*Street Address:*

18700 Ward Street  
Fountain Valley, California 92708

*Mailing Address:*

P.O. Box 20895  
Fountain Valley, CA 92728-0895

(714) 963-3058

Fax: (714) 964-9389

www.mwdoc.com

Larry D. Dick  
*President*

Wayne S. Osborne  
*Vice President*

Brett R. Barbre  
*Director*

Joan C. Finnegan  
*Director*

Susan Hinman  
*Director*

Sat Tamaribuchi  
*Director*

Jeffery M. Thomas  
*Director*

Robert J. Hunter  
*General Manager*

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South Coast Water District  
Trabuco Canyon Water District  
City of Tustin  
City of Westminster  
Yorba Linda Water District

October 21, 2015

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

Dear BDCP/California WaterFix:

**Subject: Recirculated Draft Environmental Impact Report/  
Supplemental Draft Environmental Impact Statement (RDEIR/SDEIS)**

The Municipal Water District of Orange County (MWDOC) is pleased to submit comments on the partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (RDEIR/SDEIS) for the Bay Delta Conservation Plan/California WaterFix released on July 10, 2015. Please note that on July 24, 2014, MWDOC submitted its formal comments on the BDCP Draft EIR/EIS and has attached that document to this letter as part of the official CEQA/NEPA record.

The Municipal Water District of Orange County (MWDOC) is a wholesale water supplier and resource-planning agency governed by a publicly elected seven-member Board of Directors. MWDOC is the third largest member agency of the Metropolitan Water District of Southern California (Metropolitan). Its service area covers all of Orange County with the exception of the three original Metropolitan member cities of Anaheim, Fullerton, and Santa Ana. MWDOC and the "Three Cities" coordinate water management planning. MWDOC serves Orange County through 27 cities and water agencies and one investor owned utility, including the Orange County Water District who manages the Lower Santa Ana River Groundwater Basin.

Orange County has a population of 3.1 million people, approximately eight percent of California's entire population, and an economy with a gross domestic product of over \$200 billion or 10 percent of the state's overall economy of \$2 trillion. Orange County's share of California's non-farm businesses was about 10 percent in 2011. In addition, Orange County is a major regional employment, higher education and tourism center.

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MWDOC's mission is "to provide reliable, high-quality water supplies from Metropolitan and other sources to meet the present and future needs [of Orange County] at an equitable and economical cost, and to promote water use efficiency for all of Orange County." This mission is implemented through coordinated water management and planning with appropriate investments in water use efficiency, water supply development, system reliability improvements and emergency preparedness. Our mission is supported by collaboration with our member agencies and through public outreach, water education, and legislative advocacy. MWDOC strongly supports the state and federal effort under the BDCP/California WaterFix to enhance the reliability of State Water Project (SWP) supplies and bring stability to Delta exports over the long term. Orange County remains dependent on imported water to meet approximately 45 percent of our average annual demand, with the SWP deliveries from the Delta meeting approximately half of those needs. Orange County is an acknowledged national leader in water recycling and reuse and leads the Metropolitan service area in the development of highly reliable drought proof supplies and has a long history of aggressive implementation of water conservation. Despite the extensive diversification of Orange County's water supply portfolio, we specifically rely on the SWP to meet demands as well as to support groundwater conjunctive use programs and large scale water recycling programs - it is an essential part of our regional and local water reliability strategy. We have seen very clearly the vital role storage reserves and reliable local water supplies have played in this current unprecedented four-year drought. It will be even more important in the future as California copes with climate change and the potential for seismic and other emergencies.

## General Comments

### 1. MWDOC supports the water supply facilities as described in the Modified Proposed Alternative 4A.

- New intakes in the northern Delta on the Sacramento River would provide the ability to capture increased flow in wet and normal years and address reverse-flow conditions in the southern Delta that are a result of relying solely on the operation of the existing south delta pumping.
- The proposed twin-tunnel conveyance system would not only enhance water supply reliability and provide much needed stability to State Water Project deliveries it would also protect the people and economy of California from long-term catastrophic threats such as seismic events and adapt the state's backbone water supply system to deal with the anticipated effects of climate change and sea level rise.
- Expected water quality improvements in SWP supplies from the new water facilities described in Alternative 4A will result in reduced salinity, total organic carbon and bromide providing water quality benefits to consumers and promoting water recycling and reuse in Orange County and Southern California and improving the salinity balance in groundwater basins accessing this water. The latter issues are key to the successful implementation of the Governor's Water Action Plan.
- Proposed project modifications identified in the RDEIR/SEIS to consolidate intake

pumping into a single facility in the southern Delta on SWP property near Clifton Court Forebay further reduces the physical footprint of the Project and is responsive to concerns expressed by Delta communities and compatible with existing land use activities.

2. **MWDOC continues to support sound science and adaptive management as key strategies in enhancing the reliability of State Water Project operations and also supports efforts to improve real-time monitoring to protect both threatened natural fisheries and water supply reliability.**
3. **Implementation of Alternative 4A requires a significant investment by water supply agencies and their ratepayers. That investment continues to require greater certainty in regulatory assurances and participative management inclusive of the water supply contractors.**
  - The RDEIR/SEIS proposes a significant change in the approach to permitting and achievement of the legislatively mandated co-equal goals of eco system restoration and water supply reliability. MWDOC still believes its ratepayers' investment requires that the Final Plan address the issues of regulatory assurances and greater certainty of SWP deliveries.
4. **The MWDOC Board of Directors has specifically raised a concern with the project schedule for the California WaterFix, which currently appears headed towards an operational date of 2031, thereby leaving 16 years and \$15 billion of uncertainty for a water system underpinning a \$2 trillion dollar state economy.**
  - While the Board realizes a project of this magnitude cannot be implemented immediately, every effort should be made to initiate early actions and to approach contracting in a manner that provides incentives for early completion; procurement of long lead time specialty items, including the Tunnel Boring Machines, should be pursued. If DWR has limitations on its contracting flexibility, these should be resolved via administrative or legislative methods or the contracting should be delegated to others, with the overall goal of advancing the completion date. Furthermore, once the funding commitment has been made for the construction phase, regulatory flexibility should be implemented to improve reliability of supplies until such time as the construction has been completed and the operations of the WaterFix begins.

