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September 8, 2008

Mr. John Kirlin
Executive Director
Delta Vision Task Force
1416 Ninth Street, Suite 1311
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RE: Questions Regarding a Potential State Coastal Management Program for the Delta

Dear Mr. Kirlin:

This letter responds to your legal questions concerning the potential for federal approval of a new or amended state coastal management program (hereafter "CMP" or "management program") for the delta region pursuant to the federal Coastal Zone Management Act (CZMA), 16 U.S.C. § 1451 et seq. This letter is based on the results of our legal research, as well as discussions with California Coastal Commission, San Francisco Bay Conservation and Development Commission (BCDC) and federal Office of Coastal and Resource Management (OCRM) staff. Given the legal focus of this letter, it does not analyze the wisdom, practicality or political feasibility of creating a new or amended CMP for the delta.

SUMMARY OF QUESTIONS PRESENTED AND CONCLUSIONS REACHED

The first section summarizes the basic substantive and procedural requirements for the state to obtain approval of a CMP. While these requirements are extensive, they are not insurmountable.

The second section discusses whether a separate CMP can be created for the delta, or alternatively whether the state's existing CMP would have to be amended to incorporate the delta. This section concludes that a delta CMP could be established as a new, independent component of the existing California CMP. In the alternative, one or both of the two major existing California CMP segments administered by the Coastal Commission and BCDC could be expanded to include the delta. Either approach would require an amendment to the existing CMP.

The third section addresses whether the existing two lists of federal licenses and permits subject to consistency certification requirements can be amended to include endangered species take permits and other types of federal agency approvals or whether a third list can be established in conjunction with the development of a new delta segment of the state's existing

CMP. This section concludes that either option is available.

The fourth section discusses whether the delta could be included within the CZMA's definition of the "coastal zone" and thus whether California's existing CMP could be amended to include the delta. It concludes that the answer will require a factual analysis that is beyond the scope of this memorandum, but is likely yes, at least as to some portion of the delta.

Finally, the fifth section briefly discusses whether a new delta CMP segment could incorporate the anticipated Bay-Delta Conservation Plan (BDCP) and concludes that this would be legally permissible, provided the BDCP, in combination with the other portions of a delta CMP segment, meets all requirements of the CZMA and its implementing regulations for approval of a CMP.

1) WHAT ARE THE REQUIREMENTS FOR APPROVAL OF A NEW CALIFORNIA COASTAL MANAGEMENT PLAN?

The requirements and process for approval of a state CMP are set forth in the CZMA and its implementing regulations at 15 C.F.R. Part 923.

A. Substantive Requirements for CMP Approval

The basic substantive requirements for federal approval of a state CMP program are as follows. Note that the following is not a comprehensive discussion of all substantive requirements for CMP approval, but rather is simply an overview of some of the more critical requirements.

The state must develop a management program that is adequate to carry out the purposes of, and consistent with the goals and policies of, the CZMA. (See 16 U.S.C. §§ 1452, 1455(d)(1); 15 C.F.R. § 932.3(a).) In general, the program must do all of the following:

- 1) Identify and evaluate coastal resources that require state management or protection;
- 2) Reexamine existing policies or develop new policies to manage these resources which are specific, comprehensive and enforceable;
- 3) Determine specific use and special geographic areas that are to be subject to the management program;
- 4) Identify inland and seaward boundaries of the area subject to the management program;
- 5) Provide for the consideration of the national interest in the planning for and siting of certain facilities;
- 6) Include sufficient legal authorities and organizational arrangements to implement and ensure conformance with the program;
- 7) Provide for public participation in permitting processes, consistency determinations, and other similar decisions;

- 8) Provide a mechanism to ensure that all state agencies adhere to the program; and
- 9) Contain enforceable policies and mechanisms to implement the state's Coastal Nonpoint Pollution Control Program, as required by section 1455b of the CZMA (see description of the California CNPCP, attached).

(15 C.F.R. § 923.1(c); 16 U.S.C. §§ 1455(d)(2), (d)(9)-(11), (d)(14)-(16).)

The CZMA and its implementing regulations define a “management program” as a “comprehensive statement in words, maps, illustrations or other media of communication, including an articulation of *enforceable policies* and citation of authorities providing this enforceability, prepared and adopted by the state . . . setting forth objectives, policies and standards to guide public and private uses of lands and waters in the coastal zone.” (15 C.F.R. § 923.2(g), emphasis added; see also 16 U.S.C. § 1453(12).)¹ The CZMA lists the basic elements and substantive components of a state management program (see 16 U.S.C. § 1455(d)), while the CZMA implementing regulations contain more detailed requirements concerning the content of state management programs. The basic requirements for and substantive components of a state CMP are summarized below.

