



S J C O G , I N C .

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TRACY,  
AND  
THE COUNTY OF  
SAN JOAQUIN

October 29, 2015

BDCP/WaterFix Comments  
PO Box 1919  
Sacramento, CA 95812

Re: Bay Delta Conservation Plan/California WaterFix Partially Recirculated Draft  
Environmental Impact Report/Supplemental Draft Environmental Impact Statement  
(RDEIR/SDEIS) Comment Letter Pertaining to SJMSCP

Dear BDCP/California WaterFix staff:

SJCOG, Inc., as the administrator of the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP), is providing this individual comment letter on the Bay Delta Conservation Plan (BDCP)/California WaterFix (CWF) Recirculated RDEIR/SDEIS to place on the official record the project's impacts to the SJMSCP. Concurrently, SJCOG, Inc. echoes the conclusions of the Delta Independent Science Board's (Delta ISB) written response on September 30, 2015 regarding the RDEIR/SDEIS document.

Our correspondence with BDCP/CWF staff indicates all alternatives are still being considered with the new alternative although not included in the RDEIR/SDEIS documents. With that understanding, SJCOG, Inc. is resubmitting the prior comment letters associated with prior project alternatives from July 25, 2014 to be incorporated into the public record for all alternatives still being considered. These letters are provided as attachments.

As to the general and specific comments in the RDEIR/SDEIS, SJCOG, Inc. provides the following comments regarding the splitting of the former BDCP into the CWF and the EcoRestore programs:

General Comments:

1. Although the project has been parsed into two parts, the overall impacts of the two projects to the Delta estuary, the region as a whole and the SJMSCP should not be considered as separate but as one entire project. . The project and restoration components

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BDCP/ California WaterFix Recirculated RDEIR/SDEIS -  
SJCOG, Inc.

will have significant, long-term impacts on the ability of the SJMSCP to function and meet the obligations of the existing permits issued by USFWS and CDFW to all signatories of the SJMSCP.

2. The lack of a fully comprehensive and completed Financial Analysis and/or a Cost Benefits Analysis on CWF project clouds whatever benefits the project provides considering no 'new water' is actually being created.
3. In the near future, EcoRestore will need approximately 30,000 acres for restoration projects. Without a complete understanding of where, how and when the future projects will be done, the effects to the SJMSCP can be devastating in meeting the obligations of the under USFWS and CDFW permits.
4. The restoration plans all seem to be in some way, affiliated with public lands and projects/programs which have been in existence for some time under various public/private restoration endeavors as and seem to be potentially harmful to other programs (e.g. SJMSCP) due to unknown/unidentified areas of where restoration is to occur.
5. The short window of time for response to the recirculation of the CWF's RDEIR/SDEIS documents for such a massive public works project (e.g. costs at estimated \$16 billion and impacts to the Delta estuary across multiple counties). Our agency, no agency, cannot conduct a thorough review and analysis and provide comments on the projects impacts to the SJMSCP.
6. As pointed out by the Delta ISB September 30, 2015 comment letter, the 'effects of California WaterFix extends beyond water conveyance to habitat restoration and levee maintenance. These independent issues of statewide importance warrant an environmental impact assessment that is more complete, comprehensive and comprehensible than the current draft.'

Specific Comments:

The preferred alternative for the CWF project as a lone project under the Section 7 federal process and Section 2081 state process does minimize the overall acreage of impacts with regards to the SJMSCP but still has multiple concerns to the county-wide plan.

1. The CWF will still require mitigation to be conducted within the SJMSCP permit area of up to 6,100 acres of land. This number seems small in comparison to the prior mitigation in the BDCP, however, the project and restoration of 6,100 acres can make up almost 10% of the needed agricultural lands above mean sea level for the SJMSCP in the overlap areas.

- i. Since the CWF does not have any constraints with mean sea level acquisition requirements, all lands for mitigation (e.g. swainson's hawk) should be considered for those lands below sea level.
2. For existing preserves and protected lands within San Joaquin County, the alignment of the preferred alternative may be below ground but will still have impacts to some existing preserve lands for protected species (e.g. sandhill crane, swainson's hawks, egrets, etc.) along New Hope Tract and Staten Island.
- a. The alignment of the tunnels will be encroaching on lands within San Joaquin County identified as 'Known' giant garter snake habitat causing an issue for the proliferation of the specie. Federal/state take permits allow take to occur, however, SJMSCP does not allow take within identified areas (attached map). The specific tracts of land identified at the beginning of the SJMSCP permit term in 2001 were noted as "Known Occupied" but those tracts do not include the most recent research and sightings of the GGS specie to the west and south within SJ County. The excerpt of Section 5.2.4.8 of the SJMSCP describing the "Known Occupied" areas under the SJMSCP is provided below:

#### *5.2.4.8 Giant Garter Snake*

*Full avoidance of giant garter snake known occupied habitat is required in compliance with Section 5.5.9 (C) for the following SJMSCP Covered Activities with the potential to adversely affect the GGS and which have not been mapped: golf courses; religious assembly; communications services; funeral; internment services; public services - police, fire and similar; projects impacting channel or tule island habitat; major impact projects including landfills, hazardous waste facilities, correctional institutions and similar major impact projects; recreational trails and campgrounds, recreational outdoors sports clubs; utility services, museums and similar facilities. Known occupied habitat for the giant garter snake is that area west of I-5 on Terminous Tract, Shin Kee Tract, White Slough Wildlife Area, and Rio Blanco Tract. New sites identified during the life of the SJMSCP as confirmed habitat sites for the giant garter snake shall be considered known occupied sites for the purposes of this section.*

3. The CWF document is ambiguous regarding the potential mitigation and restoration associated with the current preferred alternative impacts. As noted in prior documents and continued with this recent released draft document, the project alternative does not provide enough detail (e.g. ratios, timing, location, restoration plans, etc.) or evaluate the near/long term effects of those requirements on the Delta as a whole, the farming community, local economies and other habitat program restoration within the overlap the project area.
4. This RDEIR/SDEIS document continues to fail, as with the prior released draft documents, in being clear, concise and detailed with the project relating to the adaptive management, collaborative science based decision making, levees coupled with the

project operations/maintenance, climate change over the longer term on the Delta because of the preferred alternative, and mitigation/restoration in the broader context of the Delta.

Our staff looks forward to working with the BDCP/California WaterFix staff and consultants on the continued development of the BDCP document and BDCP final EIR/EIS (and accompanying documents) to insure a greater likelihood that the BDCP and SJMSCP will be complimentary to each other rather than conflicting.

Please feel free to contact myself or Steven Mayo, Program Manager, on my staff with any comments, concerns or additional needed information regarding the SJMSCP and the continued work on behalf of the county-wide habitat plan in San Joaquin County.

Sincerely,



STEVE DIAL  
Deputy Executive Director / Chief Financial Officer

Cc: BDCPComments@icfi.com  
Josh Emery, United States Fish and Wildlife Service  
Kursten Sheridan and Robert Stanley, California Department of Fish and Wildlife  
Kathy Miller, San Joaquin County Board of Supervisor and Delta Coalition Chair

Attachments:

- 1. SJCOG, Inc. Letters from July 25, 2014
  - a. BDCP draft EIR/EIS Comments
  - b. BDCP Public Draft Comments
  - c. BDCP Draft IA Comments
- 2. SJMSCP GGS Known Occupied Tracts Map



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SAN JOAQUIN

July 25, 2014

**BDCP Comments**  
Ryan Wulff, NMFS  
650 Capitol Mall, Suite 5-100  
Sacramento, CA 95814

Re: BDCP Draft Environmental Impact Report/Environmental Impact Study (EIR/EIS)  
Comment Letter Pertaining to SJMSCP

Dear Mr. Wulff:

SJCOG, Inc. is the administrator of the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). Our staff has continuously been involved with the evolution of the Bay Delta Conservation Plan (BDCP) since the inception. In addition to this individual comment letter on the BDCP Draft EIR/EIS, SJCOG, Inc., in conjunction with other Delta Initiative Coalition stakeholders, is submitting a separately transmitted joint comment letters. As reference, our agency also concurs with the issues raised in the 'Friends of the River' letter dated May 15, 2014 regarding the extension the comment period due to the failure to release the draft Implementation Agreement (IA).

We identified issues in the prior releases of the BDCP draft document which were again not fully addressed in those specific BDCP document sections nor in this BDCP Draft EIR/EIS. The continued concerns with the BDCP and this Draft EIR/EIS are very similar to those our agency has voiced previously to BDCP staff regarding overlapping parts of San Joaquin County covered by the SJMSCP. They are:

- The unforeseen impacts to the SJMSCP with regards to the federal and state permits being implemented under the existing SJMSCP to balance development and protection of species within San Joaquin County which the BDCP draft EIR/EIS does not fully addressed.

- Certain proposed activities and oversight of the BDCP, such as the types and extent of restoration in the Delta which may have a negative impact on existing preserves and our ability to acquire future preserves within San Joaquin County.
- The future impacts by the BDCP requiring excessive administrative time and costs to the SJMSCP to provide the vast amount of coordination and information to minimize the potential devastating effects to the existing habitat plan.

A further concern our staff had after review of the Draft EIR/EIS is all the Delta counties which have or are developing HCPs or NCCPs approved or to be approved by federal and state regulatory agencies are not being given a full voice with the overlap of the plans.

Focusing on the SJMSCP, the plan area covers approximately one-third of the Sacramento-San Joaquin Delta in both the Primary and Secondary Zones. The SJMSCP is a permitted habitat conservation plan containing existing agreements with our federal partners United States Fish and Wildlife Service (USFWS) and state partners California Department of Fish and Wildlife (CDFW) agencies including a very complicated Biological Opinion issued with the take permits. These existing agreements are a major difference between SJMSCP and the others under development. Therefore, the SJMSCP (and other implementing plans) should be considered an existing condition and included as such as the baseline.

The SJMSCP has been diligently fulfilling the terms of the Implementation Agreement and issued federal and state take permits by mitigating for development in San Joaquin County through acquisition of conservation easements and establishment of habitat preserves under an existing conservation strategy which include areas considered under the proposed Delta Plan and the incorporated BDCP.

After numerous hours of analysis of the enormous amount of text of the various documents which make up the Draft BDCP and the Draft BDCP EIR/EIS, our staff continues to have the same concerns previously expressed in our communications to BDCP staff and consultants as well as new concerns from the Draft BDCP and Draft EIR/EIS which need to be addressed/examined/explained more completely. All these concerns are matters which can cause great conflict between the already approved implementing SJMSCP under federal and state take permits and the proposed developing BDCP.

Therefore, SJCOG, Inc. strongly recommends the following be addressed by any subsequent drafts or documents of an EIR/EIS:

#### Chapter 4 –

- Section 4.1.2 Project Level and Program Level Analyses

As described as a short-coming of the document in this section, the future planned *'locations for restoration and preservation actions within the conservation zones have not been specifically identified at this time'* which means the document is guessing about the impacts to other implementing (e.g. SJMSCP and East Contra Costa HCP/NCCP) and developing (Solano, South Sacramento, Yolo) plans surrounding the Delta. The

document states the *'analysis is being done at a programmatic level based on theoretical effects of typical construction, operation and maintenance activities that would be undertaken for implementation of CM2-CM22 at a program-level of analysis, describing what environmental effects MAY occur in future project phase.'* The document pushes future project-level review (as necessary) prior to implementation of specific measures other than CM-1. The reality of approving one of the largest infrastructure projects which can greatly affect existing and planned habitat conservation plans in the Delta without fully vetting the actual impacts seem near sighted.

The Draft EIR/EIS should take a step back to further detail the specific sites, acreages and restoration/preservation concepts to fully evaluate the impacts in consultation with the specific habitat plan administrators before release of the final EIR/EIS document.

- Section 4.2.1.1 CEQA and NEPA Baselines

The 'Existing Conditions' assumed in the baseline employed in this draft EIR/EIS document is supposed to take into account facilities and ongoing programs that existed as of February 13, 2009. The SJMSCP has been in existence since 2001 and implementing in partnership with the USFWS, under a Section 10 take permit, and CDFW, under a Section 2081 take permit successfully within San Joaquin County which covers approximately 33% of the Sacramento San Joaquin Delta area. Over that time, the SJMSCP has employed a Conservation Strategy which is the back bone of the preserve system to off-set the loss of thousands of acres of covered activities within San Joaquin County over the 50-year term of the take permits. The BDCP Draft EIR/EIS has not based the document on the full build out of the SJMSCP for the overlap areas of the two very different plans which can create unrecoverable impacts to an existing habitat plan.

The Draft EIR/EIS should consider the full build out of the SJMSCP (covered activities and preservation) as the baseline. Also, our agency cannot fully comment on the draft EIR/EIS without adequate time to review in concert with the important accompanying document of the draft IA.

- Section 4.2.5.2 Cumulative Effects Analysis

The Draft EIR/EIS states the SJMSCP was accounted for as an existing condition under the cumulative effects analysis based on Appendix 3D, *Defining Existing Conditions, the No Action/No Project Alternative, and Cumulative Impact Conditions*, but in the section described it only mentions 'the contribution of the BDCP to other programs, projects and policies' rather than the destructive conflicts which would occur from the BDCP overlapping the already existing SJMSCP which has been implementing since 2001.

The Draft EIR/EIS should note the BDCP does contribute but also has adverse impacts in the cumulative aspect of the existing conditions.

- Section 4.2.5.3 Mitigation Approach

The Draft EIR/EIS states the *'mitigation related to restoration and other activities in CM3-CM22 shall be the responsibility of a larger group of agencies (including DWR and Reclamation) as set forth in relevant portions of the BDCP'* and *'responsibilities for particular measures will be described in the Mitigation Monitoring and Reporting Program to be issued in connection with the Final EIR/EIS.'* Unfortunately, our staff was unable to identify the mitigation (who, what, when, why, where) details with relation to impacts to the existing SJMSCP areas which overlap the proposed BDCP conservation zones or locate the **Mitigation Monitoring and Reporting Program** noted.

We respectfully request a copy of the **Mitigation Monitoring and Reporting Program** to be provided and discussed fully with all the surrounding habitat plan administrators and regulatory agencies (e.g. USFWS and CDFW) to review and comment further before the Final EIR/EIS is released.

## Chapter 12 -

- Section 12.0.2.1 Natural Communities

The Draft EIR/EIS touched on a list of 'Natural Communities' with relation to terrestrial species but for simplicity, the cultivated lands were not studied in-depth.

The cultivated lands must be studied in-depth to understand the reality of the environment for terrestrial species between the agricultural land types (e.g. row and field crop habitat, multi-purpose habitat, irrigated pasture habitat, etc.) because each classification has specific impacts to various species (e.g. swainson's hawk, burrowing owls, tricolor black bird, etc.). The breakdown of the type of cultivated lands will greatly affect the surrounding plans which may require conservation of these types of cultivated lands that are in conflict with the proposed BDCP.

- Section 12.0.3 Environmental Consequences

The Draft EIR/EIS calls out the first eleven conservation measures (CM 1 – 11) in this section. The CM 1, which regards construction and operation of water conveyance facilities, and CM 2 - 11 are measures which restore, protect, manage or enhance.

The section does not differentiate that CM1 actually deteriorates the value of the environment while CM 2 – 11 may provide actual benefit to the environment for BDCP. The use of building the facility as a conservation measure would be like considering the building of a large cement gas extraction pad for equipment as a benefit to the agricultural and natural environment it is within. The CM 2 – 11 providing benefit to the SJMSCP is still to be determined.

- Section 12.0.6.2 Comparison of Effects of the Alternatives

The Draft EIR/EIS section goes into numerous scenarios which would cause great losses of natural communities and cultivated lands in the range of 40,000 acres on the lowest end to upward of 100,000 acres on the highest end. The alternatives each have dramatic effects on the Delta (and other programs planned or existing) except for the lone alternative of **No Action Alternative**. The Draft EIR/EIS states *'under the No Action Alternative, there would be no water conveyance facilities construction effects on natural communities. Also, there would be no restoration, protection or enhancement of natural communities resulting from the other BDCP conservation measures. Several programs that are under way or in the planning stages to increase wetlands and riparian natural communities in the absence of the BDCP will benefit natural communities and increase wildlife-friendly agriculture in the study area.'*

The logical response is building the project in any alternative other than the No Action Alternative causes more harm than benefit. Especially, by the Draft EIR/EIS states other existing or planned programs are providing the same or better benefit then the BDCP would. For the natural communities and agricultural mosaic in relation to the species, invest the money in the existing or planned programs within the areas to bolster the success.

- Section 12.1.2.1 Natural Community Mapping Methods

The Draft EIR/EIS defines and categorizes the landscape with data from various sources and dates. The Draft EIR/EIS uses definitions from the CALFED Bay-Delta Program (2000) and CDFW (2005/2006) as well as GIS data using the 2005 USDA Farm Service Agency National Agriculture Imagery Program. Other sources used by BDCP were from the developing HCP/NCCP programs from surrounding counties (e.g. Yolo County Heritage and South Sacramento HCP) with dates of from around 2008. The western area of the Delta (e.g. western Area of Additional Analysis) was truthed in 2012 via Google Earth imagery and ground truthing by consultants.

The natural communities' definitions and mapping data used to analyze the BDCP are stale. Most of the data is between 5-10 years old in an ever changing environment of the Delta. The Draft EIR/EIS should take the steps to use more current data and truthing of the natural communities and landscape to understand the reality of the Delta today.

- Section 12.2.3.1 City and County General Plans

The Draft EIR/EIS mentions the San Joaquin County General Plan 2010 adopted in 1992 and five policies from the Resources Element are considered applicable to the BDCP. Also, the General Plan is under revision currently.