MWDOC offers the following additional, more specific, comments on the RDEIR/SEIS:

**Water Supply Reliability.** The primary reliability benefit of a north delta diversion is the ability to capture increased flow in wet and normal years when compared to the existing south delta pumps only. Capturing this increased flow in those years is critical to the foundation of Southern California's dry year strategy, reliable local supplies and storage. The current four year drought and the previous 2008-2010 drought clearly demonstrated the importance of investments made by Metropolitan in storage. It also highlighted the value of groundwater basins in Orange County and elsewhere in the Metropolitan service area as a storage asset that could reduce the demand for imported supplies in dry years. Being able to maintain high levels of storage in Metropolitan's system and in conjunctive use groundwater

basins of its member agencies is dependent on maximizing SWP supplies during those wet and normal years when the system is much less stressed. The Final EIR/EIS should provide additional information on yield, operating criteria and the benefits of real-time operations in contributing to increasing the amount of water supply yield. This is critical information needed in planning to optimize all storage assets in southern California and enhance reliability during the inevitable prolonged dry periods that will occur. The Final EIR/EIS should also include a discussion in the No Action Alternative of the likelihood and future effects on SWP operations of further fish protection restrictions, i.e., high outflow operating criteria, and its effect on water supply yield and water quality in the absence of implementation of the Preferred Alternative.

**Change in Regulatory Approach.** An important factor in the BDCP and its achievement of the co-equal goals was that it sought to provide more stable and reliable SWP supplies through obtaining a 50 year permit for water supply operations under Section 10 of the ESA and the Natural Communities Conservation Planning Act (NCCPA) under CESA. The change in permitting approach through ESA Section 7 and CESA Section 2081(b) is a more standard permitting path but one that contains less certainty and assurances on future requirements. A final plan should include formalized agreements between the permitting agencies and the permit holders that provides a participatory role for the involvement of the permit holders and water contractors in operational decisions. This formal agreement can take the form of an MOU identified in RDEIR/SEIS and include the Adaptive Management approach of the BDCP and the reliance on collaborative science to adjust to actual conditions and make operational decisions jointly with the permit holders. The final plan should include an MOU or other form of agreement that seeks to incorporate the "No Surprises" rule and regulatory assurances that are similar to those contained in *Safe Harbor Agreements* for listed species and *Candidate Conservation Agreements with Assurances* for currently unlisted species. These arrangements are regularly used with landowners as a means to better manage lands for habitat conservation and species protection. MWDOC strongly believes that the final plan should include these formal mechanisms that provide assurances, guarantees and participative management that reflect the intent of the BDCP and can be obtained under ESA Section 7 and CESA Section 2081(b).

**Habitat and Mitigation.** Under the BDCP, water conveyance facilities and habitat enhancement and restoration were linked in the same permitting process. Under the modifications of the permitting process contained in the RDEIR/SEIS, they have been delinked and the total amount of habitat acreage has been significantly reduced. While overall habitat acreage has been reduced, the amount of habitat and mitigation related to construction of the water conveyance facilities under the modified Preferred Alternative 4A has substantially increased from the amount identified under the BDCP. Under the BDCP, mitigation for direct impacts of the water conveyance facilities was significantly less than the 16,000 acres identified in Alternative 4A. Under the BDCP, water conveyance facilities (CM1) had cost responsibility for a share of habitat mitigation occurring under several of the other conservation measures (CMs 2-22). It was understood that the basis of the quantification of acreage for habitat enhancement assigned to the water suppliers was linked to the physical impacts resulting from the construction of the water conveyance facilities under CM1. Preferred Alternative 4A has a smaller construction footprint than was contemplated in the BDCP DEIR/EIS yet the amount of mitigation acreage has substantially increased. The final EIR/EIS should provide a clear explanation of how the 16,000 acres was arrived at, specifically detailing in easily understood table(s), the direct and indirect

October 21, 2015

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impacts associated with water conveyance facilities and how the total mitigation acreage was derived. If the mitigation acreage is in excess of the physical impacts of the Project, then the Final Plan should indicate the rationale as to why it is the financial responsibility of the water supply contractors.

Thank you for your time and consideration of these comments. MWDOC looks forward to a Final Plan and Final EIR/EIS being released by the Lead Agencies that addresses our comments. If you should have any questions, please do not hesitate to call me at (714) 593-5026.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Hunter", with a large, sweeping flourish extending to the right.

Robert J. Hunter  
General Manager

enclosure



*Street Address:*  
18700 Ward Street  
Fountain Valley, California 92708

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City of Seal Beach  
Serrano Water District  
South Coast Water District  
Trabuco Canyon Water District  
City of Tustin  
City of Westminster  
Yorba Linda Water District

July 24, 2014

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

BDCP Comments  
Ryan Wulff, National Marine Fisheries Services  
650 Capitol Mall, Suite 5-100  
Sacramento, CA 95814

Dear Mr. Wulff,

**Subject:** Comments of the Municipal Water District of Orange County on the Draft Public Review Bay-Delta Conservation Plan (BDCP), Draft Environmental Impact Report/Environmental Impact Statement, and Draft Implementing Agreement

#### SUMMARY OVERVIEW

The main points covered in this comment letter are:

1. MWDOC strongly supports the BDCP Preferred Alternative (No. 4) and opposes the No Action Alternative: It is critical to the state's economy and environment that both the State and federal government expeditiously follow through with the decision for adopting and implementing the BDCP.
2. Co-Equal Goals: The BDCP must be implemented in a manner consistent with the co-equal goals adopted by the State. Preferred Alternative (No. 4) is consistent with the Delta Reform Act of 2009's co-equal goals.
3. New Facilities and In-Delta Operational Flexibility: The modernization of the Delta conveyance system is essential in order for habitat restoration and conservation to have its intended effect; Preferred Alternative (No. 4), which incorporates the 9,000 cubic feet per second (cfs) three intake, twin tunnel conveyance system, provides the best balance between operational flexibility and modernizing the conveyance system for environmental benefit and water supply reliability.

Mr. Ryan Wulff  
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4. Reduced Future Reliance: The 2009 Delta legislation called for water agencies to reduce future reliance on the Delta, not to become 100 percent “self-reliant”. While efforts in these areas will continue, it is important to note that “reduced reliance” does not equate to and was never intended to require a move to 100 percent “self-reliance” and the notion of co-equal goals was never intended to result in a future with significant reduction in exports from levels achieved before the 2008 bio-opinions.
5. Plan Implementation and Regulatory Assurance: The BDCP must provide the needed implementation and regulatory structure and assurances to help achieve the co-equal goals.
  - a. To us, this means that it is virtually impossible to predict the outcome of the BDCP habitat restoration efforts and endangered species population dynamics, and such a standard should not be required in the DEIR/DEIS.
  - b. Furthermore, this means that changed circumstances under the operation of the BDCP, including the potential for new species listing, be incorporated in such a manner to result in a minimum impact on future water supply exports.
  - c. At this time, the Implementing Agreement, whose purpose is to establish the obligations of the parties toward implementation of the plan, has not been advanced for public review. We would request that the agreement be circulated for public comment.
6. Cost Allocation: MWDOC supports the “beneficiary pays principle” in cost allocation for all responsible parties and beneficiaries.
7. Economy, Environment and Water Management: The State Water Project (SWP) is critically important to the Orange County economy, environment and water management. Implementation of the BDCP is critical to Orange County’s future.
  - a. Orange County has invested heavily to diversify our water portfolio but the SWP remains a critical source of low salinity water supply that is currently unacceptably jeopardized by the unsustainability of the current Bay-Delta system.
  - b. Orange County relies on the SWP to support groundwater conjunctive use programs and water recycling programs - it is an essential part of our water reliability strategy that sustains our citizens and businesses.