1. **Land and water uses to be managed**

First, the management program must define permissible land and water uses in the coastal zone and “provide for the management of those land and water uses having a direct and significant impact on coastal waters and those geographic areas which are likely to be affected by or vulnerable to sea level rise.” (16 U.S.C. § 1455(d)(2)(B); see also 15 C.F.R. §§ 923.3(b), 923.11(a).) The CMP must explain specifically how these uses will be managed under the program. (15 C.F.R. § 923.11(a)(3).) The CZMA regulations contain detailed requirements regarding identification and management of land and water uses in a state CMP. (See *id.*, Part 923, Subpart B, § 923.10 et seq.)

¹ The definitions of “land use” and “water use” are found at 16 U.S.C. § 1453(10) and (18). “Enforceable policies” is defined as “State policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone.” (*Id.*, § 1453(6a).)

2. **Protection of significant resources and areas**

Second, the management program must “include provisions to assure appropriate protection of those significant resources and areas, such as wetlands, beaches and dunes, and barrier islands, that make the State’s coastal zone a unique, vulnerable, or valuable area.” (15 C.F.R. § 923.3(b).) Again, the regulations contain detailed requirements for designating these “areas of particular concern” subject to special management “because of their coastal-related values or characteristics, or because they may face pressures which require detailed attention beyond the general planning and regulatory system.” (*Id.*, § 923.20(a); see *id.*, Part 923, Subpart C; see also 16 U.S.C. § 1455(d)(2)(C) and (d)(9), (d)(13).) Special management methods may include “regulatory or permit requirements applicable only to the area of particular concern,” or increased inter-governmental coordination, technical assistance and/or financial expenditures, among other management techniques. (15 C.F.R. § 923.20(a).)

The management program also must incorporate procedures whereby specific areas may be designated for preservation or restoration to preserve their conservation, recreational, ecological, historical or esthetic values. (16 U.S.C. § 1455(d)(9); 15 C.F.R. § 932.22.) The management program further must include “an inventory and designation of areas that contain one or more coastal resources of national significance,” as well as “specific and enforceable standards to protect such resources.” (16 U.S.C. § 1455(d)(13).)

3. **Enforceable policies, authorities and organizational structure**

Third, the management program must contain “a broad class” of enforceable policies in each of the following areas:

- 1) Resource protection;
- 2) Management of coastal development; and
- 3) Simplification of government processes.

(15 C.F.R. § 923.3(c).) These broad classes in turn must include “specific policies that provide the framework for the exercise of various management techniques and authorities governing coastal resources, uses, and areas,” including policies that address uses of, impacts to, and preservation and enhancement of wetlands, and policies that reduce risk of flood loss, minimize the impacts of flooding, and preserve the natural and beneficial values of floodplains. (*Ibid.*) In addition, the management program must include “broad guidelines on priorities of uses in particular areas.” (16 U.S.C. § 1455(d)(2)(E); 15 C.F.R. § 923.21(a) and (g).) The program policies “must be appropriate to the nature and degree of management needed for uses, areas and resources” subject to the program. (15 C.F.R. § 923.3(d).)

The “crucial underpinnings for enforcing the policies” of the management program are the “authorities and organizational structure” on which the state will rely to administer the

program. (15 C.F.R. § 923.40(a).) The authorities and organizational structure guide the management of land and water uses and areas identified in the program. (*Ibid.*) The authorities must ensure implementation of the CMP's enforceable policies (both in terms of geographic scope and subject matter), and be "sufficiently comprehensive and specific to regulate land and water uses, control development, and resolve conflicts among competing uses." (*Ibid.*) The organizational structure likewise ensures implementation of the management program, and must include a description of "the responsibilities and interrelationships of local, areawide, State, regional and interstate agencies in the management process." (16 U.S.C. § 1455(d)(2)(F); see also 15 C.F.R. § 923.46.)

The state must identify relevant state constitutional provisions, statutes, regulations, case law and other legal instruments which demonstrate that the state has the ability to implement the management program's enforceable policies. (15 C.F.R. § 923.41(b); 16 U.S.C. § 1455(d)(2)(D).) The state program also "must incorporate, by reference or otherwise, all requirements established by" federal, state or local government agencies pursuant to the federal Clean Air Act and Clean Water Act. (15 C.F.R. § 923.45; 16 U.S.C. § 1456(f).)