Unfortunately, the Draft EIR/EIS does not fully explain the SJ County and the existing General Plan 2010 are part of the implementing SJMSCP for impacts within SJ County. The current and revision will continue to be part of the SJMSCP for providing conservation and enhancement with SJ County. Furthermore, the Draft EIR/EIS does not provide any discussion of the other jurisdictions with San Joaquin County that are

within the potential plan area of the BDCP (e.g. City of Lathrop, City of Lodi, City of Stockton or City of Tracy) which are also signatories of the SJMSCP. The Draft EIR/EIS should include those jurisdictions' General Plan information in this section.

- Section 12.2.3.2 Habitat Conservation Plans

The Draft EIR/EIS note there is a relationship with other existing or developing habitat conservation plans discussed later in the section (12.3.3.18 Effects on Other Plans).

The SJMSCP comments will be addressed within that section.

- Section 12.3.3.17 Cumulative Effects on Terrestrial Biological Resources

*The Draft EIR/EIS states the Action Alternatives 'would have little or no negative effect or would have long-term beneficial effect on nearly all of the terrestrial biological resources of concern in the study area. This is consistent with the goal of HCP/NCCP programs, which is to improve long-term viability of special status species and their habitats. The positive effects of implementing the BDCP are similar in all of the project alternatives other than the No Action Alternative. There are relatively small variations in the acres affected by construction of the alternative water conveyance facilities (CMI), but the restoration, protection, enhancement and stressor reduction elements of the alternatives are the same for Alternatives 1A, 1B, 1C, 2A, 2B, 2C, 3, 4, 6A, 6B, 8 and 9.'*

Also, this section describes cumulative effects on Giant Garter Snake Movement and Connectivity between Subpopulations. It is stated in Impact BIO-190 under the second bullet point that 'A number of HCP's have been issued by USFWS for projects anticipated to impact the giant garter snake, which include San Joaquin County Multi-Species HCP....' and other areas within the giant garter snake range being developed.

As stated earlier in the Draft EIR/EIS – Section 12.0.6.2, the various alternative actions will have a wide range of impacts (project construction footprint and CM 2 – 11) on the existing landscape of the entire Delta ranging from 40,000 acres on the lowest end of the spectrum up to 100,000 acres of impact on the highest end. These changes would greatly have effect on the existing habitat landscape, local county governments' bottom tax rolls, productivity of the lands and especially the terrestrial species within each surrounding Delta County with existing or developing HCP/NCCPs. More discussion and explanation is needed with regards to the logic of the contradictory concept:

How do near-term period of alternatives disrupting temporarily or permanently removal of natural communities and modeled habitat for special status plant and wildlife species seem offset with potential undisclosed near-, mid-, and long-term conservation actions? One example is the impacts at Staten Island which is a specie friendly easement created with state public funds within San Joaquin County for the sand-hill cranes. Not to mention the SJMSCP complimentary habitat preserves adjacent to the Staten Island location. The sand-hill crane preserve on Staten Island and the adjacent SJMSCP preserves will have various impacts such as muck piles established large exhaust stacks

created and 5-9 years of construction activity, noises and vibrations occurring where lands have been set aside in protection for the species.

The SJMSCP holds two take authority permits under Section 10 (federal) and 2081 (state) which include potential giant garter snake habitat under incidental take minimization measures prescribed under the plan. The permits do not cover direct take of the giant garter snake or cover activities for giant garter snake impacts in the "Known Occupied Areas" as clearly defined in the SJMSCP (e.g. known occupied habitat for the giant garter snake is the area west of I-5 on Terminous Tract, Shin Kee Tract, White Slough Wildlife Area, and Rio Blanc Tract). These "Known Occupied Areas" are the same tracts of land some of the BDCP alternative actions will be impacting.

- Section 12.3.3.18 Effects on Other Conservation Plans

The Draft EIR/EIS was to analyze the impacts to the surrounding HCP/NCCP of the Delta which call out six (6) that will be impacted due to the overlap of the potential BDCP plan area. While four (4) are still in development (e.g. South Sacramento, Yolo, Solano and Yuba-Sutter), the BDCP will have impacts on the remaining two (2) HCP/NCCP and an adopted Conservation Strategy Plan. The Delta's two implementing HCP/NCCP programs have been in the implementation phase with federal and state regulatory partners since as early as 2001 (e.g. SJMSCP). The *'construction of the water conveyance facilities would reduce the amount of available cultivated land for acquisitions by overlapping conservation plans by ...as much as 14,016 acres in the San Joaquin County HCP (Alternatives 1B, 2B, 6B).'*

The table 12-11 describes the range of impacts to the SJMSCP for the footprint alone to be between 6 acres to 14,050 acres.

The tables 12-14 and 12-18, 12-19, 12-20, 12-21, 12-26 and 12-27 show the estimated acreage in the overlap for the various activities between the existing SJMSCP and the proposed BDCP to be a wide range. The tables states the BDCP would need a minimum of approximately 14,000 acres to 49,000 acres within the overlap area.

The Draft EIR/EIS states *'the cultivated preservation needs of the BDCP and other conservation plan are deemed to be without conflict if the available cultivated land with full build-out is at least double the sum of the needs of the two plans in the overlap area. This assumption is based on the need to have more cultivated land for preservation than required to ensure that enough willing sellers are available for each plan.'* The Draft EIR/EIS refers to the draft BDCP out for public comment *'Chapter 3, Section 3.4.1.3.1 Land Protection having a process for coordination among BDCP, South Sacramento HCP, and San Joaquin Multiple Species Conservation Plan to ensure sufficient lands are available in the overlap area for each plan to meet its conservation obligations.'*

For the SJMSCP as an implementing HCP since 2001, the discussions have been on-going with the BDCP staff and consultant regarding the Draft EIR/EIS calculations and the referenced section of the DBCP Chapter 3, Section 3.4.1.3.1 - Land Protection with regards to the proposed potential process between plans. The SJMSCP 2010 data used

for acreage accounting in the Draft EIR/EIS for potential impacts within the overlap area for the project alternatives and restoration/enhancements coupled with the SJMSCP are not accurate as reported to BDCP staff and consultants or available in the SJMSCP Annual Reports. To further complicate the matter, the assumptions used by the BDCP staff and consultants for the analysis was not accurate to the actual activities/allowances of the SJMSCP's conservation strategies which will decrease the overall acreage allowed to be used by the SJMSCP in the overlap area to meet the obligations of the issued permits. The Draft EIR/EIS shows lower acreage than the reality of lands impacted by the BDCP activities and over reports the available lands for the SJMSCP to acquire within the overlap area. As to the statement of 'deemed to be without conflict', it has been stated to BDCP staff repeatedly and now in writing to the Draft EIR/EIS there will be a major conflict because the 'double the sum of needs' does not exist in the overlap area to 'meet its conservation obligation' for the implementing SJMSCP.

On the matter of the BDCP Chapter 3, Section 3.4.1.3.1 – Land Protection statement in the Draft EIR/EIS, the most accurate description (from the SJMSCP viewpoint) would be described as the Chapter text is in the early infancy stage and needs to be completely vetted with all the surrounding Delta HCP/NCCPs. For the SJMSCP, nothing has been agreed upon with the implementing SJMSCP administrating agency, permittees or regulatory partners in accord with the BDCP as for any potential processes. A more detailed or accurate description of the entire Section of the Draft EIR/EIS is requested.

Our staff looks forward to working with the BDCP staff and consultants on the continued development of the BDCP document and BDCP final EIR/EIS (and draft IA when available) to insure a greater likelihood that the BDCP and SJMSCP will be complimentary to each other rather than conflicting.

Please feel free to contact myself or Steven Mayo, Program Manager, on my staff with any comments, concerns or additional needed information regarding the SJMSCP and the continued work on behalf of the county-wide habitat plan in San Joaquin County.

Sincerely,



STEVE DIAL  
Deputy Executive Director / Chief Financial Officer

Cc: SJCOG, Inc. Board  
Josh Emery, United States Fish and Wildlife Service  
Todd Gardner, California Department of Fish and Wildlife  
Habitat Technical Advisory Committee (HTAC) members  
Kathy Miller, City of Stockton Council Member and Delta Coalition Chair



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July 25, 2014

BDCP Comments  
Ryan Wulff, NMFS  
650 Capitol Mall, Suite 5-100  
Sacramento, CA 95814

Re: Draft BDCP Plan Public Review Comment Letter Pertaining to San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP)

Dear Mr. Wulff:

SJCOG, Inc. is the administrator of the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). Our staff has continuously been involved with the evolution of the Bay Delta Conservation Plan (BDCP) since the inception. Our agency is glad to provide individual comments on the Draft BDCP Plan. In addition to this individual comment letter, SJCOG, Inc., in conjunction with other Delta Initiative Coalition stakeholders, is submitting a separately transmitted joint comment letters. As reference, our agency also concurs with the issues raised in the 'Friends of the River' letter dated May 15, 2014 regarding the extension of the comment period due to the failure to release the draft Implementation Agreement (IA).

SJCOG, Inc. has identified issues in the prior releases of the BDCP draft documents (part or whole) which were again not fully addressed in this specific Draft BDCP document sections as requested. The continued concerns with the BDCP (and further displayed in BDCP Draft Environmental Impact Report/Environmental Impact Study) are very similar to those our agency has voiced previously to Resource Agency staff, BDCP leadership through both the Schwarzenegger and Brown administrations, key BDCP staff, and consultant firms throughout the years regarding overlapping parts of San Joaquin County covered by the SJMSCP. They are:

- The unforeseen impacts to the SJMSCP with regards to the federal and state permits being implemented under the existing SJMSCP to balance development and protection of species within San Joaquin County which the Draft BDCP document still does not fully addressed.

- Certain proposed activities and oversight of the BDCP, such as the types and extent of restoration in the Delta which may have a negative impact on existing preserves and our ability to acquire future preserves within San Joaquin County to meet the obligations of the SJMSCP's existing permits in cooperation with our federal and state partners.
- The future impacts by the BDCP requiring excessive administrative time and costs to the SJMSCP to provide the vast amount of coordination and information to minimize the potential devastating effects to the existing habitat plan.

A more global concern our staff continues to have of the Draft BDCP document is all the Delta counties which have or are developing HCPs or NCCPs in partnership with federal and state regulatory agencies are not being given a seat at the table or a full voice with the overlap of the plans.

Focusing on the SJMSCP, the San Joaquin County plan area covers approximately one-third of the Sacramento-San Joaquin Delta in both the Primary and Secondary Zones. The SJMSCP is a permitted habitat conservation plan containing existing agreements with our federal partner, United States Fish and Wildlife Service (USFWS) and state partner, California Department of Fish and Wildlife (CDFW) including but not limited to a very complicated Biological Opinion issued with the take permits. These existing agreements are a major difference between SJMSCP and the other HCPs/NCCPs under development. Therefore, the SJMSCP (and other implementing plans) should be considered an existing condition and fully included as such as the baseline.

The SJMSCP has been diligently fulfilling the terms of the Implementation Agreement, Biological Opinion and issued federal and state take permits by mitigating for development impacts in San Joaquin County through minimizing incidental take of species and acquisition of conservation easements as habitat preserves under an existing conservation strategy which include vast areas considered under the proposed BDCP.

After numerous hours of analysis of the enormous amount of text of the various documents which make up the Draft BDCP and the Draft BDCP EIR/EIS, our staff continues to have the same concerns previously expressed in our communications to BDCP staff and consultants as well as new concerns from the Draft BDCP and Draft EIR/EIS which need to be addressed/examined/explained more completely. All these concerns are matters which can cause great conflict between the already approved implementing SJMSCP under federal and state take permits and the proposed developing BDCP.

Therefore, SJCOG, Inc. strongly recommends the following be addressed by any subsequent drafts or documents for the BDCP:

- Chapter 2 Section 2.3 Existing Ecological Conditions

The Draft BDCP defines and categorizes the ecological landscape with data from various sources and dates. The Draft BDCP uses definitions from the CALFED Bay-Delta Program (2000), California Department of Fish and Wildlife (CDFW - 2005/2006) and Department of Water Resources (DWR), to name a few, as well as GIS data using the 2007 Vegetation and Land Use Classification Map of the Sacramento-San Joaquin River Delta from 2007. Other sources used by BDCP were from the developing HCP/NCCP programs from surrounding counties (e.g. Yolo County Heritage and South Sacramento HCP) with dates from around 2008. The western area of the Delta (e.g. western Area of Additional Analysis) was truthed in 2011 via Google Earth imagery and ground truthing by consultants.

The existing ecological condition definitions and mapping data used to analyze the BDCP are stale. Most of the data is between 5-10 years old in an ever-changing environment of the Delta. The Draft BDCP document states that the every changing cultivated land in the Delta are based on the 'crop-rotation patterns' and 'market forces' of the industry. Those factors lead to show dramatic trends in the last 30-40 years in the Delta (e.g. an 18-fold increase in vineyards – 2007 DWR). The Draft BDCP should take the steps to use more current data and truthing of the 'existing ecological condition' and natural communities' landscape to understand the reality of the Delta today.

- Chapter 3 Section 3.2.3.2 Physical Habitat Restoration

The proposed conservation measure of 84,000 acres of natural communities contains 65,000 acres of tidal natural communities and associated transitional uplands distributed across the Plan Area, but primarily within Suisun Marsh, South Delta and Cache Slough ROAs. In addition, the proposed plan calls for another 5,000 acres of riparian restoration to occur within future floodplains and tidal restoration areas.

The South Delta is primarily an agricultural landscape of row and field crops which support a robust agricultural economy and various suites of species covered under the existing SJMSCP. The South Delta lands are a focal point to the existing conservation strategy employed by the SJMSCP over the first 14-years of implementation of the county-wide habitat plan covering San Joaquin County. The SJMSCP has encumbered over 1,600 acres of agricultural lands in the South Delta and Conservation Zone 7 area for protection of row and field crop habitat for proliferation of the multitude of species under the SJMSCP (Figure 3.2-12 and 15 BDCP). In the near future, the SJMSCP has more lands negotiated for protection within the area to continue the important strategies of the SJMSCP. The proposed BDCP conversion of some of the best agricultural lands within San Joaquin County to tidal communities will cause great harm to the local economy, generations of farming families and the SJMSCP's commitment to fulfilling the obligations of the existing permits.

- Chapter 3 Section 3.2.4 Developing the Terrestrial Resources Component of the Conservation Strategy

The proposed BDCP's terrestrial strategies are stated as '*actions to provide connectivity between areas that are important for sustaining and improving ecosystem functions and for the conservation of covered species.*' It continues to discuss species along the periphery of the Plan Area as '*opportunities for increased habitat connectivity will be mostly between existing and newly protected terrestrial species' habitat in the Plan Area and protected terrestrial species' habitat adjacent to the Plan Area (mostly associated with adjacent or surrounding HCPs and NCCPs).*'

This section of the proposed Plan Area for the BDCP puts a higher value and need of the proposed BDCP's conservation strategy than that of any of the surrounding plans which are developing or already in existence. Since 2001, the SJMSCP has been providing the protection, improvement and connectivity for the protected species within the SJMSCP (Figure 3.2-12 and 15 BDCP). The tone of the section assumes the adjacent lands and/or surrounding HCPs/NCCPs should be subordinate to the developing BDCP strategies and proposed restoration plans there in. This is illogical because the SJMSCP is to be considered baseline existing condition by the BDCP. The assumption of the proposed BDCP is in direct conflict to the SJMSCP.

- Chapter 3 Section 3.2.4.1 Conservation Targets

The lead paragraph of the section states '*The conservation targets are intended to satisfy mitigation requirements associated with the effects of covered activities on natural communities and covered species and provide the conservation of those species and their habitats.*'

The proposed project footprint impacts and operations associated with the exporting of waters from the northern state rivers to deliver to export pumps must impact a large amount of natural tidal communities to dictate the described mitigation/restoration. Even under standard mitigation requirements ratios of 3:1 for natural community mitigation, the proposed creation/restoration requirement of 85,000 acres of natural tidal communities from the existing prime agricultural lands which serve as an economic driver to families and counties as well as habitat to protected species would be exorbitant to mitigate the proposed project. Please identify the natural tidal communities impacted by the footprint and operation of the project which requires the mitigation.

- Chapter 3 Section 3.2.4.2.1 Reserve System Assembly Principles

The section lists bulleted principles which assist in the Reserve System Assembly to guide and support decisions of the proposed BDCP Implementation Office regarding the acquisition of reserve lands (not all included):

- Protect, enhance, and restore the ecological diversity of natural communities and covered species habitats at the periphery of the Plan Area on lands

- mostly likely to accommodate future sea level rise and less likely to be flooded as a result of levee failures.
- Design reserves to appropriately scale the ecological gradient and emphasize compatibility between restored natural communities and working landscapes (e.g. cultivated lands).
  - Maximize connections between reserves and with existing conservation lands in and adjacent to the Plan Area.
  - Where feasible, build off of existing conservation lands and management systems to increase management efficiency, connectivity, and patch size.
  - Protect the highest value natural communities and covered species habitats available consistent with the BDCP implantation schedule.
  - Implement conservation measures for terrestrial and nontidal wetland communities and covered wildlife and plants in a manner that complements or supports the conservation strategies of approved and developing conservation plans for areas adjacent to and overlapping the Plan Area.

Based on the principles stated in this section of the proposed BDCP as guiding and supporting of the BDCP Implementation Office's decisions, the repetitious concept through the principles are protection of lands with focus on working landscapes (cultivated lands) and existing HCP/NCCP conservation strategies. The concern is the potential plan to remove highly productive active agricultural lands in the South Delta. Based on the guiding and supporting principles, the land in the South Delta and Conservation Zone 7 provide benefit to the entire San Joaquin County (land owners, agricultural economy, County tax rolls and SJMSCP conservation strategy/preserve system). The concept of removing large patches of lands above mean sea level to convert to non-agricultural uses (e.g. tidal communities) seems counterintuitive to the guiding and supporting principles listed because of the detriment to those in San Joaquin County.