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- c. We support the 9,000 cfs twin tunnel Preferred Alternative (No. 4) provided reasonable assurances are included regarding governance and future decision-making in the process. We strongly advocate for a seat at the table for the water Permittees in the various oversight groups. The investment and decision-making must be structured to achieve a positive outcome for both the SWP and Permittees and the ecosystem restoration in a collaborative, partnership manner.

Detailed comments follow:

### **INTRODUCTION OF FULL COMMENTS**

The Municipal Water District of Orange County (MWDOC) is pleased to submit comments on the Draft Bay Delta Conservation Plan (BDCP) and Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS).

Please note that our comments on the BDCP and Draft EIR/EIS interchangeably use the terminology "BDCP", "BDCP process", "the Bay-Delta Fix" and the "decision-making process" to reflect the entire suite of efforts and decisions in a comprehensive manner.

The Municipal Water District of Orange County (MWDOC) is a wholesale water supplier and resource-planning agency governed by a publicly elected seven-member Board of Directors. MWDOC is the third largest member agency of Metropolitan Water District of Southern California (MET). Its service area covers all of Orange County with the exception of the three original MET member cities of Anaheim, Fullerton, and Santa Ana. MWDOC and the "Three Cities" coordinate water management planning. MWDOC serves Orange County through 27 cities and water agencies and one investor owned utility, including the Orange County Water District who manages the Lower Santa Ana River Groundwater Basin.

MWDOC's mission is "to provide reliable, high-quality supplies [of water] from Metropolitan and other sources to meet the present and future needs [of Orange County] at an equitable and economical cost, and to promote water use efficiency for all of Orange County." This mission is implemented through coordinated water management and planning with appropriate investments in water use efficiency, water supply development, system reliability improvements and emergency preparedness. Our mission is supported by collaboration with our member agencies and through public outreach, water education, and legislative advocacy.

Mr. Ryan Wulff  
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**MWDOC strongly supports the BDCP Preferred Alternative (No. 4) and opposes the No Action Alternative: It is critical to the state's economy and environment that both the State and federal Government expeditiously follow through with the decision for adopting and implementing the BDCP.**

MWDOC strongly supports the BDCP Preferred Alternative (No. 4) with the expectation that the State and federal government will move steadily forward with its adoption by issuing the Record of Decision and Notice of Determination by the end of this year, and by implementing the Preferred Alternative in accordance with the BDCP schedule.

We compliment the State and federal agencies and stakeholders in developing a thorough, comprehensive and balanced BDCP Preferred Alternative that will help achieve the co-equal goals of ecosystem restoration and water supply reliability. It is vital that the State of California and Federal Government follow through with this tremendous effort in collaborative planning as it is a once in a lifetime opportunity to resolve the long-standing Delta problems, and the cost of no action is too high. Our expectations are that the approximate \$25 billion investment to implement and carry out the BDCP will result in greater certainty in California's water supply reliability, will make measurable improvements in water quality, and will restore significant environmental values in the Delta. The Preferred Alternative appropriately achieves the proper balance between the environmental needs of the Delta watershed with the water supply reliability needs of the entire State of California.

In spite of the world-class efforts of Orange County to provide greater water supply certainty for eight percent of California's population and the \$200 billion economy they represent, Orange County remains dependent on imported water to meet approximately 45 percent of our average annual demand, with the SWP deliveries from the Delta meeting approximately half of those needs. The Delta ecosystem and water supply conveyance problems have long been recognized, and have remained in a continuing state of degradation, conflict, and stalemate. Many years and hundreds of millions of dollars have been spent on study efforts while the delta system continues to be used for water conveyance in a manner for which it was not intended. The longer it takes to begin the resolution, the more expensive it will become. This stalemate has been punctuated by droughts, floods, economic losses, environmental degradation and litigation every decade since the construction of the SWP in the 1960's. We can no longer delay action in the Delta, and urge the State and federal government to quickly move forward with the Preferred Alternative. Failing to act and move forward is not an acceptable alternative.

MWDOC also supports the proposed governance and implementation structure for the BDCP, as the large-scale Habitat Conservation Plan and Natural Community Conservation Plan (HCP/NCCP) to be formed under federal and state Endangered Species Act (ESA). Using the HCP/NCCP governance structure proposal will ensure that

Mr. Ryan Wulff  
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all of the project's environmental and water supply reliability goals and objectives are realized.

The bottom line is that the BDCP Preferred Alternative (No. 4) offers the best solution to achieve greater supply certainty and the governance structure to provide necessary regulatory assurances. Moreover, it provides for a sustainable and balanced solution to achieve the State's policy of co-equal goals.

#### COMMENTS ON THE DRAFT BDCP AND DEIR/DEIS

***Co-Equal Goals: The BDCP must be implemented in a manner consistent with the State policy of co-equal goals. Preferred Alternative (No. 4) is consistent with the Delta Reform Act of 2009's co-equal goals.***

The BDCP and Preferred Alternative (No. 4) should be adopted and implemented because they comply with State law and the Sacramento-San Joaquin Delta Reform Act of 2009. The Delta Reform Act establishes one of the basic state goals for the Delta as seeking to:

“Achieve the two coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.” Ref: California Public Resources Code Section 29702(a).

The BDCP and the Preferred Alternative balance the co-equal goals established by the Legislature in the Delta Reform Act by proposing to improve 145,000 acres of Delta habitat and permitting new conveyance facilities which will provide operational flexibility and will improve water supply reliability from the Delta.

While some critics of the BDCP have claimed that the plan unduly favors water supply interests and will permit State Water Contractors to export more water than is currently allowed, the BDCP and the Preferred Alternative do not provide a greater amount of water for export. The BDCP estimates that the average water supplies available for export will be 4.7 million acre-feet (MAF) to 5.6 MAF per year. This is the same average currently permitted for export through the Delta today.