4. State management agency or agencies designated to implement policies

The management program must designate an agency or agencies responsible for implementing and enforcing the program. It is up to the state to determine which entity or entities will implement the various program requirements. (15 C.F.R. § 923.40(b).) The state can choose a single agency or more than one agency to do this (including state agencies, local governments and regional entities), provided each agency has authority for management of the coastal zone. (15 C.F.R. §§ 923.40(b), 923.41(a)(2); 16 U.S.C. § 1455(d)(10).) The "primary [CMP] approval criterion" is a determination that the designated management agency or agencies are required to exercise their authorities in conformance with the management program. (15 C.F.R. § 923.40(b).)

Regardless of which agencies are selected, the "essential requirement is that the State demonstrate that there is a means of ensuring" compliance with the CMP's enforceable policies. (15 C.F.R. § 923.40(b); 16 U.S.C. § 1455(d)(2)(D).) In other words, the program must "identify the means by which the state proposes to exert control over the permissible land uses and water uses within the coastal zone." (15 C.F.R. § 923.41(a)(1).) In order to do so, the CMP must utilize one or more of the following three methods of oversight and enforcement: (1) state establishment of criteria and standards for local implementation, subject to administrative review and enforcement; (2) direct state land and water use planning and regulation; or (3) state review for consistency with the CMP of all development plans, projects, or land and water use regulations proposed by any state or local authority or private party. (15 C.F.R. § 923.40(b); 16 U.S.C. § 1455(d)(11).) The last method must include state power to approve or disapprove the activity after a public notice and hearing. (16 U.S.C. § 1455(d)(11).) The CZMA regulations contain detailed requirements addressing each of these methods. (See 15 C.F.R. §§ 923.42,

923.43, 923.44.)

The agency or agencies chosen to oversee implementation of the management program must have authority to manage the defined coastal zone and implement the management program, including authority to: (1) administer land and water use regulations “to control development to ensure compliance with the management program and to resolve conflicts among competing uses;” and (2) “acquire fee simple and less than fee simple interests in land, waters and other property through condemnation or other means when necessary to ensure conformance with the management program.” (15 C.F.R. § 923.41(a)(2); 16 U.S.C. §§ 1455(d)(7), (d)(10).)

5. Other requirements

The management program must “provide for adequate consideration of the national interest involved in planning for, and managing the coastal zone, including the siting of facilities such as energy facilities which are of greater than local significance.” (15 C.F.R. § 932.52; 16 U.S.C. §§ 1455(d)(2)(H), (d)(8).) Further, the management program must contain “a method of assuring” that local land and water use regulations in the coastal zone “do not unreasonably restrict or exclude” uses “of regional benefit.” (16 U.S.C. § 1455(d)(12); 15 C.F.R. § 923.12.)

Finally, the CZMA and its implementing regulations contain a detailed discussion of the mandatory procedural components of a management program, including: (1) requirements for public participation in permitting processes, consistency determinations and similar decisions; (2) state procedures for obtaining consistency determinations and certifications (including designation of a state agency to handle consistency review); (3) mechanisms for ensuring continuing inter-agency consultation and coordination throughout program implementation; and (4) mechanisms to ensure that all state agencies will adhere to the program. (16 U.S.C. § 1455(d)(3)(B), (d)(14), (d)(15); 15 C.F.R. §§ 923.50(b), 923.53, 923.57.) For example, there are specific requirements for state coordination of the CMP with local governments. Before implementing any management program decision that would conflict with any local zoning ordinance, decision, or other action, the state coastal management agency must send a notice of the management program decision to any affected local government and provide that agency with a 30-day period in which to comment on the proposed decision. (16 U.S.C. § 1455(d)(3)(B); 15 C.F.R. § 923.57.)

B. Process for CMP Approval

The CZMA and its implementing regulations contain a number of procedural requirements for CMP approval, as discussed below.