- Chapter 3 Section 3.2.4.2.3 Relationship of the Conservation Strategy with other Regional Conservation Planning Programs

As noted in this section, the SJMSCP has the largest amount of overlap area (more than 300,000 acres) with the proposed BDCP. Further the section states the proposed BDCP Implementation Office may partner with willing regional conservation planning sponsors to jointly implement such actions which complement each plan and provide economies of scale/efficiencies listing specific criteria (not all listed):

- The BDCP is responsible for the mitigation of its effects.
- The mitigation actions and the mitigation requirements of the BDCP must be additive to the mitigation obligation of other plans (e.g. BDCP mitigation cannot supplant the mitigation obligations of other plans and vice-versa).

The SJMSCP has been an active participant with discussions since the inception of the proposed BDCP to grasp the entirety of the potential conflicts created between the existing habitat plan and the proposed BDCP. To date, the discussions have not

yielded much headway for common ground (e.g. governance, guarantees, etc.). The concerns are the proposed BDCP project and required mitigation of the effects will cause great harm to the permitted SJMSCP in fulfillment of the obligations (e.g. conservation goals and strategies). The existing SJMSCP has been implementing efficiently since 2001 for protecting various habitat community types in San Joaquin County but now may be supplanted by the potential BDCP conservation strategy, goals, restoration and/or governance. The SJMSCP overlaps multiple proposed BDCP conservation zones (CZ 4, 5, 6, 7, 8) in whole or part where existing preserves and strategies have been employed (Figure 3.2-12 and 15 BDCP). The potential of increased costs, administration, competition or loss of mitigation inventory are unclear in the proposed BDCP document.

1. What is the meaning of the statement 'the BDCP actions and mitigation requirements of the BDCP being additive'?
2. What would be the result if there is conflicting actions or needs between the existing SJMSCP and proposed BDCP (e.g. permits needs, land acquisitions, etc.)?

- Chapter 3 Section 3.3.5.1 Reserve System

The section identifies in the table for Goal L1 and subsequent 'Objectives' the minimum number of target acres per Restoration Opportunity Area (ROA). The Objective L1.3 addresses tidal natural communities and transitional uplands restoration in the amount of 65,000 acres is planned. The 'Objective' further identifies target minimums of 1,500 acres for the Cosumnes/Mokelumne ROA and 5,000 acres for the South Delta ROA.

In order to attain the minimum target numbers within the overlap ROAs of the Cosumnes/Mokelumne (minimum – 1,500 acres) and the South Delta (minimum – 5,000 acres) means the removal of highly productive agricultural lands. These areas are partially or completely within the SJMSCP plan area which are part of the agricultural habitat conservation strategy employed under the implementing habitat plan for San Joaquin County. The reduction of available agricultural lands will dramatically impact the ability of the SJMSCP to fulfill the obligations of the SJMSCP permits over the life of the plan (2001-2051). Further, the SJMSCP has existing easements (e.g. Ishizuka in the Cosumnes/Mokelumne ROA and Wing Levee Preserve in the South Delta ROA) which could be greatly affected by the conversion of such large magnitude to something other than agriculture. The change of highly productive agriculture lands can cause other concerns to the generations of farming families losing land by eminent domain to achieve the goal, a loss of productive agriculture in a flourishing agricultural economy, a decrease in San Joaquin County tax rolls and create an unknown concern for Mosquito/Vector Control in San Joaquin County in the potential tidal natural community.

- Chapter 3 Section 3.3.6.4.2 Natural Community Goals and Objectives

The section identifies in Goal TFEWNC1: Large, interconnected patches of tidal freshwater emergent wetland natural community within the 'Reserve System' of the proposed BDCP. The Objective TFEWNC1.1 addresses of the 65,000 acres of tidal natural communities and transitional uplands (Objective L1.3 above) will restore or create at least 24,000 acres of tidal freshwater emergent wetland in Conservation Zones 1, 2, 4, 5, 6, and/or 7. The section goes on to provide the rationale (TFEWNC1.2) would be expectations of the restoration/creation to potentially occur *'along the mainstem and several channels of the San Joaquin, Old and Middle Rivers ...and near the confluence of the Cosumnes and Mokelumne Rivers.'*

In order to attain the target numbers within the overlap Conservation Zones means the removal of highly productive agricultural lands. These areas are partially or completely within the SJMSCP plan area which are part of the agricultural habitat conservation strategy employed under the implementing habitat plan for San Joaquin County. The reduction of available agricultural lands will dramatically impact the ability of the SJMSCP to fulfill the obligations of the SJMSCP permits over the life of the plan (2001-2051). Further, the SJMSCP has existing easements (e.g. Ishizuka, Burchell, Nuss, White Slough, Hilder, Beck, Wing Levee, Jaques, Pombo, Pelegri, Alegre, Mizuno, Cabral) all within the Conservation Zones which could be greatly affected by the conversion of such large magnitude to something other than agriculture. The change of highly productive agriculture lands can cause other concerns to the generations of farming families losing land by eminent domain to achieve the goal, a loss of productive agriculture in a flourishing agricultural economy, a decrease in San Joaquin County tax rolls and create an unknown concern for Mosquito/Vector Control in San Joaquin County in the potential tidal natural community.

- Chapter 3 Section 3.3.6.5.2 Natural Community Goals and Objectives

This section identifies Goal VFRNC1: Extensive wide bands or large patches of interconnected valley/foothill riparian natural community. Further, the section explains the Objective VFRNC1.1 to restore or create 5,000 acres of valley/foothill riparian natural community, with at least 3,000 acres occurring on restored seasonally inundated floodplain. Identified in Objective VFRNC1.2 is protection of 750 acres of existing valley/foothill riparian natural community in Conservation Zone 7 to occur by year 10 of the proposed BDCP. Also, the section identifies at least 3,000 acre will occur in the south Delta seasonal floodplain restoration site in Conservation Zone 7.

In order to attain the target numbers within the overlap Conservation Zones means the removal of highly productive agricultural lands. These areas are partially or completely within the SJMSCP plan area which are part of the agricultural habitat conservation strategy employed under the implementing habitat plan for San Joaquin County. The reduction of available agricultural lands will dramatically impact the ability of the SJMSCP to fulfill the obligations of the SJMSCP permits over the life of the plan (2001-2051). Further, the SJMSCP has existing easements (e.g. Ishizuka,

Burchell, Nuss, White Slough, Hilder, Beck, Wing Levee, Jaques, Pombo, Pelegri, Alegre, Mizuno, Cabral) all within the Conservation Zones which could be greatly affected by the conversion of such large magnitude to something other than agriculture. The change of highly productive agriculture lands can cause other concerns to the generations of farming families losing land by eminent domain to achieve the goal, a loss of productive agriculture in a flourishing agricultural economy, a decrease in San Joaquin County tax rolls and create an unknown concern for Mosquito/Vector Control in San Joaquin County in the potential tidal natural community.

- Chapter 5 Section 5.4 Effects on Natural Communities

This section addresses the proposed changes for the BDCP in terms of aquatic and terrestrial restoration and enhancements for all of the following:

- Tidal Perennial
- Tidal Mudflat
- Tidal Brackish Emergent Wetland
- Valley/Foothill Riparian
- Nontidal Perennial Aquatic and Nontidal Freshwater
- Alkali Seasonal Wetland
- Vernal Pool Complex
- Managed Wetland
- Other Natural Seasonal Wetland
- Grassland
- Cultivated Lands

The section describes the expected net effect of the actions taken by the proposed BDCP in a very one-sided light but does not delve into the real effects of the proposed removal of the fertile ground to the surrounding communities (e.g. farmers, local jurisdictions and HCPs/NCCPs) with the vast amount of land conversion being proposed. To focus on just one portion of the overall section of cultivated lands due to the covered activity, the proposed actions will PERMANENTLY REMOVE an approximate total of 55,372 acres of high quality producing agricultural land in the Delta. As stated in the section, the amount of acres is 11% of the entire cultivated lands within the proposed Plan Area of the BDCP. The breakdown of the loss is as follows converting highly productive agricultural lands to non-agricultural uses:

- 629 acres (1%) Fremont Weir/Yolo Bypass inundation
- 960 acres (2%) from tidal natural communities restoration
- 1,950 acres (4%) nontidal marsh restoration
- 2,000 acres (4%) grassland restoration
- 2,087 acres (4%) levee construction for floodplain expansion
- 3,593 acres (6%) seasonal floodplain restoration
- 4,588 acres (8%) from conveyance facility construction
- 39,565 acres (71%) from tidal natural communities restoration

San Joaquin County overlaps a great portion (approximately 40%) of the lands in the Plan Area which would equate to over 22,000 acres of loss if distributed proportionally. San Joaquin County and local jurisdictions, as land-use authority, will have little or no say over the potential removal of those productive lands by the proposed BDCP activities which will have great harm to the County (e.g. agricultural production, economic factors, taxes, loss of generations of family farms, etc.). Further, the SJMSCP which covers the same lands will be greatly affected by the PERMANENT REMOVAL of the highly productive agricultural lands which are potential habitat for the 97 covered species in the county-wide habitat conservation plan (which agricultural habitat types are a primary focus). The PERMANENT REMOVAL of the agricultural lands can greatly cause harm to the ability of the SJMSCP because of unforeseen cumulative impacts not taken into account within the SJMSCP's Biological Opinion was issued and/or to meet the obligations under the implementing federal and state take permits for mitigation requirements.

- Chapter 6 Section 6.1 Performing Implementation Actions

This section describes the proposed actions of performing the Implementation Actions, property acquisitions, planning/design, regulatory compliance, restoration schedule and post-permit term implementation. The Table 6-2 *Implementation Schedule for Natural Community Protection and Restoration Conservation Measures* details the type, acreage and term (near-term – 1 to 10 year; early long-term – 11 to 15 years; late long-term – 16 to 50 years) for each conservation measure under the proposed BDCP. The planned acquisition method is likely to occur on public lands but may require the acquisition of private lands by way of fee title or conservation easement. The actual implementation of each conservation measure may require more planning/design as these come to fruition with appropriate regulatory and jurisdictional entities.

The section on Implementation Actions is very general and does not have enough details to fully comment on the actions, timing and impacts each conservation measure. The 'kicking the can down the road' approach for the project level design costs/funding assurances and schedule of work makes commenting on this section rather difficult. With most public sector projects and especially under the many HCPs/NCCPs, the beginning of any construction activities (e.g. permit issuance and/or the ground breaking of the facilities) that create 'take' for loss of habitat for species should require the mitigation (fees, land dedication, etc.) of said project be provided. The proposed BDCP pushes the mitigation required because of the project impacts to be provided years after the project begun constructing and most during the later operations. As stated in Table 6-2, the mitigation requirements seem to be delegated to the future (near-term – 1 to 10 year; early long-term – 11 to 15 years; late long-term – 16 to 50 years) term of the permits which means impacts have occurred without actual mitigation being provided.

- Chapter 6 Section 6.2 Interim Implementation Actions

This section addresses various projects that are to be counted toward meeting the proposed BDCP's requirements but do not provide mitigation for an interim project. The section describes *'actions that have been completed, are in the process, or are planned to be initiated prior to the permit issuance'* for the proposed BDCP.

The section lists various projects which the proposed BDCP will be allowed credit toward the requirements under the permits. The lands are either public held lands or private land associated with another project is some capacity. The listed projects in the section create questions such as public lands owned by the state and the taxpayers of the state being used for Water Contractor's gains and mitigation from prior project that have been on-going being used for BDCP purposes under the permits. Some listed Interim Implementation Actions projects which need more details are:

- Calhoun Cut and Lindsey Slough Restoration
  - 927 acres property owned by CDFW – how was it acquired and what funds were used?
- Lower Yolo Restoration Project
  - Restoration project intended to help fulfill the tidal wetland mitigation requirement for the 2008 BiOp on Long-term Operation of the CVP and SWP – how is this not double dipping?
- Dutch Slough Tidal Restoration Project
  - 1,178 acre property owned by DWR – how was it acquired and what funds were used?
- McCormack-Williamson Tract Restoration
  - 1,660 acre property owned by The Nature Conservancy under a CALFED grant (USFWS funds) – do the USFWS funds used allow it to be used toward mitigation required by the proposed BDCP?
- Grizzly Slough
  - 489 acre property that was purchased in 1992 as mitigation for the SWP and owned by DWR. Nearly 70 acres has been utilized to mitigate for the Delta Levee Program while the remaining 450 acres (please check on math as remainder should be 419 acres) is planned for riparian and floodplain restoration – how is this not double dipping?
- Meins Landing Restoration Project
  - 666 acre waterfowl hunting club purchased in December 2005 by DWR in partnership with Suisun Marsh Preservation Agreement Agencies (DWR, CDFW, Reclamation, Suisun Resource Conservation District) and the California Coastal Conservancy – how was it acquired and what funds were used?
  - Part of the Van Sickle Island Levee Improvement Program and portions of the land not counted as mitigation for other DWR programs – what part is counted and not counted of the 666 acres or other land not identified?
- Hill Slough Tidal Restoration Project

- 1,723 acre property owned by CDFW of which 640 acres and 200 acres will be considered – how was it acquired and what funds were used? Can BDCP count any toward obligations?
- Tule Red Restoration Project
  - 350 acre tidal marsh with another 1,300 acre potential owned by Westervelt Ecological Services purchased to help fulfill the tidal wetland mitigation requirement of the 2008 USFWS BiOp for Coordinated Long-Term Operations of the CVP and SWP (USFWS 2008). Based on the MOA between Reclamation, USFWS, DWR, NMFS, CDFW and SFWC, this restoration project may also count toward BDCP tidal wetland restoration – how is this not double dipping?
  - Restoration may be expanded into an adjacent land owned by CDFW – how was it acquired and what funds were used?
- Rush Ranch Restoration Project
  - 2,070 acres acquired by the Solano Land Trust in 1988 intended to help fulfill the tidal wetland requirement for the 2008 USFWS BiOp for the Coordinated Long-Term Operation of the CVP and SWP (USFWS 2008). Based on the MOA between Reclamation, USFWS, DWR, NMFS, CDFW and SFWC, this restoration project may also count toward BDCP tidal wetland restoration – how is this not double dipping?
  - Project was initiated through agreement with DWR, Reclamation and the Suisun Marsh Plan with partial funding through the CALFED ERP. Some restoration could count toward BDCP obligations – how was it acquired and what funds were used?
- Prospect Island Restoration Project
  - 1,306 acre property acquired by DWR from General Services Administration in January 2010. The restoration project is intended to help fulfill the tidal wetland requirement for the 2008 USFWS BiOp for the Coordinated Long-Term Operation of the CVP and SWP (USFWS 2008). Per the Fish Restoration Program Agreement (2010) between CDFW, DWR and MOA with Reclamation, USFWS, DWR, NMFS, CDFW and SFWCA it may count toward BDCP obligations - how was it acquired and what funds were used? – how is this not double dipping?
  - The project is fully funded by SWP through the Fish Restoration Program Assistance – how do those funds associated with the State Water Project allowed to use toward the BDCP?
- Chipps Island Restoration
  - 1,000 acre property which has only 750 acres available for potential mitigation land since 250 acres has been set aside for a previous mitigation project – is that the case or all 1,000 would be used toward the BDCP obligations?
- Decker Island Restoration

- 658 acre property created in the early 1900 through deposits from Montezuma Hills. 473 acres is privately owned, CDFW owns 34 acres and Port of Sacramento owns 140 acres. Approximately 110 acres of restoration will provide habitat to migrating salmon and steelhead by the Port of Sacramento as a restoration project – what part of the land is mitigation obligation already (e.g. Port of Sacramento or CDFW Levee Program)? – how was the it acquired by CDFW and what funds were used? – is any of this going to be considered double dipping?

There are many questions, concerns and potential issues of the mingling of prior project obligations and counting toward the proposed BDCP obligations under a HCP/NCCP permit. More clarification on how prior BiOp or projects are related to the BDCP would be helpful as well as any information on the funding mechanisms used to secure the properties.

- Chapter 6 Section 6.3 Planning, Compliance and Progress Reporting, 6.4 Regulatory Assurances, Changed Circumstances and Unforeseen Circumstances, and 6.5 Changes to the Plan or Permits

These sections addresses how the Implementation Office will prepare planning documents, implementation reports and demonstrate compliance with the BDCP document (e.g. Annual Work Plan and Budget, Delta Water Operations, Progress Report, Five-Year Review and Implementation Plan, Regulatory Assurances, Obligations of the Parties, etc.) that references a draft IA as a part of the whole project and those associated authorities under ESA, NCCPA and all other regulatory requirements.

The section is difficult to comment on without adequate time provided in concert with the recently released draft IA. The 'whole project' should be viewed as one entire documented project (e.g. BDCP document, EIR/EIS, and IA) rather than the piece meal approach for best results in relation to CEQA, NEPA, ESA, NCCPA. The draft BDCP document nor the draft IA document provide any assurance details of how the project, permits, oversight and funding will be established ahead of the impacts.

- Chapter 7 Implementation Structure

The chapter and subsequent sections describes a very overarching institutional structure and organizational arrangements for the proposed BDCP with the assignment of the duties/responsibilities to be figured out over the near term of plan implementation.

The section does not provide adequate representation of the Delta (e.g. environmental, general public, governments or HCPs/NCCPs) which makes up the impact area. The governance structure limits the regulatory agencies and is

essentially allowing the 'fox to watch the hen house' with very limited ability of the local communities to enact change when needed. The whole governance structure needs to be reconsidered and redesigned to include more local representation of the Delta communities at the table and involvement. It should include more than inclusion on the 'Stakeholder Council'. Also, the regulatory authorities (e.g. USFWS, CDFW, NMFS, ACOE, etc.) should be provided 'Veto' authority within the proposed BDCP governance structure or following Implementation Agreements.