The Delta Reform Act of 2009 established the State policy of co-equal goals to provide a more reliable water supply and to protect, restore and enhance the Delta ecosystem. Orange County's primary interests in the successful implementation of the BDCP are:

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1. Restoration of SWP supply to pre-2008 capabilities before imposition of the 2008 Delta smelt and salmon/steelhead biological opinions,
2. Assurances that the BDCP will provide greater supply certainty into the future without further significant mandated reductions in exports due to endangered species issues without a fair and balanced procedure, and
3. Protection of the export supply from both catastrophic outages to the Delta levee system from earthquakes and floods and from long-term sea level rise.

While the project will not expand average annual exports, it will provide certainty in the water supply, protect export supplies from catastrophic outages, and allow for a "big gulp, little sip" approach to beneficiaries. Construction of a new north Delta intake for the SWP and Central Valley Project (CVP), a significant investment for beneficiaries, would protect this critical supply from earthquake, flood and seawater intrusion risks. It also would restore a greater level of export supply certainty and reliability by providing operational flexibility that will minimize environmentally damaging south Delta diversions and reverse flows. The "big gulp, little sip" approach will allow for greater exports when excess river flows would normally discharge to the ocean and smaller, but consistent and predetermined export levels when Delta flows at normal or lower than normal levels. This approach makes sense and helps mitigate the impact of the 2008 opinions, but not at the expense of the environment.

**New Facilities and In-Delta Operational Flexibility:** *The modernization of the Delta conveyance system is essential in order for habitat restoration and conservation to have its intended effect; Preferred Alternative (No. 4), which incorporates the 9,000 cfs three intake, twin tunnel conveyance system, provides the best balance between operational flexibility and modernizing the conveyance system for environmental benefit and water supply reliability.*

The 9,000 cfs three intake, twin tunnel conveyance system will add a new point of diversion in the north Delta area which will provide operational flexibility in how water is conveyed across the Delta. This will mitigate entrainment of fish under the current south Delta operations and will significantly curtail reverse flows. In addition, an improved conveyance system will allow the Delta to operate more naturally by minimizing conflicts between fish and water operations. This will better enable conveyance of high flows while minimizing fishery impacts. The project would substantially reduce the take of endangered species and would protect exports from earthquake, flood and sea level rise into the future. We strongly support this foundational conservation element of the BDCP, and believe that the Proposed Alternative (No. 4) proposes the best option for modernization of the conveyance system.

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Proposed Alternative (No. 4) provides the best option for operational flexibility, and will allow for the "big gulp, little sip" approach. Southern California has made significant investment in water storage and conveyance facilities, such as the Diamond Valley Reservoir, Inland Feeder and groundwater storage facilities, to allow conjunctive use storage during periods of high flows in the system. Implementation of the Preferred Alternative (No. 4) will enable a more efficient and protective location for diversion of high flows for downstream storage and subsequent dry period use than the current system can provide.

The three proposed screened intakes in the northern Delta and proposed twin tunnels, combined with the enlarged and improved SWP Clifton Court forebay intake in the southern Delta, will provide the necessary flexibility to greatly reduce conflicts between fish and water operations. Reliance solely on the existing system is not sustainable and would cause significant long-term harm to the fishery as well as adverse impacts on SWP deliveries, as has occurred since 2008. The screened intakes proposed by BDCP in the northern Delta will significantly mitigate reverse flows and south Delta diversion impacts. The Preferred Alternative (No. 4) will enable a more natural flow pattern through the Delta estuary.

The existing system is vulnerable to future sea level rise. Salinity intrusion, especially during extended dry periods, will worsen with sea level rise. With sea level rise, the ability of the existing system to meet the co-equal goals will be increasingly difficult. The Preferred Alternative (No. 4) system will help mitigate future salinity risks to water supply. In addition, the projected change in precipitation patterns to increasing rain and decreasing snow will limit the time availability windows for diversion and capture of available river flows. This change will require increased diversion rates and storage during periods when higher flows occur. This should be a recognized benefit of the BDCP and placed within its climate adaption strategy.

The Preferred Alternative (No. 4) should also provide facility protection from major flood events, up to a 200-year storm event. This will require establishing protective elevations at the Clifton Court Forebay as well as providing similar levels of protection at the recommended new north Delta diversion facilities. 200-year storm protection should be included in the BDCP.

The 9,000 cfs three intake, twin tunnel conveyance system would also protect the critical SWP and CVP supplies if massive Delta island levee failures should occur in the future from a major earthquake. The body of independent scientific evidence of the seismic risks in the Delta is growing. The best available science and engineering analysis of the Delta levee system has found that a major earthquake in the region would likely cause massive soil liquefaction, and failure of numerous levees resulting in relatively rapid seawater intrusion into Delta waterways and saltwater flooding of many islands. Under this scenario, SWP and CVP deliveries would be interrupted and

Mr. Ryan Wulff  
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significantly curtailed for up to three years resulting in severe economic damage to the state. The best available temporary solution would be a patchwork levee "pathway" that could only deliver a fraction of traditional supplies in the best-case scenario.

Seismic preparedness is crucial for this vulnerable segment of the statewide water delivery system, especially in the intervening years prior to completion of the tunnel system. The new northern Delta intakes and twin tunnels will protect future SWP deliveries and the economy of the state— providing a valuable insurance policy to improve the reliability of the system from natural disasters. Delays in implementation of the BDCP should be avoided and the project implementation should be expedited. Approvals should not be unreasonably withheld.

***Reduced Future Reliance: The 2009 Delta Legislation called for water agencies to reduce future reliance on the Delta, not to become 100 percent "self-reliant". The 2009 water package called for both reduced reliance and construction of improvements in the Delta.***

As part of the 2009 Delta legislation, water agencies are required to reduce their future dependence on the Delta. Over the past several years, agencies have worked to improve water use efficiency, develop alternative local supplies, and reduce their dependence on the Delta by changing the timing of water exports. These efforts are in compliance with California's policy "to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency." Ref: California Water Code Section 85021.

While efforts in these areas will continue, it is important to note that "reduced reliance" does not equate to and was never intended to require a move to 100 percent "self reliance." The 2009 Delta legislation did not intend or envision reduction or elimination in water exports from the Delta, but balanced the need for all of California to use its water resources wisely, and to reduce future pressures on the Delta ecosystem from future population and economic growth in the State.