1. State process

The state must hold a minimum of two public hearings in developing the management program with at least thirty days' public notice of the hearings. (See 16 U.S.C. § 1455(d)(4); 15 C.F.R. § 923.58.) The state must coordinate closely with various interest groups in developing its management program. (16 U.S.C. § 1455(d)(3)(B); 15 C.F.R. § 923.50(b).) There must be notice and "full participation" by relevant federal, state and local government agencies, regional organizations, port authorities, and other interested public and private parties and persons. (16 U.S.C. § 1455(d)(1); 15 C.F.R. §§ 923.3(a), 923.30(b), 923.51, 923.55.) To ensure such full participation, the state must "[h]old public meetings, workshops, etc. during the course of program development at accessible locations and convenient times, with reasonable notice and availability of materials." (15 C.F.R. § 923.55(d).) The state also must consult with each relevant federal agency listed in section 932.3(d), among other specific requirements. (*Id.*, § 923.51(d).) In addition, the state must coordinate its program with specified local, areawide and interstate plans applicable to areas within the coastal zone. (16 U.S.C. § 1455(d)(3)(A); 15 C.F.R. § 923.56.) Finally, the management program must be reviewed and approved by the state Governor. (16 U.S.C. § 1455(d)(5).)

2. Federal process

The state then submits the approved management program, along with a draft environmental assessment prepared pursuant to the National Environmental Policy Act (NEPA), to the Office of Coastal Resources Management (OCRM) in the National Oceanic and Atmospheric Administration (NOAA) for a "threshold review." (15 C.F.R. § 923.60(a).) The state's submission must include a letter from the Governor stating, among other things, that the Governor has reviewed and approved the management program as state policy and that the state has the authorities and organizational structure necessary to implement the program. (15 C.F.R. § 923.48.)

OCRM will determine if the management program meets the requirements of the CZMA and its implementing regulations. (15 C.F.R. § 923.60(b).) If the OCRM makes "positive findings" in this regard and does not require "major revisions" to the program, it will prepare a draft and final environmental impact statement pursuant to NEPA. (*Ibid.*) Once NEPA review is completed, the Assistant Administrator of NOAA will determine whether to approve or disapprove the state program. (*Ibid.*) Approval requires, among other things, that "the views of federal agencies principally affected by the state program have been adequately considered." (16 U.S.C. § 1456(b).) The CMP approval process is expected to take at least seven months. (15

C.F.R. § 923.60(b.)

2) CAN CALIFORNIA DEVELOP A NEW CMP, OR MUST THE EXISTING APPROVED CMP BE AMENDED? IF THE LATTER, WHAT IS THE PROCESS FOR AMENDING THE EXISTING CALIFORNIA CMP?

Although technically each state must have only one CMP, there does not appear to be any restriction on a state creating independently-functioning components (referred to as segments) of that management program and submitting these segments to OCRM separately for approval. In fact, California already has two major independent segments to its approved CMP: one for the California Coastal Commission and one for BCDC.² According to Coastal Commission staff, these segments were submitted to OCRM for review and approval at separate times. Thus, it would appear that California could develop and submit to OCRM a third state CMP segment for the delta region. However, even though a management program for the delta may be developed and submitted for approval as a separate *segment* of the state CMP, this still would require the existing CMP to be amended.

Developing a new delta CMP segment of the existing California CMP will need to be accomplished in several steps. First, given the requirements for CMP approval and the need to ensure enforceability of and authorities for the program, as discussed above, development of a delta CMP program likely will require enactment of state legislation expanding the definition of coastal zone (see answer to question 4 below) and establishing a new program for the delta with enforceable policies providing for resource protection and management. This program could consist of new regulatory requirements and/or could enhance and expand the requirements of existing state agencies and programs. It also would have to specify whether a new agency or combination of existing state and local government agencies would administer and enforce the program.

Second, in order to coordinate a new delta CMP segment with the existing approved CMP segments administered by the Coastal Commission and BCDC, it likely will be necessary to make technical amendments to the existing Coastal Commission and BCDC programs. For example, the coastal zone boundaries and Coastal Commission/BCDC authority and jurisdiction will need to be clarified and coordinated with the new delta program. This likely will require legislative amendments to the California Coastal Act, Public Resource Code § 30000 et seq., and the McAtter Petris Act., Government Code § 66600 et seq., which are integral components of the state's existing CMP. In addition, the Coastal Act currently designates the Coastal Commission as "the state coastal zone planning and management agency for any and all purposes," with authority to "exercise any and all powers set forth" in the CZMA. (Pub.

² A third important segment of the state's existing CMP, which relates to both of the other two segments, is the program administered by the California Coastal Conservancy.

Resources Code, § 30330.) The Coastal Commission also is designated as the state agency responsible for issuing federal consistency determinations and certifications, except for those federal activities, licenses and permits that are located within the area of BCDC jurisdiction. (*Ibid.*) These provisions probably also will need to be amended and clarified to account for a new delta program. Or, as an alternative to amending the state CMP to establish a new and independent delta segment of that plan, it is possible that the existing programs established by the Coastal Act or McAteer Petris Act could be modified and expanded to include the delta.