Also, our agency cannot fully comment on the draft BDCP because the important accompanying document of the draft IA to be reviewed in conjunction is lacking supporting details or requirements which cause concerns. The appointments are at the discretion of the Natural Resource Agency or the Authorized Entity Group rather than appointment and inclusion of local community stakeholders and other habitat conservation plan groups at large.

- Chapter 8 Implementation Costs and Funding Sources

This chapter and subsequent sections outlines the costs associated with implementation of the proposed BDCP and some components of the plan. The chapter notes the requirements of the proposed BDCP for permits with relation to the ESA and NCCPA to ensure adequate funding to carry out obligations. The proposed BDCP breaks down with the best assumptions possible the related costs and potential funding.

The section cannot be commented on without the funding (construction, implementation, mitigation, restoration, monitoring, etc.) details being provided by the draft BDCP sections or draft IA. Neither of the documents have sufficient information on assured funding for any part of the project. The project proponents have been admitting the repeatedly 'the costs of the BDCP is high and there is concern it will increase' which is not a surprise given the nature of public works projects over time during construction. A lacking and important piece which must accompany any review of the BDCP Implementation and Funding Sources chapter is the draft IA that establishes each proponent's contribution to the project as a whole. The 'whole project' and especially the costs/funding should be viewed as one entire documented project (e.g. BDCP document, EIR/EIS, and IA) with sufficient time provided under CEQA, NEPA, ESA, NCCPA.

Our staff looks forward to working with the BDCP staff and consultants on the continued development of the BDCP document, the BDCP final EIR/EIS and the draft IA to insure a greater likelihood that the BDCP and SJMSCP will be complimentary to each other rather than conflicting.

Please feel free to contact myself or Steven Mayo, Program Manager, on my staff with any comments, concerns or additional needed information regarding the SJMSCP and the

continued work on behalf of the county-wide habitat conservation plan of San Joaquin County.

Sincerely,



STEVE DIAL

Deputy Executive Director / Chief Financial Officer

Cc: SJCOG, Inc. Board  
Josh Emery, United States Fish and Wildlife Service  
Todd Gardner, California Department of Fish and Wildlife  
Habitat Technical Advisory Committee (HTAC) members  
Kathy Miller, City of Stockton Council Member and Delta Coalition Chair



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THE COUNTY OF  
SAN JOAQUIN

July 25, 2014

BDCP Comments  
Ryan Wulff, NMFS  
650 Capitol Mall, Suite 5-100  
Sacramento, CA 95814

Re: BDCP Draft Implementation Agreement (IA) Comment Letter Pertaining to  
SJMSCP

Dear Mr. Wulff:

SJCOG, Inc. is the administrator of the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). Our staff has continuously been involved with the evolution of the Bay Delta Conservation Plan (BDCP) since the inception. In addition to this individual comment letter on the BDCP Draft IA, SJCOG, Inc., in conjunction with other Delta Initiative Coalition stakeholders, may be submitting a separately transmitted joint comment letters.

Our agency identified issues in the prior releases of the BDCP draft documents which were again not fully addressed in those specific BDCP documents (e.g. the BDCP Public Draft, the Draft EIR/EIS or this Draft IA) in relation to those issues. The continued concerns with the BDCP and all the subsequent Draft documents are very similar to those our agency has voiced previously to BDCP staff regarding the overlap of vast tracts of land and species in parts of San Joaquin County covered by the existing county-wide habitat conservation plan. Those concerns are but not limited to:

- The unforeseen impacts to the SJMSCP with regards to the federal and state permits being implemented under the existing SJMSCP to balance development and protection of species within San Joaquin County which the BDCP draft EIR/EIS does not fully addressed.

- Certain proposed activities and oversight of the BDCP, such as the types and extent of restoration in the Delta which may have a negative impact on existing preserves and our ability to acquire future preserves within San Joaquin County.
- The future impacts by the BDCP requiring excessive administrative time and costs to the SJMSCP to provide the vast amount of coordination and information to minimize the potential devastating effects to the existing habitat plan.

A further concern our staff had after review of the Draft IA is all the Delta counties which have permitted HCPs or are developing HCPs or NCCPs be approved by federal and state regulatory agencies are not being given a full voice with the various overlapping areas of the BDCP and existing/potential plans.

Focusing on the SJMSCP, the plan area covers approximately one-third of the Sacramento-San Joaquin Delta in both the Primary and Secondary Zones. The SJMSCP is a permitted habitat conservation plan containing existing agreements with our federal partners United States Fish and Wildlife Service (USFWS) and state partners California Department of Fish and Wildlife (CDFW) agencies including a very complicated Biological Opinion issued with the take permits and the SJMSCP Implementation Agreement. These existing agreements are a major difference between SJMSCP and the others under development. Therefore, the SJMSCP (and other implementing plans) should be considered an existing condition and included as such as the baseline.

The SJMSCP has been diligently fulfilling the terms of the existing SJMSCP Implementation Agreement and issued federal and state take permits by mitigating for development in San Joaquin County through acquisition of conservation easements and establishment of habitat preserves under an existing conservation strategy which include areas considered under the proposed Delta Plan and the incorporated BDCP.

After numerous hours of analysis of the enormous amount of text of the various documents which make up the Draft BDCP, the Draft BDCP EIR/EIS and the Draft IA, our staff continues to have the same concerns previously expressed in our communications to BDCP staff and consultants as well as new concerns from the Draft BDCP, Draft EIR/EIS and Draft IA which need to be addressed/examined/explained more completely. All these concerns are matters which can cause great conflict between the already approved implementing SJMSCP under federal and state take permits and the proposed developing BDCP.

Therefore, SJCOG, Inc. strongly recommends the following be addressed by any subsequent drafts or approved BDCP Implementation Agreement document:

1. The Draft IA in the first paragraph states a 'note to reviewers' regarding the "level of agency signatory" under this agreement remains to be determined. This leaves a large void in the purpose of the draft IA. The draft IA is the tie between the various documents, the project, the proponents of the project and the regulatory agencies which will be giving authority for impacts of said project. How is this possible to not know?

2. The Draft IA should provide details of the project (conditions and funding mechanisms for mitigation) and assignments of responsibilities during the various phases of the project (construction, implementation, mitigation, monitoring). The primary reason for the IA would be a solid contract between the project proponents and regulatory agencies as to the process and means for what will be built, how it will be built, funding to assure it can be mitigated fully and assurances of obligations to meet the various federal, state and local ordinances (e.g. NEPA, CEQA, ESA, CESA, etc.). Those details are lacking in the Draft IA.
3. The Draft IA does not provide the needed assurances, details or support the required information as noted in the draft BDCP public document (see chapters 6, 7 and 8) which was to be provided in the future IA. The prior drafted material 'kicked the can down the road' with details stating the details would be found in the future IA which is not the case.
4. The Draft IA insufficiencies can lead to compliance issues with the state's Natural Community Conservation Planning Act (NCCPA) and federal Endangered Species Act (ESA) section 10 requirements. In addition, the insufficient draft IA can cause concerns with meeting the obligations under CEQA and NEPA for the project.
5. The Draft IA does not provide adequate assurances for the funding of the project (construction, implementation, mitigation, restoration or monitoring) for meeting the goals and obligations under the state and federal permits.
6. The Draft IA does not contain necessary details or language to support the assertions of meeting the NCCPA, CEQA, ESA, NEPA or any other requirement for projects of this magnitude.
7. The Draft IA shows the flaws with the BDCP's implementation structure with the 'Authorized Entity Group'; 'Permit Oversight Group'; 'Adaptive Management Team'; 'Stakeholder Council'; and 'Supporting Entities' by giving the project proponents (DWR, SWP contractors and CVP contractors) equal to that of lead agencies on the state and federal level. There is a lack of any local representation with weight.
8. The Draft IA does not allow for any 'checks/balance' or veto allowance by the regulatory agencies providing the take permits as allowed in other habitat plans.

Our staff looks forward to working with the BDCP staff and consultants on the continued development of the BDCP document and BDCP final EIR/EIS (and draft IA when available) to insure a greater likelihood that the BDCP and SJMSCP will be complimentary to each other rather than conflicting.

Please feel free to contact myself or Steven Mayo, Program Manager, on my staff with any comments, concerns or additional needed information regarding the SJMSCP and the continued work on behalf of the county-wide habitat plan in San Joaquin County.

Sincerely,

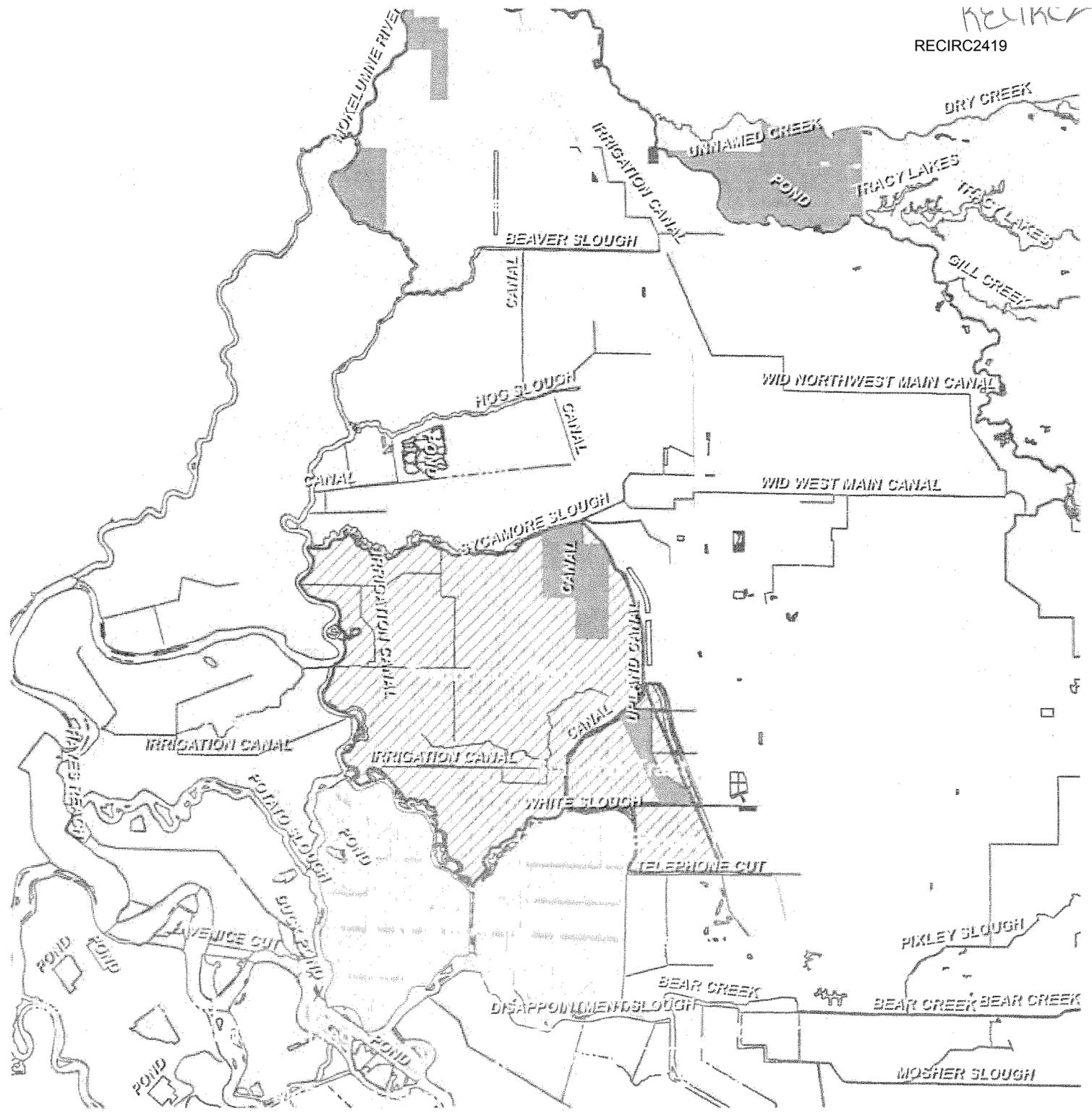


STEVE DIAL  
Deputy Executive Director / Chief Financial Officer

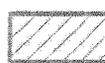
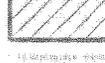
Cc: SJCOG, Inc. Board  
Josh Emery, United States Fish and Wildlife Service  
Todd Gardner, California Department of Fish and Wildlife  
Habitat Technical Advisory Committee (HTAC) members  
Kathy Miller, City of Stockton Council Member and Delta Coalition Chair

KELIKATIM

RECIRC2419



### Legend

-  KNOWN GGS -White Slough Wildlife Area - DWR
-  KNOWN GGS -Rio Blanc Tract - Delta Island
-  KNOWN GGS -Shin Kee Tract - Delta Island
-  KNOWN GGS -Terminous Tract - Delta Island
-  Additional KNOWN GGS
-  SJCOG\_Preserves

### SJMSCP GGS Area

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**From:** Steve Mayo <Mayo@sjcog.org>  
**Sent:** Thursday, October 29, 2015 8:12 AM  
**To:** BDCPcomments  
**Cc:** Joshua Emery; Sheridan, Kursten@Wildlife; kmiller@sjgov.org  
**Subject:** SJCOG, Inc. - BDCP/CA WaterFix RDEIR/SDEIS Comment Letter  
**Attachments:** SJCOG Inc\_BDCP RDEIR SDEIS Comment Letter\_Oct 2015.pdf

BDCP/WaterFix staff:

For the official record, please find the comments on the BDCP/CA WaterFix RDEIR/SDEIS being submitted prior to the October 30, 2015 closing date by SJCOG, Inc. as administrators of the San Joaquin County Habitat Conservation and Open Space Plan (SJMSCP).

Our agency will be providing a hard copy as well to the appropriate PO Box address as required through the postal service.

Please confirm the receipt of the comments via email.

Sincerely,

**Steven Mayo**  
**Program Manager**  
*Habitat Conservation Plan*  
*San Joaquin Council of Governments*  
*555 East Weber Avenue*  
*Stockton, CA 95202*  
*209-235-0600 phone*  
*209-235-0438 fax*  
[www.sjcog.org](http://www.sjcog.org)

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**From:** Barry Williams <wcstriper@gmail.com>  
**Sent:** Monday, October 26, 2015 7:33 PM  
**To:** BDCPcomments  
**Subject:** BDCP Comment 1

The State of California's "Delta Fix" water tunnels project to divert Sacramento River flows under the San Francisco Bay Delta Estuary will cause the destruction of the West Coast's largest estuary, a nursery for fish and wildlife that feeds the Pacific Flyway (from Mexico to Alaska), commercial fishing operations in three states, a thriving tourist economy and vibrant farm community, drinking water for 5 million people in the San Francisco Bay Area, and essential natural water hub for recreation and community enjoyment.

Taking this water for export before it reaches the estuary and bay, will lead to decades of public dissension and box the federal government into a corner replete with huge costs and obstacles to meeting its statutory and legal obligations. Independent state scientists recently testified that the project is legally deficient and not justifiable. The proposed Delta Water Tunnels will not solve current or future droughts because they create no new water supply. Moreover, they are so large they could easily drain the Delta Estuary of essential freshwater. Before saddling taxpayers with a multi-billion dollar mortgage, years of confusion and a legacy of conflict, more cost effective water supply alternatives must be considered and implemented. This multibillion-dollar tunnels plan hinders real statewide water solutions for California. Policy analysis of the proposed project fails to consider more cost-effective water conservation alternatives that produce more water now in comparison to waiting the decades it will take to construct these experimental tunnels before determining if the investment was worth it.

As currently proposed, the State of California's water tunnels project does not comply with Federal law and it will prevent the Department of Interior and other agencies from meeting their collective responsibilities to protect the San Francisco Bay Delta ecosystem. The water tunnels would serve both the federal Central Valley Project (CVP) and the California State Water Project (SWP). An engineering undertaking of this magnitude has never been attempted. More importantly, it would have devastating impacts on the Delta ecosystem, and inhibit your agency's ability to comply with the Clean Water Act, Endangered Species Act, Fish and Wildlife Coordination Act and to meet your trust obligations to Native Americans, especially those on the North Coast that depend on waters from the Trinity River Division. The resulting federal confusion will lead to decades of legal and political conflict, not a good legacy for the Department of Interior. All of this can be avoided if you show bold leadership and foresight by rejecting this project.

Diverting the highest quality freshwater inflow from the Bay-Delta system would lead to unprecedented change in the ecosystem character and sustainability. As for habitat and endangered species, they will be permanently, detrimentally affected. Impact studies on flow restrictions to San Francisco Bay have been largely excluded from public review and the resulting effect of years of flow restrictions omitted. Impacts to water dependent industries that count on a healthy bay and estuary have been ignored or brushed aside. Drinking and recreational contact water quality impacts, including flow related toxic harmful algae blooms will impact millions of people who depend on a healthy estuary to live, play, work, farm and fish.

Serious and potentially catastrophic issues have been raised by Fish and Wildlife Services' red flag memos, USGS has expressed concerns about pollution emanating from exporting more Delta water to irrigate toxic San Joaquin Valley west side soils, and an Interior commissioned National Academy of Sciences (NRC Report) report concluded the water tunnels approach "contains critical scientific gaps." These experts, along with National Marine Fisheries and the U.S. Environmental Protection Agency have rung alarm bells, informing that if approved, you won't be able to meet your legal duties. USBR has failed to look at alternative operations that will not have such devastating impacts on fish and wildlife.