We have grown concerned over references to "self-reliance" as this is markedly different than "reduced future reliance," which was the intent of the law. The concept of "self-reliance" is troubling as the notion of co-equal goals was never intended to result in a future with significant reduction in exports from levels achieved before the 2008 bio-opinions. We would question whether this line of reasoning seeks to establish the pretext for ever-declining yields out of the SWP and ever increasing unit costs, further stranding imported supply investments onto our ratepayers and fundamentally damaging our ability to continue to optimize our local resources (i.e. salt management in recycled water and groundwater basins).

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It is our considered opinion that both improvement in supply that should be expected from the BDCP implementation and new local resource developments are necessary, as well as other longer-term federal/multi-state supply and conservation projects if we are to secure and improve our water and economic future for the benefit of a growing population.

The recently released California Water Action Plan promotes increasing self-reliance through several measures, including providing a more reliable water supply that protects export supplies from catastrophic outages from earthquakes, major floods and rising sea levels. The California Water Action Plan focus highlights the importance of the BDCP to improve operational flexibility, protect water supplies and water quality, and restore the Delta ecosystem within a stable regulatory framework. It also goes on to state that as the Delta ecosystem improves in response to the implementation of the BDCP conservation measures, water operations would become more reliable, offering more secure water supplies. These are laudable goals of the BDCP, including restoration of export water supplies to levels that were realized before the 2008 biological opinions.

It is now time for the State and federal government to achieve the 2009 legislation's co-equal goals of improving water supply reliability and ecosystem function by implementing the BDCP.

**Plan Implementation and Regulatory Assurance: *The BDCP must provide the needed implementation and regulatory structure and assurances to achieve the co-equal goals as established by the State. MWDOC submits the following comments related to plan implementation, governance and assurances.***

#### ***Regulatory Assurances***

It is important to establish a more stable regulatory environment, which is one of the key goals of the BDCP. The BDCP offers a clear choice between a stable future and today's ineffective and adversarial species-by-species approach to regulation and ESA enforcement under Section 7 of the ESA. Under the BDCP, ESA regulations and provisions of the HCP/NCCP would provide for regulatory and economic assurances, and greater certainty for public water supply and fish and wildlife agencies. The core Adaptive Management and Monitoring program is encouraged and should help to realize achievement of the co-equal goals. It is virtually impossible to ascertain and predict with any precision the outcome of the BDCP habitat restoration efforts and endangered species population dynamics, and such a standard should not be required in the DEIR/DEIS.

The BDCP must provide regulatory assurances commensurate with the significant investment to be made in both improved habitat and facilities. We generally concur

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with BDCP Chapter 6 Plan Implementation structure and process. It is important that under the operation of the BDCP the identified changed circumstances, including the potential for new species listing, be incorporated within the BDCP with minimum impact on future water supply exports.

Further, it is likely that unforeseen circumstances will be caused by factors other than water diversions. The plan recognizes this under Section 6.4.1 which states "... if unforeseen circumstances occur that adversely affect species covered by an HCP or NCCP, the fish and wildlife agencies will not require additional land, water or financial compensation or impose additional restrictions on the use of land, water or other natural resources." These provisions must be retained to assure fairness in the process.

### *Balancing and Proportionality*

In the discussion of Alternatives 4, 7 and 8 in DEIR/EIS Chapter 31 (starting at line 42, pg 31-7 and ending at line 32 on pg 31-8), the rationale for the Preferred Alternative (No. 4) is provided in terms of its balancing and proportionality between upstream salmonids, in-Delta species, and export area economy and environmental needs. In addition, the incidental take limits (ITL) should be set in some proportion to the population size of the listed species and should be adjusted accordingly based on population dynamics.

This section further indicates that Preferred Alternative (No. 4) would be subject to the "scientific decision tree" mechanism to "...ensure minimization of adverse environmental effects to water exports in response to changing conditions and evolving scientific information." It is our understanding that the scientific decision tree analysis process would apply only to the Delta smelt (fall outflow issue from 2008 USFWS Biological Opinion "Reasonable and Prudent Alternative") and Longfin smelt (spring outflow operations effects) (CM1). We would hope that improved data collection of the presence and abundance of these fish be monitored over a reasonable habitat range rather than be limited to historical sampling points and procedures. We also recommend that flow changes must also be based on balancing and proportionality to the maximum extent practicable between upstream salmonids, in-Delta, and export area economy and environmental needs.

### *Sound Science*

Sound science is critical to the success of the BDCP. We strongly support the inclusion of independent scientific investigation and research to be included in the BDCP process. The current process of reliance on agency staffs and consultants, the Delta Science Program, and independent science review panels, is very good, but it can further benefit from the inclusion of scientific investigations by researchers not part of these groups. We are also concerned that the models being used for the effects analyses may not fully consider all elements of the BDCP, as the models have recognized limitations and would

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likely underestimate the benefits of the BDCP. Outside expert opinions and independent research can only help the process and the process should be open to the inclusion of new scientific data and findings.

We note on page pg 31-8 the statement "Although Alternatives 7 and 8 do not include operations based on the (scientific) decision tree concept, these two alternatives would include greater levels of guaranteed spring and fall Delta outflows, which have demonstrated strong correlations with increased abundances of Delta and Longfin smelt." We disagree with this assertion and do not believe this has been supported at an accepted scientific level. This statement should be clarified for each species where it occurs in the BDCP and DEIR/EIS. Only necessary outflows for migrating fish should be required.

***Habitat Conservation Plan (HCP)/Natural Community Conservation Plan (NCCP)  
Structure and Governance***

Establishing an HCP/NCCP in the Delta is the best vehicle for achieving the Delta's co-equal goals, and providing assurances that both environmental protection and water supply reliability will be achieved.

It is important that the BDCP is being developed as a 50-year habitat conservation plan with the co-equal goals of restoring the Delta ecosystem and securing California water supplies. A habitat conservation plan is a proper vehicle for reaching these co-equal goals because it will bring the interested parties to the same table, and establish clear operating rules and conservation measures for the 50-year term proposed in the BDCP and its associated EIR/EIS. It is also important to note that the 50-year term proposed meets the objective declared by the Legislature in Water Code Section 85020, which requires that the water and environmental resources of the Delta be managed over the long term.

There must be a strong voice for participating public water agencies in the BDCP process. There are good examples of multiple Permittee interests working collaboratively with resource agencies in southern California on Federal HCPs and State NCCP implementation. For example, the Metropolitan Water District of Southern California (MET) has Permittee status as part of a multi-state, multi-species HCP on the Colorado River because southern California's water supply reliability is tied to the success of the plan.

In Orange County, agencies have successfully implemented HCP/NCCPs incorporating assurances and representation for all participants. For example, in Orange County both the Santa Margarita Water District and Irvine Ranch Water District are participants in HCP/NCCP processes.