As mentioned, regardless of how a new delta CMP segment is structured in relation to the existing approved segments of the California CMP, adoption of a new delta program will require OCRM approval of an amendment to the state's existing CMP. The procedures for amending an existing, approved state CMP are set forth at 16 U.S.C. § 1455(e) and 15 C.F.R. Part 923, Subpart H, § 923.80 et seq. In brief, amendment requests must be submitted to the Assistant Administrator for NOAA by the state Governor or by the head of the state agency designated to administer CZMA grant funds (the Coastal Commission in California -- see below). (15 C.F.R. § 923.81(a).) The state must hold at least one public hearing on the proposed amendment. (*Ibid.*) Amendment requests must contain the components specified in 15 C.F.R. § 923.81(b). The process for OCRM review and approval of amendments is set forth in 15 C.F.R. § 923.82 and 16 U.S.C. § 1455(e). According to OCRM staff, depending upon the scope of the proposed amendment to an existing CMP, the amendment process may include aspects of the approval process applicable to new CMPs discussed in section 1.B above.

Another important issue to consider is how CZMA grant funds will be made available to and distributed among three state CMP segments. In addition to the procedures for consistency review, one of the big advantages to the state of having an approved CMP is the availability of grant funding for administering the state CMP; for preservation and restoration of designated special management areas; for public access to coastal areas; and for other purposes. (See, e.g. 16 U.S.C. §§ 1455(a), 1456 and 15 C.F.R. Part 923, Subparts I, J and K, commencing at § 932.90 et seq.) Grants for administration of the management program are allocated on a state-by-state basis based on "the extent and nature of the shoreline and area covered by the program, population of the area, and other factors." (16 U.S.C. § 1455(c); see 15 C.F.R. Part 923, Subpart J for a discussion of these grant allocation factors.)

The CZMA and its implementing regulations also require the Governor of the State to designate a single state agency that will receive and administer grant funds to implement the state CMP. (16 U.S.C. § 1455(d)(6); 15 C.F.R. § 932.47.) The California Coastal Act designates the Coastal Commission as this agency. (Pub. Resources Code, § 30330.) Thus, currently the Coastal Commission is responsible for administering all CZMA grant funds. Pursuant to a memorandum of understanding with BCDC, the Coastal Commission acts as a pass through for BCDC's share of CZMA grant funds. The allocation of funds and BCDC's share is determined by informal agency agreement.

We have been informed by Coastal Commission and other agency staff that California currently is receiving the maximum amount of funds that it is entitled to receive for administration and implementation of its CMP under the CZMA. As a result, if California increases the scope of its CMP to include the delta, the additional financing necessary to support this expanded program would have to be provided by the state. Therefore, the primary advantage of having an approved delta segment of the state CMP would be the availability of state consistency review authority over federal agency activities and federal licenses and permits in the delta.

3) AS A RELATED QUESTION, CAN CALIFORNIA DEVELOP A NEW LIST OF FEDERAL LICENSES AND PERMITS SUBJECT TO THE CONSISTENCY CERTIFICATION REQUIREMENT OR MUST THE EXISTING LIST(S) BE AMENDED? IF THE LATTER, WHAT IS THE PROCESS FOR AMENDING THE EXISTING LIST(S)?

California currently has two separately approved lists of federal licenses and permits subject to state consistency certification requirements (one for the Coastal Commission and one for BCDC). Thus, there appears to be no reason why a third list could not be submitted for approval in conjunction with a delta segment of the state CMP. In fact, the CZMA regulations require a state to include a list of federal licenses and permits that would be subject to consistency certification as part of the management program submitted to OCRM for approval. (15 C.F.R. § 923.53(a)(2).) The CMP also may include the following: (1) a list of federal activities (including development projects) which the state management agency believes are likely to significantly affect the coastal zone and thus require a federal consistency determination; and (2) a description of the types of information and data necessary to assess consistency of federal license and permit activities with the state management program. (*Id.*, § 923.53(b).)

Alternatively, one of the existing lists for the Coastal Commission or BCDC could be amended and expanded to cover the delta CMP. The CZMA regulations provide that an existing state license and permit list may be amended after consultation with the affected federal agency and subject to OCRM approval, pursuant to the procedures for amending a state CMP. (15 C.F.R. § 930.53(c).)

4) COULD A NEW OR AMENDED CALIFORNIA CMP APPLY TO THE DELTA -- I.E. COULD THE COASTAL ZONE BE EXPANDED TO INCLUDE THE DELTA?