Just recently, USBR jumped the gun to file a water rights application for new points of diversion for the tunnels with the State Water Resources Control Board, assuming that the project complies with all applicable federal laws and regulations. On the contrary, compliance is highly doubtful. We have a classic case in which different agencies within the Department go in different directions. In addition to the water rights filing, USBR petitioned the Army Corps of Engineers for permission to perform dredge and fill construction activities for the water tunnels long before the project has received other necessary approvals. This heightens the public's fears that USBR and the State are trying to force the project through administrative channels without proper review. On the other hand, their inaction with regard to Section 7 consultation with the fisheries agencies compounds the public's fears that realistic and prudent alternatives are being ignored and avoided. Their actions with the State Water Board and the Corps of Engineers are premature given their inaction on Section 7 consultation, and should be withdrawn. Embedded in this rush to act before safeguards are approved and analysis is completed, is the notion of building a project without operating plans. Building it now and learning to operate it later is not a recipe for success.

The Delta Water Tunnels Project is a massive experiment that has not been adequately thought through and presents unprecedented environmental and economic risks. The CVP and SWP already have a lengthy history of not meeting conservation objectives. For almost a decade, the projects' coordinated operations have made little or no progress in meeting required mitigation measures including the required purchase of 27,000 acres of endangered species habitat. Populations of listed fish species have declined to dangerous levels in this period. There should be no rush to make decisions that would hasten their extinction.

The San Francisco Sacramento-San Joaquin River Delta and San Francisco Bay serve as a nursery and breeding grounds for iconic species on the brink of becoming extinct, such as salmon that, if lost, will set in motion an ecological chain reaction extinguishing orcas (*Orcinus orca*) and along with support for over 750 species.

Barry Williams



ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7

100 NORTH CANYONS PARKWAY, LIVERMORE, CA 94551-9486 • PHONE (925) 454-5000

October 28, 2015

BDCP/California WaterFix Comments  
P.O. Box 1919  
Sacramento, CA 95812.

Sent via email to: [BDCPComments@icfi.com](mailto:BDCPComments@icfi.com)

Subject: ***Comments on the Bay Delta Conservation Plan/California WaterFix Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement***

Zone 7 Water Agency appreciates the opportunity to comment on the Bay Delta Conservation Plan/California WaterFix Partially-Recirculated Draft Environmental Impact Report (EIR)/Supplemental Draft Environmental Impact Statement (EIS).

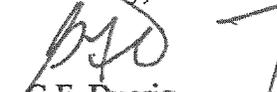
Zone 7 is the wholesale treated water supplier to businesses and approximately 240,000 residents in the cities of Livermore, Pleasanton, Dublin and a portion of San Ramon. Zone 7 also provides flood protection in eastern Alameda County and serves untreated water for irrigating 3,500 acres. Approximately 80 to 90% of Zone 7's water supply comes from the State Water Project (SWP), making Zone 7 one of the local water agencies that are most reliant on SWP water conveyed through the Delta. Furthermore, Zone is the first recipient of Delta water delivered by the SWP's Banks Pumping Plant, making Zone 7 especially vulnerable to Delta disruptions due to earthquakes, salinity intrusions, wind-stirred sediment, toxic algal blooms and any other catastrophic events.

The instability of the aging levees in the Delta (including their vulnerability to seismic events and climate change), regulatory uncertainty, saltwater intrusion and the declining health of the Delta ecosystem all challenge Zone 7's primary water supply, making the California WaterFix critical to Zone 7. The proposed project provides the best identified pathway for addressing the many complex issues undermining the Delta and its ability to continue to provide environmental, water supply conveyance and economic benefits, not just to Zone 7, but to the rest of California.

Zone 7 supports the comments provided by the State Water Contractors. While some improvements are still necessary to complete the Final EIR/EIS, Zone 7 believes that the environmental documents prepared to date give the Department of Water Resources, the Bureau of Reclamation and other stakeholders the information needed to make an informed decision and to move California WaterFix forward as a key component of implementing the California Water Action Plan. To further delay Cal WaterFix extends risks to water supply reliability and the health of the Delta Ecosystem.

If you have any questions regarding this letter, please feel free to contact me at (925) 454-5000 or via email at [jduerig@zone7water.com](mailto:jduerig@zone7water.com).

Sincerely,

  
G.F. Duerig  
General Manager

**From:** Duerig, Jill <jduerig@zone7water.com>  
**Sent:** Wednesday, October 28, 2015 11:19 AM  
**To:** BDCPcomments  
**Subject:** Comments on the Bay Delta Conservation Plan/California WaterFix Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement  
**Attachments:** BDCP Cal WaterFix comments.pdf

Please see attached –

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**From:** Kit Kubitz <mesondk@yahoo.com>  
**Sent:** Wednesday, October 28, 2015 1:33 PM  
**To:** BDCPcomments; bwright@friendsoftheriver.org; Barbara; Osha Meserve;  
troutnk@aol.com; bdcpcments@noaa.gov  
**Subject:** Comments on Revised BDCP Cal Water Fix EIR  
**Attachments:** BDCP CommentOct30.docx

Enclosed are comments, with citations to the revised EIR, and references to studies pertinent to the EIR. These comments object to the proposed project, request a public hearing in San Francisco (where no public meeting was so far held), request changes to the decision-making process for project operation, ask for elimination of the second tunnel and reduction in size, and request the Independent Science Board to further review the EIR.

The basis for these comments are 3 key uncertainties: Uncertainties of impacts, uncertainties of mitigation, and uncertainties of decision making in operation. The risks are too great to allow this project to proceed as proposed, where Delta flows and fish species have already been depleted. There is an environmental opportunity cost, the risk of serious harm to the Delta, the bay, salmon and other fish, and the overall environment of Northern California. Taking that environmental opportunity cost into account, the environmental impact is negative and the fiscal cost benefit is also negative for the project as proposed and the preferred alternative.

These comments also request information on any changes to the Project, EIR, or hearing process as requested for a public meeting in San Francisco and further review by the Independent Science Board.

Kermit R. Kubitz 415-412-4393 mesondk@yahoo.com

COMMENTS ON REVISED BDCP EIR AND OBJECTIONS TO DELTA TUNNEL PROJECT PREFERRED ALTERNATIVE 4A

DEAR SIR:

ENCLOSED ARE COMMENTS ON THE REVISED EIR, AND OBJECTIONS TO THE ALTERNATIVE 4A. I OBJECT TO THE EIR AND THE DELTA TUNNEL AS CURRENTLY PROPOSED ON THREE BASES:

1. THE IMPACTS ON THE ENVIRONMENT ARE NOT UNDERSTOOD WELL ENOUGH AND BASED ON SIMPLISTIC ASSUMPTIONS THAT MAY UNDERSTATE SIGNIFICANT ENVIRONMENTAL IMPACTS. (UNCERTAIN IMPACTS)
  
2. SOME ASSERTED COMMITMENTS WHICH ARE DESCRIBED AS MITIGATION MEASURES FOR ENVIRONMENTAL IMPACTS ARE NOT ADEQUATELY DESCRIBED AND COMMITTED, LACKING FUNDING, SCIENTIFIC BASIS, AND DETAIL (UNCERTAIN MITIGATION)
  
3. THE ON-GOING DECISION PROCESSES FOR WATER USE, RELEASES, AND MANAGEMENT OF DELTA INFLOWS ARE NOT ADEQUATELY DESCRIBED, COMMITTED AND LEGALLY CONSTRIINED BY AGREEMENTS, PERMITS AND CONDITIONS TO PREVENT NEGATIVE ENVIRONMENTAL IMPACTS, INCLUDING THOSE ON NORTHERN CALIFORNIA ENVIRONMENT, RIPARIAN HABITAT, AND IMPORTANT SPECIES AFFECTED BY THE PROJECT. (UNCERTAIN DECISION PROCESSES FOR OPERATION)

4. I FURTHER REQUEST THAT A PUBLIC HEARING ON THE REVISED EIR, DELTA TUNNELS PROJECT, AND IMPLEMENTATION AGREEMENT AND MITIGATION MEASURES BE HELD IN SAN FRANCISCO, CA, BECAUSE NO PUBLIC MEETING WAS HELD IN SAN FRANCISCO, ONLY 1 (“ONE”) COPY OF BDCP EIR MATERIALS WAS PLACED IN THE SAN FRANCISCO PUBLIC LIBRARY SYSTEM (AS OPPOSED TO 10 IN MARIN COUNTY AND SEVERAL IN EACH OF SAN JOAQUIN AND OTHER COUNTIES.)

SUCH A PUBLIC HEARING IN SAN FRANCISCO COULD BE HELD EITHER IN A HEARING ROOM IN CITY HALL OR SOME OTHER BUILDING SUCH AS THE PUBLIC UTILITIES COMMISSION BUILDING IN SAN FRANCISCO.

5. I REQUEST THAT THE INDEPENDENT SCIENCE BOARD WHICH HAS QUESTIONED THE ADEQUACY OF THE SCIENTIFIC BASIS FOR THE IMPACT AND MITIGATION PLAN DESCRIPTION IN THE EIR BE REQUESTED TO REVIEW THE REVISED EIR, COMMENTS OF INTERESTED AGENCIES AND THE PUBLIC, AND PROVIDE COMMENTS TO BE INCLUDED IN THE RECORD TO DETERMINE THE ADEQUACY OF THE EIR AND SUITABILITY OF THE PROPOSED PROJECT AND PREFERRED ALTERNATIVE.

COMMENTS.

Comment A. MITIGATION MEASURES ARE INADEQUATE WHEN USE OF CAPTIVE SPECIES IS MENTIONED.

The revised EIR, Appendix D, showing substantive changes, shows a section D.3.1.2 referring to Goal DTSM3, which

apparently provides for use of captive delta smelt in fisheries as a backstop for impacts on delta smelt, a threatened species which could be significantly impacted

However, use of captive species to preserve an endangered or threatened species of fish is not without risks. To suggest that fish hatcheries or captive born fish can be relied up to offset impacts in natural river conditions and populations ignores the history of problems and failures of captive fish and hatcheries. As noted recently, hatcheries can be subject to failure for a number of reasons, including infections, loss of water, or failure to maintain appropriate conditions for the species. See stories from Sep 2015

GOLD RIVER (AP) - The California Department of Fish and Wildlife say it is working to keep hundreds of thousands of trout alive at the American River Hatchery after warm water temperatures killed about 155,000 trout.

The department said Wednesday a chiller that cools water at the hatchery about 18 miles east of Sacramento unexpectedly failed Tuesday, and warm temperatures killed most of the Eagle Lake species of trout being raised there. Why the hatchery equipment failed is under investigation.

It says trout require cold water to survive and hatchery staff is working to get a least one chiller working again to help the remaining 335,000 trout.

The department says the unexpected die-off could mean it will not be able to stock streams and lakes at an ideal level in the Sacramento region next year.

THUS, RELIANCE ON CAPTIVE SPECIES AND HATCHERIES TO MAINTAIN POPULATIONS OF THREATENED SPECIES IS RISKY AND UNCERTAIN. GOAL DTSM3 CANNOT BE CONSIDERED ADEQUATE MITIGATION IF DELTA SMELT ARE IMPACTED BY THE

DELTA TUNNELS PROJECT. THIS COMMENT REFERS TO BOTH BASES 1 AND 2 FOR OBJECTION, IE UNCERTAIN IMPACTS AND UNCERTAIN MITIGATION.

COMMENT B. MITIGATION MEASURES, REQUIRED UNDER CEQA AND NEPA, ARE UNCERTAIN, NOT FINALLY FUNDED, AND CANNOT BE USED IF UNCERTAIN TO JUSTIFY NEGATIVE IMPACTS OF THE DELTA TUNNELS PROJECT.

At various places in the revised EIR reference is made to various projects which are considered “defacto” mitigation. However, it is clear from a careful reading, that many of these projects are far from certain of being implemented, lacking necessary commitments, agreements, planning, or funding.

As one example, the Southport Project is described as one of several measures which will either create or enhance tidal march, or riparian habitat, or otherwise contribute environmental features which might have some positive impact on the delta and fish species. However, these projects are not committed or funded. As noted in Section D1.1.1.4, the Southport project is not funded.

See p.

“Partial funding for the project was secured through the DWR Early Implementation Project; however, funding for floodplain design and restoration has not been determined. A partner agency is needed to help fund the riparian floodplain restoration for the portion of the property that will not be used as mitigation for the flood control project. Depending on the funding source, this project may contribute up to 280 acres of floodplain restoration, which would be consistent with the goals of CM5 Seasonally Inundated Floodplain Restoration”

COMMENT C. ENVIRONMENTAL IMPACTS ARE HIGHLY UNCERTAIN, AND MITIGATION MEASURES ARE THEREFORE NOT WELL UNDERSTOOD. IT CANNOT BE CONCLUDED THAT MITIGATION WILL BE ADEQUATE, KNOWING THERE WILL BE NEGATIVE ENVIRONMENTAL IMPACTS.

As an example of the uncertainty of environmental impacts and assumptions about necessary mitigation, there is a discussion of the objectives for stream flows necessary for salmon survival.

See the following from pages 7-8/216 of Appendix D

Objective WRCS1.1 Rationale: Appendix 3.G, Proposed Interim Delta Salmonid Survival Objectives, presents a 2012 technical memorandum prepared by NMFS outlining the framework for determining appropriate metrics for through-Delta survival based on limited data of current through-Delta survival rates. The technical memorandum outlines how NMFS estimated current through-Delta survival rates and the rationale for specific interim metrics defined within Objectives WRCS1.1, SRCS1.1, FRCS1.1, and STHD1.1. NMFS used a simple deterministic, stage-based life-cycle model and cohort replacement rates of 1.2, 1.3, and 1.4 (1.3, 1.4, and 1.5 for winter-run Chinook salmon) to define survival objectives .....

For each of the covered salmonids, the interim through-Delta survival objective represent 50% of the estimated increase in Delta survival required to achieve the modeled cohort replacement rates, based on improvements in through-Delta survival alone. That is, NMFS held pre-and post-Delta survival constant and calculated the improvement in Delta survival needed to achieve the target cohort replacement rates, assigning half of that improvement to

the BDCP. The balance of the improvements required to achieve the modeled cohort replacement rates is expected to be derived from other recovery actions distributed throughout the entire range of covered salmonids, which could occur upstream, in the Delta, and/or in the ocean.”

Thus we can see that the objectives for Delta water flows and resulting salmon populations are first, based on a simple model, second, assign only half (50%) or required improvements in salmon survival to the BDCP project mitigation, and third, rely on other, as yet unnamed measures, such as “ocean” improvements to provide appropriate Salmon populations (“cohort replacement”).

It is clear from other studies that fundamentally, water flows are correlated, positively or negatively, with fish populations, sometimes with a lag of a few years. The lag in effects is caused by the fact that water conditions in the first few years of fish species life are most important, including populations able to survive adequately to lay eggs, with required upstream migration. Then, the survival of eggs and young fish during downstream migration again provides major impacts on fish populations and “cohort replacement” ie, the continuance of fish populations based on prior populations reproducing.

See Effects of river regulation and diversion on marine fish and invertebrates, Drinkwater and Frank (1994)

“Variations in river run-off are believed to induce upstream spawning migrations in many anadromous fish stocks (Fraser, 1972; Northcote, 1982). Most salmon migrations occur at times of increasing or peak run-off. Also, the downstream migration of many juvenile salmon stocks tends to be associated with high freshwater discharge

(Northcote, 1982; Youngson et al., 1983)”

[http://swrcb2.swrcb.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/deltaflow/docs/exhibits/swrcb/swrcb\\_drinkwater1994.pdf](http://swrcb2.swrcb.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/exhibits/swrcb/swrcb_drinkwater1994.pdf)

By capturing and diverting conditions of high river run-off, the Delta tunnels will eliminate the potential for higher salmon migrations upstream to spawn as well as the downstream migration of juvenile salmon. This effect is clear and cannot be denied. Therefore, the only question is whether to allow it, or to reduce it, if it cannot be fully mitigated.

Reduction or elimination of the two large proposed Delta Tunnels under Preferred Alternative 4A is the only reasonable response to the potential impacts of large Delta diversions resulting from twin, large scale tunnels. Moreover, while it is suggested that mitigation will consider maintenance of adequate Delta stream flows, as discussed above, the basis for determination of these “adequate” flows is highly uncertain and based on simplistic assumptions.

Importantly, because of the lag in cohort replacement, ie the fact that returns of migratory fish may not take place for 2-3 years after the stream conditions under which the fish population was conceived or born, mistakes made in year 20XX may be devastating, with the impact not know until year 20XX+3. Therefore, mistakes in operation, stream flow, temperature conditions and so on can be long term harmful without being understood at the time operational decisions are made.

Given the potential for drastic harm to occur, no major decision which affects Delta flows should be made except on a conservative basis, designed to avoid the potential for a horrendous, unrecoverable error which would devastate Delta

and bay fisheries and the estuarine environment of Northern California.

There has been extensive discussion of the uncertainty of developing necessary fresh water flows, with consideration of multiple approaches, reflecting the underlying uncertainty of knowledge about flow needs. A UC Davis study noted:

“Estimating flows for improving habitat conditions, particularly to support fishes with different and often conflicting life history strategies, is much more complex and is hampered by numerous uncertainties”

The same study reported that the biggest change from the period when “fish were doing better” to when “fish were doing worse” was increased Delta exports, exactly what Two-Delta-tunnel project is proposed to provide.

“The largest change from the earlier historical period when fish were doing better to the later period when fish were doing poorer is the increase in exports that reduce net Delta outflow. Exports increase from 0.9 maf during the 1949 – 1968 period (1.4 maf annual average over the 13 years of actual export) to 5.1 maf over the 1986 – 2005 period, an increase exceeding 450 percent.”

See: Fleenor, Bennett, Myle and Lund,  
On Developing Prescriptions for Freshwater Flows to Sustain  
Desirable Fishes in the Sacramento-San Joaquin Delta

[https://watershed.ucdavis.edu/pdf/Moyle\\_Fish\\_Flows\\_for\\_the\\_Delta\\_15feb2010.pdf](https://watershed.ucdavis.edu/pdf/Moyle_Fish_Flows_for_the_Delta_15feb2010.pdf)

The lessons of these reports are clear, there is great uncertainty in estimating Delta flows, and lower flows are associated with poor fish conditions and survival.

