Tuolumne County
Administration Center
2 South Green Street
Sonora, California 95370

Phone (209) 533-5521
Fax (209) 533-6549

Alicia L. Jamar
Clerk of the Board of Supervisors

Elizabeth Logan
Assistant Clerk

BOARD OF SUPERVISORS
COUNTY OF TUOLUMNE

Elizabeth Bass, *First District*
Mark V. Thornton, *Fourth District*

Paolo Maffei, *Second District*

Teri A. Murrison, *Third District*
Richard H. Pland, *Fifth District*

May 20, 2008

Ms. Delores Brown, Chief
Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Re: Scoping Comments; Bay Delta Conservation Plan (BDCP); Notice of Preparation of Environmental Impact Report (EIR) and Environmental Impact Statement (EIS)

Dear Ms. Brown:

Although the Department of Water Resources (DWR) has yet to draft the EIR/EIS with alternatives concerning the BDCP, the County requests that the DWR respond to the following when drafting the BDCP EIR/EIS:

* Counties and watersheds of origin must have assurances that their rights to water resources will be protected and programs to resolve conflicts in the Delta will not result in redirected negative impacts to the counties and watersheds of origin. All of California hydrologic regions should manage resources to achieve an increased degree of self-sustainability and to avoid increasing inter-regional allocation of resources.

* The DWR must evaluate the BDCP for consistency with local County plans and policies concerning area of origin rights.

* How will the BDCP Project planning process coordinate with and take into account the County's Blueprint planning process?

* The BDCP Project planning process must be consistent with the State Water Plan (Bulletin 160).

* How will advancing BDCP goals and objectives impact the statewide hydroelectric generation infrastructure?

* How will the BDCP Project planning process evaluate greater water use efficiency efforts in Southern California that will reduce the dependency for imported water?

* With regard to the Tuolumne Public Power Agency (TPPA), it is imperative that the draft EIR/EIS take into consideration the County of Tuolumne's First Preference Power allocation stemming from New Melones Dam, and that any continued or new management strategies must have no negative impact on the County's power allocation or cost of power to our citizens.

As the County of Origin of the Stanislaus and Tuolumne Watersheds, the County believes it is necessary for DWR to consider circumstances that will not negatively impact and will protect the County's area of origin rights. Furthermore, this Board took action on December 4, 2007, by adopting a resolution "asserting legal standing and formally requests coordination status with all federal and state agencies maintaining jurisdiction over lands and/or resources located within Tuolumne County." The resolution is attached, and this Board formally requests that the DWR, pursuant to Sections 8125-8129 of the California Water Code, "Coordinate" with the County of Tuolumne from this point forward.

The County recommends that DWR, during the drafting of the corresponding EIS/EIR, consider the above County concerns. The County looks forward to meeting with the DWR to discuss and resolve potential impacts of the BDCP.

If you have any questions, please contact Steve Boyack, Natural Resources Analyst at (209) 533-5511.

Sincerely,

Richard H. Pland, Chairman
Tuolumne County Board of Supervisors

c: Congressman George Radanovich
Senator Dave Cogdill
Assemblyman Tom Berryhill
Bev Shane, Director, CDD
Steve Boyack, Resources Analyst
Kathleen Rustrum, TPPA Staff
Sandee Peebles, Western Area Power Administration
Pete Kampa, General Manger, TUD

No. 156-07

Filed: December 4, 2007

By: Alicia L. Jamar

Clerk of the Board of Supervisors

RESOLUTION
OF THE BOARD OF SUPERVISORS OF THE COUNTY OF TUOLUMNE

RESOLUTION ASSERTING LEGAL STANDING AND FORMALLY REQUESTING COORDINATION WITH ALL FEDERAL AND STATE AGENCIES MAINTAINING JURISDICTION OVER LANDS AND/OR RESOURCES LOCATED WITHIN TUOLUMNE COUNTY

WHEREAS, Tuolumne County is a public unit of local government and a 5-member elected Board of Supervisors serves as its chief governing authority; and

WHEREAS, Tuolumne County Board of Supervisors is charged with supervising and protecting the tax base of the county and establishing comprehensive land use plans (including, but not limited to the General Plan) outlining present and future authorized uses for all lands and resources situated within the county; and

