



September 20, 2012

BOARD OF SUPERVISORS
SEP 21 2012
OROVILLE, CALIFORNIA

Steve Lambert, Chair
Butte County Board of Supervisors
25 County Center Drive
Oroville, California 95965

Dear Mr. Lambert

Thank you for your letter of August 14 regarding the Bay Delta Conservation Plan (BDCP). Although you state in your letter that you oppose the BDCP proposal in its current form, you also recognize that no final BDCP proposal has been adopted, and we appreciate your willingness to continue to participate in BDCP as we develop a final proposal. We do not expect a final proposal to be ready for adoption until late spring of next year.

You asked that the BDCP lead agencies develop an enforceable means to assure that certain principles will be honored, and in particular that implementation of BDCP will neither result in adverse impacts on water rights in the Delta watershed nor impose any obligations on upstream water rights holders to supplement Delta flows. Additionally, you asked that BDCP lead agencies promote these operational principles to other agencies that have authority over water rights including the State Water Resources Control Board (SWRCB) and the Delta Stewardship Council (DSC). Again, these points are reasonable, and we agree that the water rights of those upstream of the Delta must be protected.

These principles will be reflected in the final version of the BDCP that the Department of Water Resources (DWR), as the primary project applicant and proponent, submits for final action to the other state and federal agencies with decision-making responsibility over the BDCP, namely, the Department of Fish and Game (DFG), the US Fish and Wildlife Service (USFWS), and the National Marine Fisheries Service (NMFS). This commitment will also be reflected in the final Environmental Impact Report/Statement (EIR/EIS) and related project approval documents prepared under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). Once DWR certifies the Final EIR portion of the Final EIR/S showing no significant adverse impacts from BDCP on upstream water rights, the existence of this certified CEQA document will emphasize this finding to other agencies. Further, as responsible agencies under CEQA, the SWRCB and the DSC generally must presume that the EIR/S complies with CEQA for purposes of their use as responsible agencies unless a subsequent EIR or supplemental EIR is necessary in order to grant their approvals. (See Pub. Resources Code, §§ 21167.2, 21167.3; Cal. Code Regs, tit. 14, § 15096, subd. (e).)

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Baldwin Hills Conservancy • California Coastal Commission • California Coastal Conservancy • California Conservation Corps • California Tahoe Conservancy
Coachella Valley Mountains Conservancy • Colorado River Board of California • Delta Protection Commission • Delta Stewardship Council • Department of Boating & Waterways • Department of Conservation
Department of Fish & Game • Department of Forestry & Fire Protection • Department of Parks & Recreation • Department of Resources Recycling and Recovery • Department of Water Resources
Energy Resources, Conservation & Development Commission • Native American Heritage Commission • Sacramento-San Joaquin Delta Conservancy • San Diego River Conservancy
San Francisco Bay Conservation & Development Commission • San Gabriel & Lower Los Angeles Rivers & Mountains Conservancy • San Joaquin River Conservancy
Santa Monica Mountains Conservancy • Sierra Nevada Conservancy • State Lands Commission • Wildlife Conservation Board

CC: BOS, Water, CAD



In other words, either responsible agency using our certified final EIR/S could not alter the BDCP as submitted by DWR and approved by DFG in a manner that causes a new upstream significant effect without first preparing a new EIR grappling with any such significant effects, which, under CEQA, would have to be mitigated to less than significant levels if feasible (see Pub. Resources Code, § 21002).

While the Natural Resources Agency and the other BDCP lead agencies may promote the operational principles inherent in the BDCP process to other state agencies, including the DSC and the SWRCB, these other agencies have their own independent responsibilities with which they must comply. The BDCP and its CEQA/NEPA processes do not affect any independent authority granted to other state agencies. In particular, the SWRCB has long-term ongoing statewide public trust and water quality duties.

We share your concerns about the level of Lake Oroville. Modeling of various operating scenarios under BDCP continues, and the impacts on Lake Oroville are being closely examined. DWR shares your concern about the recreational, water supply, and energy impacts of excessive drawdown of Lake Oroville to implement fish protection flows in the Delta. DWR is therefore working closely with DFG to develop a BDCP operating scenario which would protect both native California fish species and the important benefits of maintaining reasonable amounts of water in Lake Oroville. The results of this work should be available for public review by the end of September.

You also requested greater involvement by the Northern Sacramento Valley public in BDCP. This is a good idea, and we will act on it. BDCP already meets periodically with water rights holders upstream of the Delta to exchange ideas and share information. We also have public meetings once every month or two in Sacramento. We recognize, though, that these meetings are not convenient to those living in the Upper Sacramento Valley. Once we have a better developed BDCP preferred project, we will hold a meeting for stakeholders in the Northern Sacramento Valley, at which impacts on the region (if any) will be fully identified and explained.

Thank you for your patience and participation as we continue to develop the BDCP. We share your conviction that your concerns can be worked out and we appreciate your willingness to work with us on a plan that will benefit Northern California, as well as the state as a whole.

Sincerely,



John Laird
Secretary for Natural Resources