Similarly, a State Water Board Report found that Delta flows should be maintained at a level of about 75% of unimpaired flows for January through June.

[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/deltaflow/docs/final\\_rpt080310.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/final_rpt080310.pdf)

Therefore, projects should be sized to minimize impacts that increase Delta exports, reduce Delta flows outward, and harm fish populations correspondingly, without effective knowledge about what conditions are necessary to maintain or improve those populations. Two tunnels should not be built, as a constraint on the level of exports and resulting harm to the Delta environment.

**COMMENT D. DECISIONS PROCESSES FOR DELTA TUNNEL OPERATION ARE POORLY DEFINED AND NOT WELL DESIGNED TO MAINTAIN ADEQUATE FLOWS TO IMPROVE OR MAINTAIN DELTA AND BAY ENVIRONMENT OR SPECIES POPULATIONS.**

The mantra of how the Delta Tunnels, exports, diversion amounts and timing and flows to Southern California and the Central Valley has been “adaptive management.” This implies that decision making will be a learning process which conforms to rational and scientific decision-making, and improves management over time as new information becomes available.

Unfortunately, the adaptive management process is subject to the actual processes provided for making decisions about water

use and diversion, the people and agencies involved, and who has the ultimate power to make or veto decisions.

As noted in the revisions to the EIR in Appendix D

“The fish and wildlife agencies (USFWS, NMFS, and CDFW) retain final authority over the operational criteria and constraints (i.e., which pumping stations are operated and at what pumping rate) during testing.”

This implies that “after testing” the fish and wildlife agencies will give over control to another decision process. This is one of the fundamental problems with the EIR and a change that should be made. Eliminate “during testing” so that the fish and wildlife agencies “retain final authority over the operational criteria and constraints.” At all times during the operation of any approved project, conditions may be found which require revision of any proposed operation, to protect critical species, water quality, and habitat. The fish and wildlife agencies must have on-going authority to control (or at least veto) any proposed operations which endanger the Delta environment, such as excessive back flows, slough like conditions, inadequate flows for salmon spawning or juvenile downstream migration, inadequate salmon populations to permit Delta diversion and other considerations which should be within the control of fish and wildlife agencies if any project is to be permitted. Especially if a twin tunnel project is permitted, the USFWS and other wildlife agencies must have a controlling role in Delta flows and exports.

The need for definition of who is in control is obvious from the use of passive voice: Things will be done, but we don't know who will do them. From page 21/261 of Appendix D

“Based on the results of the studies described above initial operating criteria will be established, including conditions under which pumping levels will be adjusted within the bypass flow criteria to minimize effects on migrating covered fish and to achieve water supply goals.”

So we have the BDCP, the AMT, a working group of the AMT yet to be established, the results of the working group being some research studies to address uncertainties, results of the research used by someone to establish criteria, and someone who will implement those criteria. This sounds like a playground game where children in a circle whisper to each other and what starts out at the beginning is incomprehensible at the end.

The management processes have been extensively edited in the revised draft EIR, as shown on pages 25-26 of Appendix D. Page D.3-24 et seq lay out a management process whereby a Real Time Operations (RTO) team is set up, with approval of BDCP. The RTO team consists of representatives of 1. USFWS 2. NMFS 3. CDFW 4. Reclamation 5. DWR and 6. State Water Project Contractors and 7. Central Valley Project Contractors.

Nominally, members 6 SVP contractor and 7 CVP contractor rep are “non-voting”. But this is unclear because the decision process says the RTO team will operate by consensus. Consensus is an informal agreement process, not a voting process. So what happens if the 6 and 7 non-voting members do not consent and happen to agree with DWR and Reclamation on the need for maintaining some level of water exports/diversion with which the fish and wildlife agencies do not agree.

Then, on pages 25-26, the matter is escalated to the Regional Director of FWS agency, the Director of DWR, and the Regional Director of Reclamation. Note that two out of three of

these decision makers are oriented toward water supply and contractor obligations, not fish and game and species preservation. Quite simply this decision process is ill-defined and does not provide adequate protection against imprudent diversions or exports. The operations process should be better defined, the FWS agencies should have the right to establish the constraints, which cannot be modified or violated by real time operations, within CM-1 referred to at page D.3-25 as set forth below:

“The extent to which real time adjustments that may be made to each parameter related to these facilities shall be limited by the criteria and/or ranges set out in CM1 and CM2. That is, operational adjustments shall be consistent with the criteria, and within any ranges, established in the Conservation Measures.”

These criteria or ranges should be set narrowly and conservatively, and subject to revisions by the fish and wildlife agencies as necessary to protect the environment, water quality, and threatened and endangered fish species.

Overall, in review of the EIR and proposed project reaches conclusions similar to that of the Independent Science Board, as published, and reported in the Sacramento Bee in May 2015. We do not know whether the revised EIR, issued in July, resolves, or increases the concerns expressed in that independent review:

May 15, 2015  
Sacramento BEE

The state’s proposal to restore habitat in the Delta and build two massive water diversion tunnels on the Sacramento River “falls

short” in its scientific rigor, according to a new report by a group of scientists.

The tunnels are just one component of the Bay Delta Conservation Plan, a \$25 billion project proposed by the California Department of Water Resources. The project, intended to reform water management in the Sacramento-San Joaquin Delta, has been in the works for eight years. It is now undergoing public review, with a decision on approval expected by the end of this year.

As part of that process, legislation in 2009 required the draft environmental impact study for the project to be reviewed by the Delta Independent Science Board, a 10-member panel of technical experts appointed by the Delta Stewardship Council. The council is a state agency, separate from DWR, whose seven members are appointed by the governor and Legislature. It has limited powers of review over the Bay Delta Conservation Plan and other matters in the Delta.

In a 133-page report released Monday, the Independent Science Board commends the BDCP planners for compiling and analyzing mountains of complex information on the Delta, the largest estuary on the West Coast of the Americas. But it also faults the analysis in a number of crucial areas, including interaction among wildlife species, effects of climate change, effects on San Francisco Bay, poor analysis of uncertainties, and poor organization that undermines public understanding.

Jay Lund, the science panel’s chair-elect and a professor of civil and environmental engineering at UC Davis, said another issue is the way the proposal analyzes the effectiveness of 100,000 acres of habitat restoration proposed in the Delta.

“One of the bigger concerns in my mind, and for the science panel, is that they’re assuming the restoration is going to work, and work right away,” said Lund.

Please advise me of

1. Any further revisions to the Draft EIR/EIS for the Delta tunnels project.
2. Any changes or conclusions to the Implementing Agreement
3. Any public or legislative hearings on the BDCP and California Water Fix.
4. Any proposed hearing in San Francisco.
5. Any further reports by the Independent Science Board.

Thank you for considering these comments, and hopefully, revising this project to eliminate the negative environmental and budgetary impacts of the Two-Tunnels-Proposal, by eliminating any second tunnel, reducing the size of the tunnel, establishing hard constraints on Delta flow losses and exports, and maintaining fish and wildlife agency primacy in decision making on Delta flows.

Respectfully,

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BDCP COMMENTS PAGE ONE OF THIRTEEN

Thank you for this opportunity to comment on the Bay Delta Conservation Plan. These are my own comments and are not funded by any client.

There is an opportunity to design and operate a new water redistribution system that secures water supply for California for the next century and significantly improves ecology in the deltas that will be sustaining as long as we all recognize what is appropriate and how to act responsibly.

I also attach a draft white paper (Li, 2012) that I have been working on for some time and ask that you incorporate it by reference. It may be helpful to you.

These various Bay Delta documents are suitable only for those with technical expertise. It may be clearly written for the cognoscenti, but it fails as a document because they are not written for the lay public's perspective and, therefore, will not facilitate understanding to that most important audience for this work.

The water redistribution system replacement proposals are vital to the economy of California but have been defeated handily not because they were technically flawed, but because the public did not understand the issue and were easily swayed by political emotional rhetoric. There is significant parochial rivalry between Northern and Southern California that must be overcome. There are also myths about CVP/SWP that have no foundation in fact. There is also the vast intrigue of California water politics where some factions would prefer to use all the water solely for economic gain regardless of the environmental consequences and have therefore resisted any initiative of environmental stewardship. These powerful impediments can be overcome by providing a coherent narrative of the project and why it is in everybody's interest to have it constructed and operated in a sustainable fashion. While it is tempting to excuse this omission due to the vast complexity of the project, it also invites the same opposition that defeated the Peripheral Canal Proposition in 1982. Finally, this is a very expensive project. I doubt the claim that the water districts can fully fund it. Prepare to solicit Congressional support or for taxpayer approval. You won't get either with the documents as they are presently written. This is your opportunity to educate the lay public so that they can understand that this project is in the best interests of all of California. There is a great need for an overview. I have presented these ideas at recent Bay Delta conferences (Li, 2010, Li 2012). It is of utmost importance that the public understands:

- How the Sacramento-San Joaquin Delta is fundamentally different from most river deltas;
- Why a redesign of the water redistribution system is necessary;
- Why the new water diversion system on the Sacramento River is mandatory;

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- How ecological damage occurred in the San Joaquin Delta and the San Joaquin Valley due to San Joaquin Delta water exports;
- What are the ecological benefits of removing water diversions from the San Joaquin Delta?
- Why these adverse effects will not reappear in the Sacramento Delta;
- Why flow reversals should be avoided at all cost;
- Why all of San Joaquin River should be reserved to control salt incursion into the Delta during incoming tides;
- Why tidal salt incursion should be limited to West of Rock Slough diversion;
- Why standards of minimum outflow to San Francisco Bay from both the Sacramento Delta and the San Joaquin Delta must be established;
- What are the elements that caused the fish salvage facilities to fail;
- The limitations of fish screens must be understood;
- The logic behind underground tunnels to transport exported water from the Sacramento River to Clifton Court Forebay;
- Why there should be two tunnels instead of one;
- The reasons for habitat restoration at each site identified; and
- Guarantees to maintain this system in a sustainable condition.

Here are some narratives that may be useful to you.

**I. How the Sacramento-San Joaquin Delta is fundamentally different from most river deltas.**

The Sacramento-San Joaquin deltas are different from most river system deltas in that they are hydraulically and hydrologically isolated from one another and that their deltaic distributaries are not located adjacent to the ocean like most alluvial fans, but inland, making them one of the rare inverted river delta systems in the world. Unlike, for example, the Mississippi-Missouri river system where the two great rivers flow in the same direction, the flows of the Sacramento River and the San Joaquin River oppose one another, thus they are two separate hydrological and ecological systems that only share a common outlet to the ocean.

**II. Why a redesign of the water redistribution system is necessary**

What is now needed in California is the water redistribution system that was first articulated by B.S. Alexander in 1873, i.e., a system that redistributes the abundant water produced in Northern California to the arid areas of Southern California (See Jackson et al. 1990).

The present CVP/SWP does not do this. At Friant Dam the CVP diverts water from the San Joaquin watershed, a southern California watershed, and transfers it via the Friant - Kern Canal to the Kern watershed, another southern California watershed. Then it takes San Joaquin Delta water, again Southern California water and by using Jones Pumping

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Plant sends the San Joaquin Delta water back to Mendota Pool on the San Joaquin River via the Delta-Mendota Canal. Water stored in Shasta Dam and Folsom Dam that enter the deltas is used largely for water quality management and virtually all of this water flows into San Francisco Bay.

The SWP collects water from the Feather River watershed, sends it south using the Sacramento River as a water conveyance channel and invokes "Through Delta Water Conveyance" to have that water reach Clifton Court Forebay to be sent south. Banks Pumping Plant delivers water to the California Aqueduct. Since "Through Delta Water Conveyance" cannot occur (See below), the present CVP/SWP system has never taken water from the north and sent it south. It is a mere folk-tale. It has taken water from one Southern California watershed and sent to another Southern California watershed.

The very design of the CVP/SWP shows that the Sacramento-San Joaquin has been treated as a single monolithic delta, rather than as two separate deltas. This is fundamentally wrong. Because there are two different and separate hydrological systems, the sediment loads, suspended solids, water temperature regimes, intensity of land use practices, hydraulic energy, hydraulic inertia and hydraulic momentum are all different. These factors prevent the waters from mixing once they join and prevents any significant capture of Sacramento River water from the present pumping plants. SWP, in particular, has promoted the myth of "Through Delta Water Conveyance", where water flowing in the Sacramento River can be captured at Banks Pumping Plant 31 river miles upstream in the San Joaquin Delta. This is nonsense because the waters of these two rivers do not mix downstream of their confluence until it is too late because they have mixed with brackish water in Suisun Bay.

After the rivers have joined, the Sacramento River water remains in the north portion of the channel, protected from the CVP/SWP pumping operation by San Joaquin River water occupying the south portion of the channel. Water export operations must take into consideration the tidal cycle. Incoming tides draw water closer to the pumping plants, but flood tides also increases the risk of entraining the invading tidal salt wedge. Outgoing tides reduce the risk of tidal salt wedge entrainment, but makes pumping water more difficult because it's running away with the ebb tide. Tidal cycles impose a time constraint on water export operations. The distance between the confluence and Suisun Bay is also a problem because the distance from their confluence and Suisun Bay is very short. Thus, CVP/SWP water export operations must overcome the shorter time allowed due to constraints imposed by the dynamics of the tidal cycle, the vast volume of San Joaquin water between the pumping plants and the edge of the salt wedge to get to Sacramento water, the export pumps require time to gradually ramp up to prevent rolling brown outs from energy surges, and the amount of energy available to run the massive pumps. Energy shortage is acute during the summer months, making expanding the number of pumps unreasonable. They typically can't pump long enough to entrain all the San Joaquin water and avoid the tidal salt wedge in the time allowed to capture

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significant amounts of Sacramento water before the Sacramento water reaches the brackish Suisun Bay.

Another potential source of Sacramento water is from Georgiana Slough and the Delta Cross Channel, but they flow largely west to the San Francisco Bay rather than south to the water export pumps.

SWP compounds the CVP error by locating Banks Pumping Plant only about a mile away from Jones Pumping Plant. Now there are two large pumping facilities to create flow reversals. This only guaranteed higher magnitude of adverse effects to San Joaquin Delta fish with no increase in water supply.

The levee system in the San Joaquin Delta is necessary for the CVP/SWP water export operations is non-uniform, poorly designed, old, fragile, and poorly maintained. Some if not most of the levees in the San Joaquin Delta were manually constructed without proper design by Chinese laborers in roughly the 1860-1870 period. Currently, most of these levees are privately owned and are maintained variously by the owners without government subsidy, consequently maintenance is sporadic and variable.

The San Joaquin Delta levees may fail at any time. It may be caused by a 6.5 Richter seismic event or so, from wave action, from storm surge, from king tides, or simply cave in on a warm sunny day as was the case of the recent levee failure at Lower Jones Tract.

The present water export system is nearing water supply capacity. According to the Delta Atlas (1993) mean for water exports are around 2.5 million AFA for the CVP and 2.5 Million AFA for the SWP. The mean yield from the San Joaquin River is only 5.66 million AFA. This is 88% of capacity. If there is no move to the Sacramento River, water supply will soon be exhausted.

### **III. Why the new water diversion system on the Sacramento River is mandatory**

The water from the Sacramento River Watershed should be used to secure the water supply because there is almost  $3\frac{3}{4}$  more water available and it is of significantly higher water quality. The Sacramento Watershed (Sacramento River + Yolo Bypass) has contributed mean annually 21.19 MAF (million acre-feet) as Delta inflow between 1980 and 1991, while the San Joaquin Watershed (San Joaquin River + Eastside streams) contributed a mean annual 5.66 MAF over the same period (Delta Atlas 1993). With this amount of water from the Sacramento River available, the issue of nearing water supply capacity becomes moot and placement of the new water export diversion site becomes obvious.

Risk of collapse of the water system from levee failure in the Sacramento River watershed is less than those in the San Joaquin Delta because the levees are built to resist

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the higher flows in the Sacramento River, more of it has been replaced with levees of a modern design, and USACE has active levee improvement programs in this watershed.

**IV. How ecological damage occurred in the San Joaquin Delta and the San Joaquin Valley due to water exports**

The major direct adverse effect of water export operations from the Delta is flow reversal, an unnatural phenomenon. Both Jones Pumping Plant (CVP) and Banks Pumping Plant (SWP) are located about 31 River miles upstream on the San Joaquin River. These water export operations reverse the flows in lowest 31 river miles all the major channels in the San Joaquin Delta for almost 300 days each year (San Francisco Estuary Project 1992). Flow reversals through pumping are possible because the San Joaquin River is almost pancake flat (gradient 0.016) from near Fresno to its confluence with the Sacramento River just West of Sherman Island. The river has no significant gradient and therefore no energy, almost no momentum, and low inertia; it is easily pumped upstream. I suspect that the largest impetus for downstream movement in the San Joaquin Delta is from San Joaquin tributary outflow from the west slope Sierra slowing pushing the resident San Joaquin Delta water downstream.

San Joaquin anadromous salmonids, Chinook salmon and steelhead, are harmed by flow reversals in the San Joaquin River. While Sacramento watershed fall run Chinook salmon populations all show some degree of increase over baseline (1968-1992) populations with some actually achieving the Doubling Goal of the Anadromous Fish Restoration Program (AFRP) [See Anadromous Fish Restoration Program Website 2006. <http://www.delta.dfg.ca.gov/afrp/>], San Joaquin tributary fall-run Chinook salmon populations (Stanislaus, Tuolumne and Merced) are far less abundant than their baseline populations (AFRP). Reverse flows eliminates any downstream cues for the emigrating smolts so the smolts can't find the ocean. Successful smolt production from the San Joaquin watershed is zero.