WHEREAS, Tuolumne County is engaged in the land use planning process for future land uses to serve the welfare of all the citizens of Tuolumne County; and

WHEREAS, Tuolumne County is comprised of approximately twenty-five percent (25%) privately-held lands with the balance of lands and/or resources publicly owned, managed, and/or regulated by various federal and state agencies; and

WHEREAS, the citizens of Tuolumne County historically earn their livelihood from activities reliant upon natural resources and land which produces natural resources is critical to the economy of Tuolumne County; and

WHEREAS, the economic base and stability of Tuolumne County is largely dependent upon commercial and business activities operated on federally and state owned, managed, and/or regulated lands that include, but are not limited to recreation, tourism, timber harvesting, mining, livestock grazing, and other commercial pursuits; and

WHEREAS, Tuolumne County desires to assure that federal and state agencies shall inform the Board of Supervisors of all pending or proposed actions affecting local communities and citizens within Tuolumne County and coordinate with the Board of Supervisors in the planning and implementation of those actions; and

WHEREAS, coordination of planning and management actions is mandated by federal laws governing land management including the Federal Land Policy and Management Act, 43 US § 1701, and 43 U.S.C. § 1712, regarding the coordinate status of a county engaging in the land use planning process, and requires that the "Secretary of the Interior [Secretary] shall...coordinate the land use inventory, planning, and management activities...with the land use planning, and management programs of other federal departments and agencies and of the state and local governments within which the lands are located"; and

WHEREAS, the coordination requirements of Section 1712 provide for special involvement by government officials who are engaged in the land use planning process; and

WHEREAS, Section 1712 sets forth the nature of the coordination required with planning efforts by government officials and subsection (f) of Section 1712 sets forth an additional requirement that the Secretary "shall allow an opportunity for public involvement" (including local government without limiting the coordination requirement of Section 1712 allowing land or resource management or regulatory agencies to simply lump local government in with special interest groups of citizens or members of the public in general); and

WHEREAS, Section 1712 also provides that the "Secretary shall... assist in resolving, to the extent practical, inconsistencies between federal and non-federal government plans" and gives preference to those counties which are engaging in the planning process over the general public, special interest groups of citizens, and even counties not engaging in a land use planning program; and

WHEREAS, the requirement that the Secretary "coordinate" land use inventory, planning, and management activities with local governments, requires the assisting in resolving inconsistencies to mean that the resolution process takes place during the planning cycle instead of at the end of the planning cycle when the draft federal plan or proposed action is released for public review; and

WHEREAS, Section 1712 further requires that the "Secretary shall... provide for meaningful public involvement of state and local government officials... in the development of land use programs, land use regulations, and land use decisions for public lands"; and, when read in light of the "coordinate" requirement of Section 1712, reasonably contemplates "meaningful involvement" as referring to on-going consultations and involvement throughout the planning cycle, not merely at the end of the planning cycle; and

WHEREAS, Section 1712 further provides that the Secretary must assure that the federal agency's land use plan be "consistent with state and local plans" to the maximum extent possible under federal law and the purposes of the Federal Land Policy and Management Act and distinguishes local government officials from members of the general public or special interest groups of citizens; and

WHEREAS, the Environmental Protection Agency, charged with administration and implementation of the National Environmental Policy Act (NEPA), has issued regulations which require that federal agencies consider the economic impact of their actions and plans on local government such as Tuolumne County; and

WHEREAS, NEPA requires federal agencies to consider the impact of their actions on the customs of the people as shown by their beliefs, social forms, and "material traits," it reasonably follows that NEPA requires federal agencies to consider the impact of their actions on the rural, land and resource-oriented citizens of Tuolumne County who depend on the "material traits" including recreation, tourism, timber harvesting, mining, livestock grazing, and other commercial pursuits for their economic livelihoods; and

WHEREAS, NEPA requires federal agencies to consider the impact of their actions on the customs, beliefs, and social forms, as well as the "material traits" of the people; and

WHEREAS, it is reasonable to interpret NEPA as requiring federal agencies to consider the impacts of their actions on those traditional and historical and economic practices, including commercial and business activities, which are performed or operated on federally and state managed lands (including, but not limited to recreation, tourism, timber harvesting, mining, livestock grazing, and other commercial pursuits); and

