

**Thomas M. Zuckerman**  
P.O. Box 1804  
Woodbridge, CA 95258-1804

September 10, 2012

Phil Isenberg, Chair  
Delta Stewardship Council  
980 Ninth Street, Ste 1500  
Sacramento, CA 95814

**RE: Comments made orally at August 23, 2012, at the DSC meeting  
Regarding BCDP Review**

Dear Phil:

In preparation for drafting this letter, I went back to review the tapes of the portion of the meeting on August 23 where I made the above captioned remarks. I discovered that the tape cut off at the beginning of my remarks and did not continue until the next speaker. Consequently, I decided to make a written record of the points I was making for inclusion for your meeting summary and otherwise.

I made three points in my presentation:

**Governance.** The decision making process at the BDCP level, as described in the documents released just in advance of the joint press conference of Governor Brown and Secretary Salazar is muddled and confusing. One is left with the impression that the export contractors will control this process rather than the regulators and/or the scientists. Deputy Resources Secretary Meral, in a subsequent interview, responded to the following questions: "How would such a partnership be managed? Would there be an authority created?" Answer: "Possibly. That's in the very initial stage of discussion, these are agencies that the State has worked with for decades, so we don't think it will be hard for some kind of structure to make use of all our capacities. But we don't have anything near, even a draft of what that would look like."

I pointed out in my remarks that there has been a very spotty record of enforcing water quality standards against the export projects. In fact, there are current violations in the South Delta which remain unredressed. My point is that the DSC will need to be convinced in its review of the BDCP upon appeal (if not during the formation process itself) that a governance mechanism is in place that can be relied upon to meet the requirements of the NCCP Permit into the future.

Telephone: (209) 745-5537

Fax: (209) 745-4792

e-mail: [tmz@talavera.us](mailto:tmz@talavera.us)

2012 SEP 11 PM 2:33

RECEIVED  
DELTA COUNCIL  
MAILROOM

September 10, 2012

**Financial Ability.** One of the requirements of a valid NCCP Permit is a showing of financial reliability, i.e., are sufficient funds available and committed to insure the performance of the NCCP. Current understanding is that the BDCP will rely upon a mixture of export project resources, including those pledged by the export contractors themselves, and public financing to achieve all the construction financing costs, financing costs, maintenance costs and adaptive management initiatives that may be required over the course of the NCCP Permit. Identification and confirmation that these financial resources are and will remain adequate over the course of the NCCP Permit will be an essential finding required upon your review.

**Separate Counsel.** Inasmuch as the Dept. of Fish & Game, whose conclusions involve BDCP compliance with the requirements of the NCCP Permit, receives its legal advice and support from the California Attorney General's office, it will be advisable for the DSC to obtain its legal advice in acting upon an appeal of the BDCP from an independent source. You should anticipate this necessity and the financial requirements thereof in your budgeting for future DSC operating expenses lest you find yourselves without independent counsel during the very short period you will have to consider such an appeal.

At the conclusion of my remarks, you asked me to provide you with legal opinion on these points. Since I am no longer an active member of the State Bar of California, I will endeavor to procure such an opinion from someone who is. Thank you very much for your consideration.

Yours very truly,



THOMAS M. ZUCKERMAN

TMZ:csf

cc: Dante J. Nomellini  
John Herrick  
Melinda Terry