It is likely that the existing California CMP could be amended to include at least a portion of the delta as part of California's "coastal zone," as defined by the CZMA and its implementing regulations. The requirements for OCRM approval of the *boundaries* of the coastal zone to be covered by a CMP or amended CMP are set forth in 15 C.F.R. Part 923,

Subpart D, § 923.30 et seq. To be approved, a state CMP must include “an identification of the boundaries of the coastal zone,” as defined in the CZMA, that will be subject to the plan. (16 U.S.C. § 1455(d)(2)(A); 15 C.F.R. § 923.1(b)(4).) The CZMA defines the “coastal zone” to extend to inland areas “only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on coastal waters, and to control those geographical areas which are likely to be affected by or vulnerable to sea level rise.” (16 U.S.C. § 1453(1).)

The CZMA regulations further explain the statutory definition and provide that the inland boundary identification *must* include, among other areas: (1) special management areas identified under section 923.21;³ (2) waters under saline influence (e.g. waters containing a significant quantity of seawater); and (3) salt marshes and wetlands subject to tidal inundation. (15 C.F.R. § 923.31(a).) The inland boundary identification *may* include, among other areas: (1) watersheds that “have a direct and significant impact on coastal waters or are likely to be affected by or vulnerable to sea level rise”; and (2) “areas of tidal influence that extend further inland than waters under saline influence” such as “estuaries, deltas and rivers where uses inland could have direct and significant impacts on coastal waters or areas that are likely to be affected by or vulnerable to sea level rise.” (*Id.*, § 923.31(b).)

We do not have the facts before us to make a determination of whether, or to what extent, the delta comes within these provisions. It would, however, appear that at least some portion of the delta could likely come within the definition of the “coastal zone.” For example, applying the foregoing standards and criteria, it is possible that the entire legal delta (Water Code section 12220) could qualify as special management area, watershed or watersheds, and/or area of tidal influence extending further than saline influence subject either to mandatory or permissive boundary identification. Also, portions of the legal delta might qualify as waters under saline influence, salt marshes and wetlands subject to mandatory boundary identification. The criteria for permissive boundary identification in theory might also be applied to portions of the delta beyond the legal delta, provided it can be shown that these areas “could have a direct and significant impact on coastal waters or areas that are likely to be affected by or vulnerable to sea level rise.”⁴ (15 C.F.R. § 923.31(b).)

³ Such “special management areas” may include, among other regions, “areas of unique, scarce, fragile, or vulnerable natural habitat,” “areas of high natural productivity or essential habitat” for fish and wildlife resources, including endangered species, “areas of substantial recreational value and/or opportunity,” areas subject to flooding, geologic hazards, erosion, salt water intrusion, etc., and estuaries. (15 C.F.R. § 923.21(b).)

⁴ Note also that the CZMA excludes from the coastal zone “lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.” (16 U.S.C. § 1453(1).) The California Coastal Act definition of “coastal zone,” however, is broader than the CZMA, inasmuch as it applies to private activities on federal

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Again, determining whether any portion of the delta actually comes within the term “coastal zone” is beyond the scope of this memorandum. Moreover, as previously noted, establishing a new CMP segment for the delta likely will require legislative enactment of a new regulatory program for activities in the delta, as well as amendments to the California Coastal Act and McAtter Petris Act.

5) COULD A NEW CMP FOR THE DELTA INCLUDE THE BAY DELTA CONSERVATION PLAN?

Our research reveals nothing that would *prohibit* incorporation of the BDCP into a new California CMP segment for the delta, as long as the BDCP’s substantive requirements, in combination with other provisions of a delta CMP segment, are enforceable and meet the other CMP approval requirements of the CZMA and its implementing regulations. Those requirements are reviewed in the first section of this memorandum starting on page 2.

As always, please feel free to contact me at 510-622-2136 if you have any additional questions. Thank you.

Sincerely,

[Original signed by]

TARA L. MUELLER
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

lands within the defined coastal zone. (Pub. Resources Code, § 30008 [“within federal lands excluded from the coastal zone pursuant to the Federal Coastal Zone Management Act of 1972, the State of California shall, consistent with applicable federal and state laws, continue to exercise the full range of powers, rights, and privileges it now possesses or which may be granted”].) Thus, presumably a CMP may be approved if it includes a broader, but not a narrower, definition of the coastal zone than in the CZMA and its implementing regulations, provided the state definition is consistent with the CZMA.

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cc: J. Matthew Rodriquez
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