WHEREAS, 42 U.S.C. § 4331 places upon federal agencies the "continuing responsibility... to use all practicable means, consistent with other considerations of national policy to... preserve important historic, culture, and natural aspects of our national heritage"; and

WHEREAS, Webster's New Collegiate Dictionary (at 277, 1975) defines "culture" as "customary beliefs, social forms, and material traits of a group; the integrated pattern of human behavior passed to succeeding generations"; and

WHEREAS, in 16 U.S.C. § 1604, the National Forest Management Act, requires the Forest Service to coordinate its planning processes with local government units such as Tuolumne County; and

WHEREAS, federal agencies implementing the Endangered Species Act, the Clean Water Act, the Clean Air Act, and the Outdoor Recreation Coordination Act (16 U.S.C. § 460l-1(c) and (d)) are required by Congress to consider local plans and to coordinate and cooperate directly with plans of local government such as Tuolumne County; and

WHEREAS, the coordinating provisions referred in the resolution require the Secretary of Interior to work directly with local government to resolve water resource issues and with regard to recreation uses of the federal lands; and

WHEREAS, the regulations issued by the federal agencies in this resolution are consistent with statutory requirements of coordination and direct cooperation and provide implementation processes for such coordination and direct consideration and communication; and

WHEREAS, the California Constitution has recognized Tuolumne County's authority to exercise its local, police and sanitary powers, and the California legislature has recognized and mandated exercise of certain of those powers in specific statutes; and

WHEREAS, the California legislature has mandated in Government Code § 65300 that each county shall prepare a comprehensive plan, and stated legislative intent in Section 65300.9 that the county planning shall be coordinated with federal and state program activities, and has mandated in Section 65103 that county local plans and programs must be coordinated with plans and programs of other agencies; and

WHEREAS, the California legislature has stated its intent in Section 65070 that preparation of state and regional transportation plans be performed in a cooperative process involving local government; and

WHEREAS, the California legislature has mandated in Section 65040 that the State Office of Planning and Research shall "coordinate, in conjunction with...local agencies: with regard to matters relating to the environmental quality of the state"; and

WHEREAS, in Water Code §§ 8125-8129 the California legislature has placed planning for non-navigable streams within the authority of county supervisors, and since such planning activities must be coordinated with natural resource planning processes of federal and state agencies; and

WHEREAS, in Streets and Highways Code §§ 940-941.2 the California legislature has placed the general supervision, management, and control of county roads and highways – including closing such roads (Section 901) and removing and preventing encroachment of such roads and highways, and since planning and actions with regard to such roads by any federal or state agency must be coordinated with the county; and

WHEREAS, in Public Resources Code § 5099.3 the California legislature has mandated coordination by the state with Tuolumne County since it is a county "having interest in the planning, development, and maintenance of outdoor recreation resources and facilities."

NOW THEREFORE BE IT RESOLVED that the Tuolumne County Board of Supervisors does hereby assert legal standing and formally requests coordination status with all federal and state agencies maintaining jurisdiction over lands and/or resources located within Tuolumne County.

BE IT FURTHER RESOLVED that the Clerk of the Board shall cause a copy of this Resolution to be transmitted to local, regional, state, and/or national offices of all federal and state agencies maintaining jurisdiction of lands and/or resources located within Tuolumne County and to all federal and state elected representatives serving Tuolumne County.

BE IT FURTHER RESOLVED that the Clerk of the Board is authorized and hereby directed to publish a copy of this Resolution in the Union Democrat, a newspaper of general circulation printed and published in the County of Tuolumne, State of California.

ADOPTED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF TUOLUMNE ON December 4, 2007.

AYES:	1st Dist.		NOES:	1	Dist. Bass
	2nd Dist. Maffei				Dist.
	3rd Dist. Munison		ABSENT:		Dist.
	4th Dist. Tranbo				Dist.
	5th Dist. Pand		ABSTAIN:		Dist.

CHAIR OF THE BOARD OF SUPERVISORS

ATTEST: _____
Clerk of the Board of Supervisors

No. 156-07