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As one of the first communities in California to implement a HCP/NCCP, Orange County and the Central/Coastal HCP/NCCP demonstrated how the private and public sectors, including water agencies, can successfully partner with the resource agencies to allow for a holistic and broad-based ecosystem approach to habitat conservation and ecological protection while allowing for appropriate development and urban planning. The Central/Coastal HCP/NCCP in Orange County has demonstrated how substantial amounts of habitat can be conserved and restored based on an ecosystem approach, which better protects biological diversity and improves habitat for species of concern. Ultimately, the use of a similar HCP/NCCP, as proposed in the BDCP, will provide better ecosystem protection and restoration outcomes in the Delta.

Orange County's Central/Coastal HCP/NCCP is also a prime example of how HCP/NCCPs ensure that the habitat protection and other operating parameters agreed to in an HCP/NCCP are binding on all of the parties involved. Like the process proposed in the BDCP and the long-term 50-year permit discussed in its associated documents, the Central/Coastal HCP/NCCP is a long-term agreement with a permit in effect until 2071.

As the coordinating entity for the management of the 37,000-acre reserve system under the Central/Coastal HCP/NCCP, the Nature Reserve of Orange County serves the important role of working to implement the HCP/NCCP on behalf of its signatories. Its role is to ensure that the agreed upon natural communities and species are protected, and that the permit requirements for the reserve are met. After more than a decade, the Nature Reserve of Orange County has continued to bring all of the interested parties to the same table to ensure that the agreement reached in the HCP/NCCP is respected. We believe that the BDCP HCP/NCCP can do the same for the interests in the Delta.

#### ***Authorized Entity Group***

Permittees, such as water providers, must have a strong voice in the governance of the BDCP because water providers have a huge vested interest in the success of the effort as they are directly affected by the risk to water supply by its failure. Permittees are currently envisioned as key members of the "Authorized Entity Group" which, according to the BDCP documents, "will provide input and guidance on general policy and program-related matters, monitor and assess the effectiveness of the Implementation Office in implementing the Plan and foster and maintain collaborative and constructive relationships with fish and wildlife agencies, other public agencies, stakeholders, local governments and interested parties." This is good and effective governance and these provisions must be retained in the final plan.

#### ***Permit Oversight Group***

Our understanding is that the Permit Oversight Group, consisting of representatives of state and federal fish and wildlife agencies, will ensure "that the BDCP is being properly implemented." This group has "final decision-making about real-time operations." The

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Permit Oversight Group is apparently empowered to shut down the water exports and change the permits without Permittee recourse. We believe this is flawed and inconsistent with meeting the co-equal goals.

In early administrative draft versions of the plan that were available to the public, there was an appeals process that would enable decisions to be reviewed by the Secretary of the Interior and Secretary of Commerce. We believe this appeals step is critical, as Orange County and others across the state substantially depend on the SWP for their water supply. This change from earlier drafts would impose an unacceptable veto power without adequate recourse. The appeals process must be provided as before. Our concern is best alleviated via a balanced process including the ability for appeals. The process must avoid the more rigid and case-by-case Section 7 consultation approach that we have experienced and the uncertainty it can create.

The investment is too great to be vulnerable to unilateral actions driven solely by regulators without allowing the functioning of the BDCP plan to achieve the co-equal goals. As currently written, this provision appears to undermine the BDCP, and it needs to be revised along the lines as described.

### *Salinity Control*

Before the construction of the CVP and SWP reservoirs, salinity intrusion far into the Delta was a common occurrence during very dry years. Since the construction of Shasta and Oroville Reservoirs and with the 1978 SWRCB D-1485 water quality control decision, the CVP and SWP have provided broad salinity control benefits to the Delta that have helped to protect in-Delta agriculture and domestic uses as well as export water quality, even as San Joaquin River flows were depleted by upstream diversion. We concur that salinity control is an important component of the BDCP. We also note that natural variability must be recognized within the BDCP and some relaxation of salinity control objectives must be allowed during severe droughts.

In addition, with future sea level rise, the BDCP needs to provide for a gradual relaxation of the X2 salinity control point, as releasing more and more stored water, which is made possible by both the CVP and SWP, will cause increasingly greater shortages in water supply at increasingly greater economic impact to the state. The estuary would be expected to shift upstream with sea level rise and this should be accounted for in the 50-year permit period. The BDCP must recognize that the existing Delta agricultural areas may require some form of land use conversion into the future.

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### ***Recognize Need for Additional Upstream Storage***

While not part of the BDCP plan, additional storage north and south of the Delta will be critical concurrent with improvements in conveyance to enable the capture of high flows during wet periods for subsequent use. Additional storage will be especially important during periods of prolonged drought. Such facilities would be of statewide and national benefit, and both the State and federal government should financially contribute to their development. The BDCP should recognize the need for additional upstream and downstream surface storage to realize the full benefits of Preferred Alternative (No. 4). We support the development of future storage projects as stand-alone projects outside of the BDCP Plan to help with meeting the co-equal goals.

### ***Scientific Decision Tree and Project Yield***

The BDCP holds the potential to stabilize SWP and CVP annual deliveries to between a range of 4.7 to 5.6 MAF (Prior 20-year average deliveries were 5.2 MAF) and to stabilize them within this range over the 50-year permit period, but this depends upon the future outcome of "Scientific Decision Tree" studies that will refine future spring and fall outflows. The BDCP indicates that without the BDCP the Delta will continue in ecosystem decline, future deliveries would be reduced between 3.4 to 3.9 MAF as the result of new listings, higher requirements for outflows during wet and above-normal precipitation years would be required, and using fixed limits on take rather than proportionate take based on actual population size and dynamics would be likely.

The Decision Tree process is critical; water agencies require a seat at the table to represent the water supply and economic interests of the public that we, as public agencies, serve. Further, the water agencies have a high level of interest in ensuring that adaptability will result in regulatory agencies working collaboratively with the Permittees as provided for under the state and federal ESA laws for habitat and natural community conservation plans. It is important to ensure that the process is not skewed and has not established pre-determined outflows and compliance locations.

***Plan Implementation and Regulatory Assurance: The BDCP must provide the needed implementation and regulatory structure and assurances to help achieve the co-equal goals. MWDOC submits the following comments related to plan implementation, governance and assurances.***

The BDCP and the 9,000 cfs three intake, twin tunnel conveyance system would significantly improve export water quality by reducing total dissolved solids (TDS), bromide, dissolved organic carbon (DOC) and other contaminants that currently impact the south Delta. This is especially important for Orange County for a broad range of water management purposes. It is our understanding, that future SWP deliveries under the Preferred Alternative (No. 4) would realize a reduction in concentrations, on average, of approximately 20 percent from existing conditions. Reductions in TDS,

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bromide and DOC will help to sustain Orange County's groundwater basins, enhance recycling usage, and reduce treatment and consumer costs. Improving source water quality is an important value of the BDCP.

