservation actions that have the potential to result in take of species that are or may become listed under the ESA, pursuant to the ESA at Section 10(a)(1)(B) and its implementing regulations and policies; and

- c. The diversion and discharge of water by Mirant LLC for power generation in the Western Delta.
2. To improve the ecosystem of the Delta by:
 - a. Providing for the conservation and management of covered species through actions within the BDCP Planning Area that will contribute to the recovery of the species;
 - b. Protecting, restoring, and enhancing certain aquatic, riparian, and associated terrestrial natural communities and ecosystems; and
 - c. Reducing the adverse effects to certain listed species of diverting water by relocating the intakes of the SWP and CVP.
3. To restore and protect the ability of the SWP and CVP to deliver up to full contract amounts, when hydrologic conditions result in availability of sufficient water, consistent with the requirements of state and federal law and the terms and conditions of water delivery contracts and other existing applicable agreements.

It is unclear to the Council the degree to which the co-equal goals will be included in alternatives considered by the BDCP. Specifically, the Revised NOP project objectives were written before the adoption of Water Code Section 85021 in November 2009. This new section declares the State's policy to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. During development of the Council's Delta Plan, alternatives will be considered that reduce reliance on the Delta. The Council looks forward to working with BDCP staff to consider how this state policy can be reflected in BDCP alternatives.

The Council believes that the concept of reliability merits increased consideration. The Council, through adoption and implementation of the Delta Plan, is tasked with providing a more reliable water supply for California (see Water Code Section 85054). It is unclear if delivery of full contract amounts, as described in the Revised NOP, will achieve a more reliable water supply for California. For example, would the frequency of full contract deliveries to SWP and CVP customers increase? And, if so, by how much? Would reliability for non-SWP and -CVP water users be affected? The Council looks forward to working with DWR and BDCP participants to consider how full contract deliveries would affect other water users and how these considerations will form alternatives.

As described in the Council's June 28 letter, the Revised NOP provides that one of the goals of BDCP is to obtain an incidental take permit under Section 2835 and/or Section 2081 of the Fish and Game Code. Water Code Section 85320(b)(1) describes that BDCP must meet the requirements of the Section 2835

(the Natural Community Conservation Planning Act) in order to be incorporated into the Delta Plan and to be eligible to receive state funds for associated public benefits. The Revised NOP project objectives include protecting, restoring, and enhancing the natural communities and ecosystems of the Delta. The Council interprets this to be consistent with its co-equal goals, provided it meets Section 2835 requirements. The Council looks forward to working with BDCP staff to ensure these remain consistent.

The Council appreciates the opportunity to provide these scoping comments in its role as a responsible agency pursuant to CEQA, as required by the Delta Reform Act. Council staff looks forward to working with DWR and BDCP participants to identify, develop, and refine alternatives to meet the goals of BDCP and the requirements of the Delta Reform Act.

Sincerely,

P. Joseph Grindstaff
Executive Officer

Enclosure