The combination of inadequate instream flows and reverse flow make it very difficult for returning adults to find their natal streams. In fact, it is likely that these runs are supported largely by straying adults, i.e., adults that were born in a different stream. Salmon hatcheries tag between 15%-20% of their production releases and this is roughly the proportion of foreign tags recovered from salmon carcasses in each of the San Joaquin tributaries.

Delta smelt, a federally and state endangered species, is a member of the Pelagic Organism Decline (POD). The POD is a group of fish species whose abundance indices have plunged to all time lows. Delta smelt are a backwater-adapted species. Preproject, their population centers were in the lower reaches of the San Joaquin River that were placid even during tidal changes. I think the Delta smelt habitat in the Sacramento watershed is marginal and was always so. San Joaquin Delta water export operations

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created unnatural high currents in the San Joaquin River that were adverse to Delta smelt, which are poor swimmers adapted to backwater conditions.

Longfin smelt, a federally threatened species, is also a member of the POD. They are stronger swimmers than Delta smelt and are more marine. A short lived species, they spawn in the October through December period (Clemens and Wilby 1961). I think the prolonged period of reverse flows in the San Joaquin Delta increase entrainment of fry during pumping operations to the point of greatly reducing their numbers.

Threadfin shad and young-of-the-year striped bass are members of the POD. Both are planktivores. Plankton communities require long water residence time to develop robust and diverse plankton populations. Water exports shorten water residence time.

Water quality in the San Joaquin Delta is very poor. Much of it is agricultural return water filled with salts from fertilizer and pesticides. Dairy and stockyard operations increase salinity in the San Joaquin River. This is the water that is exported via CVP/SWP into the San Joaquin Valley resulting in 1 million tons of salts imported annually into the valley, making the valley soils increasingly more saline.

#### **IV. What are the ecological benefits of removing water diversions from the San Joaquin Delta?**

Moving the export water diversion facility to the Sacramento River and banning further water exports in the San Joaquin Delta will eliminate reverse flows in the San Joaquin Delta. Without reverse flows from water export operations, migration cues to the ocean will reappear in the San Joaquin Delta so that San Joaquin tributary salmonid smolts are able to successfully emigrate through it. There also would be no water diversion facility to entrain them. Smolt production in the San Joaquin watershed would become meaningful. As a consequence of these two changes significantly larger numbers of returning Fall-run Chinook salmon adults are expected.

Despite low tributary instream flow releases that reduce attraction flows for returning adult salmonids, there would be at least a signal where the natal stream is located with no water exports from the San Joaquin Delta. Higher return rates to the natal stream and lower levels of straying are expected.

The San Joaquin Delta will revert to backwater habitat with no water export operations in the San Joaquin Delta. That is a habitat to which Delta smelt were adapted. With so much suitable habitat restored, and much of it in the historical center of their distribution (Moyle 2003) rapid and large increases in Delta smelt populations should occur.

Longfin smelt populations are also expected to quickly rebound since the entrainment of fry by export operations would disappear.

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Residence time of San Joaquin Delta water would increase to pre-project levels without water export operations in the San Joaquin Delta, improving conditions conducive to robust and diverse plankton communities upon which threadfin shad and young-of-the-year striped bass feed.

Importation of salts to the San Joaquin Valley would virtually cease due to the difference in water quality between the polluted San Joaquin Delta water and the much cleaner Sacramento River.

**V. Why these adverse effects will not reappear in the Sacramento Delta**

When the water export operations are relocated to the Sacramento River, the adverse effects associated with present water export operations will disappear from the San Joaquin Delta not reappear in the Sacramento Delta because the Sacramento River has a much higher gradient (0.026) from near the city of Sacramento to its confluence with the San Joaquin River just West of Sherman Island. This is 1.6 times the gradient of the San Joaquin River from Fresno to the confluence with the Sacramento River. Therefore the Sacramento River has a significant higher gradient and consequently has more energy with higher momentum and higher inertia. A typical water velocity in the Sacramento River is about 2.5 feet/second. It will be very difficult if not impossible to pump Sacramento River upstream. Therefore, by just by moving the export pumping facilities from the San Joaquin River to the Sacramento River, the adverse effects caused by flow reversal disappear in the San Joaquin Delta and will not reappear in the Sacramento Delta.

If there are no reverse flows in the Sacramento River, then the emigrating anadromous smolts from the Sacramento watershed will still be able to find the ocean. This is critically important because the size of the salmonid stocks are higher and more varied than the San Joaquin salmonid stocks. The Sacramento watershed supports fall-run Chinook salmon, late-fall run Chinook salmon, winter-run Chinook salmon (Federally and State Endangered), spring-run Chinook salmon (Federally and State threatened), Winter-run steelhead, summer-run steelhead, and green sturgeon (Federally threatened) that are presently absent from the San Joaquin watershed. Size of attraction flows in the Sacramento watershed is not as serious as those in the San Joaquin watershed. The proposed magnitude of the water diversion is large, but the Sacramento River channel around Hood is also huge. There should be an instream flow assessment made, but it has to be something more than PHABSIM, because the Sacramento River is wide and deep and I think there is a depth bias in the PHABSIM approach.

If there are no reverse flows in the Sacramento River, the marginal habitat conditions for Delta smelt in the Sacramento Delta will not change much with the new water export operations, so the net result in both deltas will be enhanced habitat condition in the San Joaquin Delta and no change in conditions in the Sacramento Delta.

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Longfin smelt upstream distribution in the Sacramento Watershed is at Rio Vista, far downstream of the proposed water export diversion site at Hood. The proposed project should have no effect on longfin smelt in the Sacramento Delta.

With Sacramento River water export diversions operating The Sacramento River downstream of the export facility will slow slightly due to the reduction in flow. This slight increase in residence time is not expected to enhance conditions conducive to plankton proliferation, therefore feeding conditions for threadfin shad and young-of-the-year striped bass would be unchanged.

**VI. Why flow reversals should be avoided at all cost.**

The protective standard for CVP/SWP water export operations must be no reverse flows.

I have already described the multitude of adverse effects caused by reverse flows. The reason why reverse flows occur in the San Joaquin Delta is because the gradient is so flat that there is hardly a downstream component to flow here. The San Joaquin Delta water has no hydraulic energy, no momentum and no inertia. The nature San Joaquin Delta water is too ecologically sensitive to allow further water export from that system Any level of water export activity can cause reverse flows. Reverse flows are not natural and must be avoided.

There is a proposal that water export facilities must be maintained in the San Joaquin Delta in case the Sacramento River is unable to supply water demand. With almost four times as much water as is delivered currently, when would this shortfall occur? This proposal must have come from those who want to take all the water. This is inappropriate and should be rejected outright. Besides, the system needs all of the San Joaquin Delta outflow to resist salt intrusion during incoming tides.

**VII. Why all of San Joaquin River should be reserved to control salt incursion into the Delta during incoming tides.**

There are many advantages of using the entire outflow of the San Joaquin Delta to control tidal salt intrusion. One, the low energy San Joaquin Delta water resists tidal intrusion in a more consistent and predictable fashion than the high energy Sacramento Delta water. This allows for better management of Delta tidal intrusion. In contrast, the higher energy Sacramento Delta water reacts violently with the incoming tide, creating an uneven interface that would be more difficult to model. Two, the San Joaquin Delta water quality is very low. It is filled with pesticide and fertilizer residues, so water-processing costs would be high. It would be better to use low quality water to control tidal intrusion and provide a valuable service rather than using high quality water that could be used for domestic purposes.

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It is going to take all of San Joaquin outflow and some water from the Sacramento to manage tidal salt incursion into the deltas.

**VIII. Why tidal salt incursion should be limited to West of Rock Slough diversion.**

Controlling tidal intrusion into the Delta has had much interest and should not be ignored. Its relevance with this project is two considerations. One, tidal salt intrusion into the Delta must be kept West of Rock Slough to preserve domestic water supply for Antioch and Pittsburg. Two, amounts of flow necessary by season to kept salt West of that diversion point must be determined prior to any consideration of expanding water demand, i.e., determining what water is surplus and available for water development.

Pittsburg and Antioch had their domestic water diversion just off shore of each city. Each city lost their domestic water diversions in the 1920s due to upstream water development that decreased outflow that functioned to keep those domestic water diversion sites permanently fresh. Ultimately, the initial CVP moved their diversions further East to Rock Slough where water was still fresh. This area is not as fresh as when CVP constructed the facility. I believe keeping this area fresh has been compromised when water supply issues became more apparent. With the increased water supply situated on the Sacramento River there is no reason not to improve water quality at this location.

**IX. Why standards of minimum outflow to San Francisco Bay from both the Sacramento Delta and the San Joaquin Delta must be established.**

Upstream water development has resulted in the outflow to San Francisco Bay to be half of historical (California State Lands Commission 1991). Any further water development means outflow to San Francisco Bay would be reduced to more than half of historical. When you use more than half of anything, you must proceed with caution. I suggest that the amount of outflow sufficient to keep the Rock Slough diversion permanently fresh as the first bit of information needed to determine the amount of water available for further development.

Outflow to the bay is ecologically very important. Outflow magnitude determines where Pacific herring spawn. Many sea birds are dependant upon Pacific herring eggs for their welfare. Surf scoters, Western grebes, Clark's grebes, greater scaup and lesser scaup have a ten-year trend of declining abundance. They may be indicators that the minimum adequate outflow level to the bay has already been exceeded.

I do not know anyone investigating what the minimum outflow to San Francisco Bay should be. It is a very important question and pertinent to this project. It relates to sustainable practices of water diversion and I request that you address this question.

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**X. What are the elements that caused the fish salvage facilities to fail?**

The major adverse effect to be mitigated is fish entrainment in water diversion facilities. The Sacramento watershed produces the majority of the salmonid stocks in California. White and green sturgeons are species of interest that live there. There is a lot to lose if fish protective facilities are inadequate.

The present delta fish protective facilities are worthless because there is no downstream to escape entrainment into the facility, so fish are repeatedly exposed to entrainment. The new facility must have a downstream so that fish can bypass the diversion facility.

The louvers meant to screen the facility are inefficient so fish are sucked through the system and into the export channels. Use screens. They may be more expensive, but they work better than louvers.

There is unacceptable mortality in fish rescued from both the state and federal water export diversion facilities. Too many fish are packed into the salvage tank trucks. At times there are more fish than water in these tank trucks. Fish are severely stressed and consequent mortality is high. A solution would be to provide more and larger tank trucks and develop standards for maximum fish density in tank trucks.

Predator fish are trained to be present when salvaged fish are about to be released. Salvaged fish are not rescued. They become fish food. This is a tough one. Perhaps release the salvaged fish in a screened so they might recover. The screen may be designed to allow salvage fish to exit volitionally but prevent predators from entering the area.

**XI. The limitations of fish screens must be understood.**

The perfect fish screen has not yet been built.

Largest fish screen is at Glen-Colusa Irrigation District and is sized for a 3,000 cfs diversion or 1/4 the size of the proposed diversion. Maybe the water diversion infrastructure should be built in 3,000 cfs- sized increments to keep within known fish screen performance.

Along the bank screens have been extensively used in the California Central Valley. Along the bank perforated screens have holes that are sized to the species lifestage to be screened. The density of the holes is determined by the magnitude of the diversion and the desired approach velocity that will avoid impinging (sucking) the fish fast to the fish screen. The holes are distributed evenly in hopes that this will produce even approach velocity all along the screen.

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Unfortunately, as flow passes along the screen zones of higher than desired approach velocity and lower than desired approach velocity always occur. To remedy this, a secondary baffle is placed behind the screen and is adjusted to account for these uneven velocity spots. Unfortunately, all this does is change the location of these uneven velocities. Perhaps what is needed is for the water to enter the diversion facility when it is perpendicular to the screen so as to eliminate the upstream to downstream flow dynamic.

**XII. The logic behind underground tunnels to transport exported water from the Sacramento River to Clifton Court Forebay.**

The proposed export water diversion site will be on the Sacramento River. The infrastructure to deliver the water South is Clifton Court Forebay and the California Aqueduct in the San Joaquin Delta some fifty miles away. The 1000 miles of waterways of the Sacramento-San Joaquin deltas lie in between. How do you get the water to the California Aqueduct?

One way to overcome these obstacles is to use a water bridge to go over these waterways. Water can be elevated over the existing rivers in a canal supported by pillars or the like. Water bridges have been constructed in Germany and India. Because ocean freighters stop at Stockton and Sacramento as ports, the water bridge must be sufficiently high to allow unimpeded passage for these ships. The identifiable sources of cost would be the cross section of the canal (It must be sufficient to transport a volume of water between 9 thousand to 12 thousand cubic feet per second), length (fifty miles!) and height of the structure (Think height of the Bay Bridge) and then there are seismic protective considerations. This would be very expensive.

Another way is to go around to avoid this maze of waterways is to build a canal that runs initially eastwards to circumnavigate the Delta maze of waterways and separately siphon under each waterway. Under this concept North Fork Mokelumne River, Fourteen Mile Slough, Disappointment Slough, San Joaquin River and Middle River would have to be siphoned. This is basically the Peripheral Canal concept. In addition to costs of construction of canal and siphons, the cost of acquiring land will be much more than the west San Joaquin land acquired for the California Aqueduct when it was considered worthless desert. This alternative is politically dead.

The last way to get there is to go underground. Tunneling beneath them can surmount the difficulty of multiple waterways as obstacles. The technology to do this is available. The BART tunnel under San Francisco Bay between San Francisco and Oakland comes immediately to mind. I am guessing that the proposed water tunnels are within this size scale.

BDCP COMMENTS PAGE TWELVE OF THIRTEEN**XIII. Why there should be two tunnels instead of one?**

Why two tunnels? It reduces the risk of total failure of the diversion system, most probably from seismic events.

**XIV. Guarantees to maintain this system in a sustainable condition.**

The water demand on the Colorado River reduced the inflow into the Colorado River Delta to no flow, eliminating vibrant fisheries, bird habitation and riparian communities. This must not happen to the Sacramento-San Joaquin deltas. The resource agencies have a responsibility to keep natural resources in good condition. I ask that good condition be defined as habitat sufficient to provide sufficient reproductive levels of all species living in the deltas so they can persist indefinitely.

**Other Comments - Identified Habitat Restoration Sites**

This list of identified habitat restoration sites appears to be a wish list, the only apparent criterion to be on this list is that the habitat is degraded and is in need of restoration. It is curious that restoration of riparian habitat that was converted into levee is conspicuously absent. California has less than 10% of the historical distribution of riparian forest that is a virtual cornucopia of terrestrial and aquatic ecological benefits. Riparian forest provides climate change resilience, improves water quality, buffers water temperature change, improves bank stability, improves flood flow retention, and facilitates terrestrial and aquatic biodiversity and much much more. The reasons for denuding banks and not revegetating them are frivolous.

**Other Comments - Action Area**

The San Joaquin River Restoration Project activities should be incorporated into the EIS/EIR because the reason for that action was excessive water diversions from Friant Dam that caused extremely adverse affects to the San Joaquin River. How will these restoration activities affect San Joaquin Delta inflow?

**REFERENCES**

Anadromous Fish Restoration Program Website 2006. <http://www.delta.dfg.ca.gov/afrp/>

California Department of Water Resources 1993. Sacramento San Joaquin Delta Atlas: 121 pp.

California State Lands Commission. 1991. Delta-Estuary California's Inland Coast A Public Trust Report: 208 pp.

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Clemens, W.A. and G.V. Wilby 1961. Fishes of the Pacific Coast, Second Edition  
Bulletin of the Fisheries Research Board of Canada, 68:443 pp.

Healy, Michael C. 1991. Life history of Chinook salmon *Oncorhynchus tshawytscha*. In.  
Groot, C. and L. Margolis (eds), Pacific Salmon Life Histories. University of British  
Columbia Press, Vancouver, British Columbia, Canada: 564 pp.

Jackson, W. Turrentine, Rand F. Herbert, Stephen R. Wee (annotated and introduced).  
1990. Engineers and Irrigation: The Report of the Commissioners on the Irrigation of the  
San Joaquin, Tulare, and Sacramento Valleys in the State of California, 1873. Engineer  
Historical Studies Number 5. Office of History U.S. Army Corps of Engineers, Fort  
Belvoir, Virginia.

Li, Stacy K. 2012. The Necessary Action to Ensure the Ecological Recovery of the San  
Joaquin Delta. Bay Delta Conference.

Li, Stacy K. 2010. Achieving California's Water Supply and Delta Ecological  
Improvement Simultaneously. Bay Delta Conference.

Moyle, Peter B. 2003. Inland Fishes of California. Second Edition University of  
California Press, Berkeley, CA

San Francisco Estuary Project. 1992. State of the Estuary: 269 pp.

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**From:** Stacy Li <stacyli@sonic.net>  
**Sent:** Wednesday, October 28, 2015 2:21 PM  
**To:** BDCPcomments  
**Subject:** BCDC comments  
**Attachments:** BCDC2.pdf

Fax  
(925) 625-0169

**IRONHOUSE SANITARY DISTRICT**

450 Walnut Meadows Drive . P.O. Box 1105 . Oakley, CA 94561

Telephone  
(925) 625-2279

October 28, 2015

U. S. Mail  
BDCP/California WaterFix Comments  
P.O. Box 1919  
Sacramento, CA 95812

Email: [BDCPComments@icfi.com](mailto:BDCPComments@icfi.com)

**SUBJECT: Comments on the Bay Delta Conservation Plan/California WaterFix Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (RDEIR/SDEIS)**

Dear Representative:

Ironhouse Sanitary District (ISD) has reviewed the Partially Recirculated Draft Environmental Impact Report/Environmental Impact Statement (RDEIR/EIS) for the Bay Delta Conservation Plan/California WaterFix. Though the name of the project document has changed there are no substantive changes to the content of document that address our previous comments made to the DEIR/EIS for the Bay Delta Conservation Plant. Hence the comments previously made to the DEIR/EIS are still relevant and are our comments to the RDEIR/EIS. Our previous comments dated July 2, 2014 are attached for reference.