Reductions in DOC and bromide in SWP water will lower disinfection by-product formation in public water systems. Compliance with these U.S. Environmental Protection Agency and California Department of Public Health regulated compounds requires expensive water treatment to meet public health requirements. Reducing DOC levels will also reduce chemical and energy usage in ozone or chlorine based disinfection processes saving the ratepayer money and reducing environmental impact.

Further, given the high TDS and hardness levels in Colorado River water, lower TDS and softer SWP water is essential to help manage the long-term salt balance in southern California and Orange County groundwater basins, thereby, minimizing treatment costs, reducing penalty costs to consumers, and lowering the cost of recycled water projects. Lower TDS source water helps many of the elements of our Southern California reliability strategy, as well as achieving compliance with Regional Water Quality Control Board Basin Plan objectives and discharge limitations.

***Water Quality Improvements and Regional Compliance with Section 85021***

The Water Code directs that "Each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts", reference California Water Code Section 85021. Orange County and Southern California have complied with the California Water Code by taking great strides to improve its regional self-reliance, but the BDCP and a reliable supply of imported water is still needed.

Many of the opponents of the proposed BDCP process state that development of local supplies, water reuse, conservation and water use efficiency can take the place of the supply and reliability projects proposed in the BDCP. The reality is that the solution to California's water problems requires action on all of these fronts in addition to the BDCP. While California should continue to develop local supplies, improve water reuse, and move towards greater water use efficiency and conservation, those efforts would be hampered without the BDCP Preferred Alternative (No. 4) and the water quality improvements which will be obtained as a result of those projects and changes in operations.

Expected water quality improvements in SWP supplies from the BDCP in reduced salinity, total organic carbon and bromide would result in water quality benefits and would promote water recycling and reuse. A reduction at the source means that these water quality challenges are less of a problem once the water is recycled, and would

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allow for better quality in the recycled water produced in Orange County and Southern California. A better quality recycled water will allow water to be used for a greater number of cycles.

Orange County's future depends on high quality, reliable and affordable imported water supplies. If we do not have the expected high quality and reliable supply from the SWP that would be made possible by the BDCP, it would seriously jeopardize groundwater basin management and expanded local recycling projects, many of which may not be economically feasible without the high quality water received from the SWP. Moreover, a high quality SWP supply also supports long-term economic management and protection of groundwater basins from salinization and reduces overall consumer penalty costs from corrosion and scaling.

**Cost Allocation: MWDOC supports the "beneficiary pays principle" in cost allocation for all responsible parties and beneficiaries**

All beneficiaries and responsible parties of the BDCP must contribute to the solution, including any diverter of water from the system (north or south of the Delta). Moreover, in-Delta interests have been significant contributors to the modification of habitat, continue to discharge pollutants into the waterways, have caused the subsidence of the Delta islands and need for ever higher and unstable levees that risk both habitat and exports, and have benefited from operations of the projects. Accordingly, these interests have a moral and financial responsibility to directly participate in any solutions as do other responsible parties. Where habitat is to be created by modifying or restoring Delta islands to a more natural state, the in-Delta interests should work collaboratively to facilitate such actions.

Further, any recipient of water should pay the cost of water conveyance improvements in line with the proportion of overall water supplies they receive. Economic values associated with end uses of the water should have no bearing on the cost allocation of the BDCP; it is solely a matter of paying one's share of the cost of development of the water supply.

Furthermore, all Californians will benefit from a solution in the Delta through the improved habitat and reliable water supply that will be created; a stronger overall economy benefits everyone. Consequently, the State and federal government should step up to fund the costs of environmental and habitat improvements as well as providing funding support for flood control, levee improvements, fisheries, invasive species control and other programs within their jurisdictions.

**Economy, Environment and Water Management: The State Water Project is critically important to the Orange County economy, environment and water management.**

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### *Economic Impacts*

The BDCP and DEIR/DEIS "No Project Alternative" analysis should include an evaluation of the economic impact of not strengthening California's water supply and the impact that "no action" has on the state's economic hubs as part of its overall evaluation. The BDCP evaluates the economic impact of the project's potential for growth inducement; however, it does not adequately take into account the economic impact of failing to secure water reliability for the state's economic centers. MWDOC urges inclusion of these impacts.

The economy of California is largely driven by economic activity in the San Francisco Bay Area and Southern California. To put the economic contributions of these areas in perspective it is important to note that Los Angeles and Orange counties contribute roughly \$766 billion to California's gross state product (GSP). The Bay Area contributes \$534 billion, and San Diego County contributes \$177 billion. These three areas alone comprise nearly 75% of the state's \$2 trillion GSP.

Orange County has a population of 3.1 million people, approximately eight percent of California's entire population, and an economy with a gross domestic product of about \$200 billion or 10 percent of the state's overall economy of \$2 trillion. Orange County's share of California's non-farm businesses was about 10 percent in 2011, and in 2007 Orange County accounted for \$49 billion (10 percent) of California's manufacturer's shipments and \$98 billion (16 percent) of California's merchant wholesaler sales. In addition, Orange County is a major regional employment, higher education and tourism center.

Orange County is an economic powerhouse for the state; the lifeblood of any economy is a reliable and secure water supply. MWDOC's 2010 Urban Water Management Plan indicates water demand for municipal and industrial use is expected to increase from approximately 485,000 acre-feet per year (AFY) to nearly 568,000 AFY by 2035. For all of Orange County, the total demand of 627,000 AFY is expected to increase to 726,000 AFY by 2035. Regional and local innovative programs and investments in water use efficiency have saved an estimated 75,000 AFY to date in the county.

The San Francisco Bay Area and Southern California depend heavily on the Bay-Delta with nearly one third of their water supplies coming from Delta exports, and the economic vitality of these areas is dependent upon a secure and reliable water supply. The bottom line is that a dependable water supply is essential to business operations and expansion that will continue to strengthen our state's economy and increase employment. The BDCP should take into account the economic cost of not providing a secure and dependable water supply in its economic impacts analysis. Given the importance of Southern California and the Bay Area to California's economy, the cost of

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no BDCP, without the Preferred Alternative (No. 4), would be extremely large and would greatly exceed any economic benefits of other alternatives that were considered.