This concludes ISD's response to the Partially Recirculated DEIR/DEIS. Please contact the undersigned if you have any questions. Thank you for your attention to this letter.

Sincerely,  
IRONHOUSE SANITARY DISTRICT

A handwritten signature in cursive script that reads "Chad Davisson".

Chad Davisson  
General Manager

Attachment

RECIRC 2424

RECIRC2424

Fax  
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**IRONHOUSE SANITARY DISTRICT**

450 Walnut Meadows Drive . P.O. Box 1105 . Oakley, CA 94561

Telephone  
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July 2, 2014

U. S. Mail  
BDCP Comments  
Ryan Wulff, NMFS  
650 Capitol Mall, Suite 5-100  
Sacramento, CA 95814

Email [BDCP.Comments@noaa.gov](mailto:BDCP.Comments@noaa.gov)

**SUBJECT: Comments on the BDCP DEIR/DEIS**

Dear Mr. Wulff:

Ironhouse Sanitary District (ISD) is pleased to submit the following comments on the Draft Environmental Impact Report/Environmental Impact Statement (DEIR/DEIS) for the Bay Delta Conservation Plan (BDCP).

**Comment 1:** Alternatives development in Chapter 3 of the Bay Delta Conservation Plan Draft EIR/EIS is inadequate, and failed to consider a full range of alternatives. A full range of statewide alternatives such as the increased use of recycled water, implementation of desalinization facilities, water conservation methods, and modified farming/cropping practices to reduce reliance on surface water supplies should have been included and analyzed in the range of alternatives developed.

**Comment 2:** In the Bay Delta Conservation Plan Draft EIR/EIS (Chapter 8, page 437, line 33), for preferred Alternative 4, it is stated "...the percent of days exceeding EC (electrical conductivity) objectives and percent of days out of compliance would *increase* at..., San Joaquin River at Jersey Point...." ISD discharges treated effluent *year-round* just downstream of Jersey Point in compliance with NPDES permit No. CA0085260 issued by the Central Valley Regional Water Quality Control Board. In 2010, ISD spent \$68 million to upgrade its wastewater treatment facilities to allow discharge of treated effluent into the San Joaquin River. The EIR/EIS failed to address the impacts higher electrical conductivity levels in the Delta will have on ISD's (and other entities in the Delta) ability to discharge legally permitted treated effluent into the San Joaquin River and other Delta locations.

**Comment 3:** Chapter 8, Water Quality, of the Bay Delta Conservation Plan Draft EIR/EIS fails to adequately address the water quality impacts of the Bay Delta Conservation Plan. Potable water for the majority of ISD customers comes from the Delta surface water supplies. The proposed project will adversely impact Delta water quality in the western Delta as well as other areas of the Delta. The adverse impact to water quality (salinity increases) will cause ISD's customers to install water conditioning

units to mitigate for drinking water supply sources higher in salinity (electrical conductivity), which will result in wastewater higher in salinity. These conditioning units, which typically discharge brine during recharge, will increase the influent salinity to the wastewater treatment plant, and hence the effluent salinity, which could have a major impact on ISD's ability to discharge its legally permitted treated effluent into the San Joaquin River.

In addition, as ISD currently recycles one half of its treated effluent on its agricultural fields, increased salinity in effluent water will adversely impact ISD's ability to use its effluent as irrigation water for its fields and crops. ISD is also currently producing a Recycled Water Feasibility study to further recycle its treated effluent for irrigation throughout ISD's service area, for industrial process and cooling waters, as well as for future indirect potable reuse opportunities. Increased electrical conductivity in ISD's treated effluent will adversely limit ISD's ability to recycle its treated water to irrigate crops, to assist with industrial processes, and possibly to use its water for high and better uses like indirect potable reuse.

**Comment 4:** Increased salinity in the Delta at Jersey Point will adversely impact ISD's ability to utilize its significant water rights on both its mainland and island properties for purposes of irrigation of crops as well as for a water supply for its significant animal resources (2,400+/- head of cattle) on Jersey Island. ISD believes the increase in electrical conductivity in the San Joaquin River, resulting from implementing the preferred alternative in the BDCP will increase the salinity in its groundwater as well as its irrigation water and reduce ISD's ability to farm its ground and recycle its water.

**Comment 5:** The California Environmental Quality Act (CEQA) provides that the project description for the DEIR/DEIS for the BDCP must include all relevant parts of the BDCP, **including reasonably foreseeable future expansion or other activities that are part of the BDCP** (Emphasis added.) *Laurel Heights Improvement Ass'n v Regents of Univ. of Cal.* (1988) 47 C3d 376. CEQA also requires that the lead agency, in this case the BDCP Proponents, may not split the BDCP, a single large project, into small pieces so as to avoid environmental review of the entire project. *Orinda Ass'n v Board of Supervisors* (1986) 182 CA 3d 1145, 1171. The DEIR/DEIS fails to meet this standard and therefore is inadequate because the project description does not include nor does the DEIR/DEIS analyze the 2014 Drought Emergency Temporary Rock Barriers, Steamboat and Sutter Sloughs and False River, California, DWR March 2014, Sheets 1 – 15 (“Barriers”).

These Barriers are both reasonably foreseeable and part of the BDCP for several reasons, including: (1) during the 1976-77 drought, rock barriers were placed in several Delta channels, including Sutter Slough and Dutch Slough,<sup>1</sup> and (2) these barriers are addressed in DWR, Delta Drought Emergency Barriers, Administrative Draft, April 2009. Even if the Barriers are not explicitly included in the Project Description of the BDCP

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<sup>1</sup> Protecting Water Supplies and Delta Water Quality with Emergency Drought Barriers, DWR, March 2014, p.1.

DEIR/DEIS, they are *de facto* an integral part of the BDCP. As the BDCP DEIR/DEIS acknowledges in Chapter 8 that increases in salinity at multiple locations within the Delta will occur as part of the project, the BDCP DEIR/DEIS must analyze the need for rock barriers as part of the project. Although sometimes described with the adjectives "temporary" or "emergency," unfortunately these barriers are likely to become, especially in the western Delta, permanent, routinely used defenses against salinity intrusion in response to implementation of the BDCP and California's cycle of recurring droughts. CEQA demands that the DEIR/DEIS analyze the Barriers because they are both reasonably foreseeable and activities that are part of the BDCP. To allow the Barriers to be analyzed separately in other CEQA documents constitutes impermissible piecemealing.<sup>2</sup>

To state it in concrete terms, the authors of the BDCP DEIR/DEIS must revise Chapter 8: Water Quality in order to analyze the short and long term impacts on salinity in the western Delta of the installation of the Barriers. In particular, the BDCP DEIR/DEIS authors must analyze the impacts of the installation of barriers as a result of the implementation of the BDCP as well as how barrier installations in response to future droughts would change once the BDCP is implemented.

**Comment 6:** The DEIR/DEIS does not adequately analyze, in a focused, specific and coherent manner, the impact of the salinity intrusion which will be caused by the BDCP on the riparian and appropriative water rights held by various entities in the western Delta. These entities include but are not limited to ISD.

ISD owns lands located along the west bank of Marsh Creek in Contra Costa County and the accompanying riparian right to divert water from Marsh Creek. The water right ID is S018558, Face Value 68.75 acre-ft/year.

ISD is also the owner of Jersey Island and the holder of a riparian right to divert water from the San Joaquin and False Rivers, Piper, Taylor and Dutch Sloughs. The water right ID is S023983, Face Value 16,619 acre-ft/year.

The DEIR/DEIS presents several discrete, disparate discussions on the subject of salinity intrusion in the western Delta. For example, Appendix 3E discusses Potential Seismic and Climate Change Risks to SWP/CVP Water Supplies. In Appendix page 3E-3 in Section 3E.2.2, the DEIR/DEIS discusses Salinity/Seawater Intrusion. In Chapter 8, Water Quality, the DEIR/DEIS contains numerous references to EC (electrical conductivity) objectives as measured at Jersey Point. Chapter 8 at pages 8-562 and 563 discusses NEPA Effects and presents CEQA conclusions at pages 8-563 and 564.

However, as previously noted the DEIR/DEIS does not adequately analyze the impact of the salinity intrusion caused by the BDCP on the riparian and appropriative water rights held by various entities in the western Delta.

<sup>2</sup> A lead agency may not split a single large project into small pieces so as to avoid environmental review of the entire project. *Orinda Ass'n v Board of Supervisors* (1986) 182 CA 3d 1145, 1171.

**Comment 7:** Figure 14-1 Overview of Agricultural Type contains an error. The purple designation for Field, Truck, Nursery, and Berry Crops shown on Jersey Island is incorrect and should be removed.

**Comment 8:** At page 29-20, lines 12 through 21, the DEIR/DEIS states:

#### **Resilience/Adaptation**

The BDCP alternatives, with the exception of Alternative 9, would not add resiliency to existing levees; levee fragility would remain high and increase with time as in the No Action/No Project Alternative. However, BDCP Alternatives 1A-8 would provide additional adaptability to catastrophic failure of Delta levees. By providing an alternate conveyance route around the Delta, Alternatives 1A-8 provide a mechanism to continue making water deliveries to SWP/CVP contractors and local and in-Delta water users with conveyance interties even if the Delta were temporarily disrupted by a catastrophic levee failure. Alternative 9 adds additional resiliency to the Delta by strengthening and reinforcing levees critical to the through-Delta conveyance route, however, this alternative does not increase the adaptive capacity of the system.

ISD does not dispute this statement. However, the DEIR/DEIS should, but unfortunately does not, analyze the impacts of "providing an alternate conveyance route around the Delta" on the availability and willingness of the state legislature and State Department of Water Resources (DWR) to provide funding to local reclamation districts for ongoing levee repair and maintenance. In other words, the availability of an alternative conveyance route around the Delta could potentially serve as a disincentive for DWR's funding of levee repair and maintenance because "worst case," in the event of levee failure and salinity intrusion into the Delta, there is an alternative means to route fresh water around rather than through the Delta.

**Comment 9:** The DEIR/DEIS in Figure 20-4: Solid Waste Facilities shows that a "Disposal" facility is located in the center of Jersey Island. The term "Disposal" facility is not defined, nor is it discussed in the text of Chapter 20 – Public Services and Utilities. ISD believes this reference to "solid waste disposal facility" is to an area on Jersey Island where ISD use to receive and store certain salvaged building materials delivered by local contractors until RD 830 reuses these materials for Jersey Island levee repair. The symbol for "disposal" should be removed from Jersey Island in Figure 20-4.

**Comment 10:** The DEIR/DEIS Glossary in Chapter 35, page 35-29 defines the term Restoration Opportunity Area (ROA). Figures 24-3, -5 and -6 show a Restoration Opportunity Area on the former Emerson, Gilbert & Burroughs properties and on the eastern fringe of the ISD Mainland property along the west bank of Marsh Creek. Figure 26-1 also shows the West Delta Restoration Area (ROA) which again includes the eastern fringe of the ISD Mainland property along the west bank of Marsh Creek. Please provide

This concludes ISD's comments on the DEIR/DEIS. Please contact Tom Williams, General Manager of ISD, if you have any questions. Thank you for your attention to this letter.

Sincerely,



David Huerta, President,  
Ironhouse Sanitary District Board of Directors

cc: ISD Board of Directors  
Honorable Supervisor Mary N. Piepho, Board of Supervisors, District III  
Honorable Jim Frazier, California State Assembly, 11<sup>th</sup> District  
Honorable John Garamendi, Member House of Representatives, 3<sup>rd</sup> District  
Honorable Senator Mark DeSaulnier 7<sup>th</sup> District  
Honorable Jerry McNerney, Member House of Representatives, 9<sup>th</sup> District  
Mayor, City of Oakley  
Mayor, City of Brentwood  
Mayor, City of Stockton  
Mayor, City of Antioch  
Town of Discovery Bay  
Byron Bethany Irrigation District  
Delta Protection Commission  
Contra Costa Water District  
Diablo Water District

**From:** Jenny Skrel <skrel@isd.us.com>  
**Sent:** Wednesday, October 28, 2015 1:49 PM  
**To:** BDCPcomments  
**Subject:** ISD Comment Letter on BDCP REIR/EIS  
**Attachments:** ISD Comment letter on BDCP REIR EIS 102815.pdf

*Jenny Skrel*

District Engineer  
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Jonathan Seager  
 Director  
 State Infrastructure Projects

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(415) 973-6410  
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October 28, 2015

Mr. Michael Bradbury  
 California Department of Water Resources  
 BDCP/California WaterFix Comments  
 P.O. Box 1919  
 Sacramento, CA 95812

**Re: Pacific Gas and Electric Company Facilities – Review of the California Department of Water Resources' Administrative Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement**

Dear Mr. Bradbury and Bay Delta Conservation Plan / California Waterfix Environmental Team:

Pacific Gas and Electric Company (PG&E) appreciates the second opportunity to review the California Department of Water Resources' (CDWR) Administrative Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (RDEIR/SDEIS) for the Bay Delta Conservation Plan/California Waterfix (BDCP). PG&E provides the enclosed high-level comments regarding expected PG&E work, based on PG&E experience with environmental permitting.

As communicated in our April 15<sup>th</sup> comments, PG&E believes that CDWR's RDEIR/SDEIS would benefit from being supplemented with considerably more detail concerning the description and impacts of expected PG&E work as a result of implementation of the BDCP. The BDCP water conveyance component (CM-1) is expected to require new transmission-level electric service, upgrades to existing electric transmission facilities, and the relocation and protection in place of existing PG&E electric and gas facilities. Licensing and permitting of transmission facilities can take a considerable amount of time; however, the California Public Utilities Commission's (CPUC) General Order 131-D provides an exemption from CPUC permit requirements for certain projects that have undergone environmental review by another agency as part of a larger project, such as the BDCP. Even where this exemption is not available, the CPUC's permit process can be expedited where another agency has already certified a final CEQA document that includes environmental review of the facilities to be permitted by the CPUC.

As such, PG&E is concerned that, absent further analysis in CDWR's RDEIR/SDEIS of the PG&E work necessary to serve and allow construction of the BDCP, the overall time needed to permit and construct the necessary PG&E facilities may be increased. These potential delays could result in a corresponding increase in the overall time and cost necessary to complete CDWR's project.

**New Transmission Service / Facility Upgrades**

The document (Chapter 20 – Public Services Utilities) should address, with as much specificity as possible, what facilities PG&E will build or upgrade to serve the project's power needs, including, but not limited to, the following:

- Facility information (materials, locations, land requirements)
- Planned route
- Location and size of conductor pull sites
- Appearance of structures
- Construction (methods, equipment, access, impacted areas)
- Temporary environmental impacts (disturbance footprints)
- Permanent environmental impacts (disturbance footprints)

As previously stated in PG&E's April 15<sup>th</sup> comment, complete project design information should be included and analyzed in the RDEIR/SDEIS. Absent such complete information, the RDEIR/SDEIS should be improved to reflect real-world constructability review and more robust assumptions related to PG&E facility construction and operation.

#### Facility Relocation / Protect in Place

The document (Chapter 20 – Public Services Utilities) should address, with as much specificity as possible, what facilities PG&E will necessarily relocate or protect in place to meet the project's needs, including, but not limited to, the following:

- Specific utility facilities to be relocated
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As previously discussed, PG&E recommends CDWR staff continue to work closely with PG&E to further develop the appropriate preliminary project descriptions and augment the relevant chapters in DWR's RDEIR/SDEIS to help mitigate the risk of project delays.

Sincerely,



Jonathan Seager  
Director, State Infrastructure Projects

Cc:

Veronica Hicks, California Department of Water Resources  
John Yarbrough, California Department of Water Resources  
Allan Davis, California Department of Water Resources  
Michael Werner, California Department of Water Resources

**From:** Miyano, Christi <C2M6@pge.com>  
**Sent:** Wednesday, October 28, 2015 4:02 PM  
**To:** BDCPcomments  
**Cc:** Hicks, Veronica@DWR (Veronica.Hicks@water.ca.gov); Yarbrough, John@DWR (John.Yarbrough@water.ca.gov); Werner, Michael@DWR (Michael.Werner@water.ca.gov); 'allan.davis@water.ca.gov'; Borak, Mary Jo (maryjo.borak@cpuc.ca.gov); Sterkel, Merideth "Molly" (Merideth.Sterkel@cpuc.ca.gov); Peterson, Robert (Robert.Peterson@cpuc.ca.gov); Seager, Jonathan; Doll, Laura; Kraska, David (Law)  
**Subject:** Pacific Gas and Electric Company Facilities – Review of the California Department of Water Resources' Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement  
**Attachments:** PG&E Comment on RDEIR-SDEIS 10-28-2015.pdf

To the BDCP/California Waterfix Team,

Please find PG&E's comments on the Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement attached above and copied below for your convenience.

Thank you for the opportunity to comment and your consideration.

October 28, 2015

Mr. Michael Bradbury  
California Department of Water Resources  
BDCP/California WaterFix Comments  
P.O. Box 1919  
Sacramento, CA 95812

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As previously discussed, PG&E recommends CDWR staff continue to work closely with PG&E to further develop the appropriate preliminary project descriptions and augment the relevant chapters in DWR's RDEIR/SDEIS to help mitigate the risk of project delays.

Sincerely,

Jonathan Seager  
Director, State Infrastructure Projects

Cc:

Veronica Hicks, California Department of Water Resources  
John Yarbrough, California Department of Water Resources  
Allan Davis, California Department of Water Resources  
Michael Werner, California Department of Water Resources

Christi Miyano  
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