It is also noteworthy that the Delta is a key water supply for 25 million California residents, largely located in the economic centers discussed above. The risk of a large earthquake in Northern California causing severe damage to the Delta grows greater with each day a comprehensive Delta solution is not implemented. If the State and federal government do not move forward on the BDCP, we are risking great environmental damage, a loss of substantial water supply to more than two-thirds of California's residents and businesses, and associated economic losses into the future.

We also risk severe and possibly permanent damage to our State's agricultural economy. The water from the Delta supports more than 5 million acres of California agriculture. These 5 million acres represents more than 80 percent of the United States' food production and more than 500,000 jobs. Loss of water as a result of failure in the Delta will mean California's agriculture will lose an essential water supply.

That loss of water will result in millions of acres of unproductive land and a loss of jobs in communities which have already suffered great losses as a result of our most recent economic downturn and during the current severe drought. Without implementing the comprehensive environmental and conveyance solution proposed by the BDCP, we risk permanent damage to California's \$44.7 billion agriculture industry.

The development of a secure and reliable water supply for the citizens of California is important to the economic vitality of our state. The BDCP will provide stability in California's water infrastructure by providing a process that can result in a more dependable, high quality SWP water supply.

### ***Orange County Environment and Water Management***

The recent droughts of 1977-78, 1987-92, 1999-00, 2007-08 and the current drought demonstrate the precarious nature of the federal, state, regional and local water supply systems serving California. Throughout the state, the current acute drought, natural climate variability and climate change, agricultural cutbacks due to lack of water and continuing groundwater overdraft, increasing population and need for an ever growing economy, have brought to the light that water supply solutions and challenges are looming larger and more complex. This has led many to an increasing recognition that we have entered an era of uncertainty and potential era of water scarcity if we do not plan for the future.

Recent droughts and a greater understanding of climate change impacts have demonstrated that supply uncertainty and variability pose great risks to our economy and the natural environment. We remain confident that we have the combined ability

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to help solve these long-term problems. One key part of this solution is to fix the "broken Delta" through the program developed and recommended in the BDCP.

MWDOC and its member agencies have made significant investments in local resources and water management. Orange County water agencies are recognized leaders in water use efficiency, storm water conservation, groundwater basin management, wastewater management, water recycling and reuse, and advanced water treatment technologies. In north Orange County, the Orange County Water District is recognized as a world leader in indirect water recycling through their award winning Groundwater Replenishment System, a project that now recycles 72,000 AFY, is under construction to be expanded to recycle 100,000 AFY with plans to recycle up to 130,000 AFY in the near future. These programs with imported water enable OCWD groundwater producers to meet about 70% of their water supply needs from the groundwater production. Conjunctive use of the basin with imported water and its utilization remains dependent on the availability of high quality imported water that can be replenished during wet periods.

Through innovative, multi-agency approaches, MWDOC and its agencies develop, implement, and evaluate water use efficiency programs that provide multiple benefits, including improved irrigation efficiency, increased utilization of California Friendly landscapes, and pollution prevention through programs that help to reduce dry weather urban runoff. Our programs include educational classes on water-wise landscaping, irrigation performance reporting, water use surveys for hotels and industrial customers, and consumer incentives for water-efficient devices. To evaluate the effectiveness of such devices, MWDOC conducts studies to monitor water savings and urban runoff reduction.

Through these efforts, Orange County's water use today is less than it was in 1990 even with population growth of 683,000 and jobs growth of 204,000 respectively. Overall, MWDOC has documented conservation of about 75,000 AF per year (active and passive). Despite these efforts, Orange County is still reliant on purchases of imported water from MET to meet about 45 percent of our current needs. About one-half this need is met from the SWP.

South Orange County is much more reliant on imported water, having few local resources other than water recycling and a few small groundwater basins that are nearly fully developed. Regional recycling planning is underway to evaluate how best to maximize the use of recycled water in South Orange County. In addition, studies are underway for evaluating the feasibility of augmenting the groundwater supply from the San Juan Creek alluvial basin through replenishment with recycled water. The southern portion of Orange County despite its best efforts remains heavily dependent upon the Delta.

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A number of retail agencies in south Orange County are recognized leaders in water use efficiency and conservation based rate structures, water recycling, and water reliability projects. For example, Irvine Ranch Water District, Moulton Niguel Water District, El Toro Water District, Santa Margarita Water District, Trabuco Canyon Water District and the cities of San Juan Capistrano and San Clemente are recognized leaders in water recycling and management through the use of dual distribution systems and community planning.

Orange County ratepayers have invested heavily in local resources in past years both directly and through MET. These investments through MET water supply purchases helped fund the \$2 billion Diamond Valley Reservoir and \$1 billion Inland Feeder that allow SWP deliveries during wet periods to be delivered into storage Southern California reservoirs. In addition, at least \$1 billion in local recycling and groundwater recovery projects have been made, including water use efficiency and conjunctive use since 1991. Combined, these investments provide the ability to efficiently use existing supplies, develop additional local supplies, and to store water in wet years for subsequent dry year use.

Orange County is also exploring ocean desalination, another potential local supply. It is also a key feature of planning in Orange County with the innovative subsurface intake system being examined for the planned 15 million gallon per day Doheny Ocean Desalination Project in Dana Point and permitting of the 50 million gallon per day Poseidon Resources desalination plant in Huntington Beach.

Despite all of these efforts and investments, Orange County will continue to be dependent upon imported water. Completion and successful implementation of the BDCP is paramount to achieving the reliability that supports water management in Southern California. These local investments have helped meet the water needs of a growing productive population and reduced the otherwise growing pressure on water imports - our agencies should not be "penalized" by additional mandated investments that do not recognize and account for investments that have already been made.

#### **COMMENTS ON THE DRAFT IMPLEMENTING AGREEMENT**

The "Implementing Agreement" is necessary to provide a contractual, legally-binding agreement that spells out the commitments and assurances as well as the terms and conditions for on-going implementation of the BDCP. Given the high level of BDCP investment, the water community needs reasonable certainty regarding the expected amount of water supply to be restored that was lost as a result of the 2008 biological opinions.

It should be clearly recognized in the implementation structure and agreement decision-making process that the new, screened North Delta intake system will not only

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greatly improve salinity control and water supply reliability from catastrophic levee failure and future sea level rise, but will avoid entrainment losses of fish as well as minimizing impingement losses from current south Delta diversions. In addition, the new intake system will provide much needed operational flexibility that will enable significant protections to endangered species as well as maintaining environmental and water quality benefits to the south Delta that are provided by the SWP and CVP. These benefits will be made possible through the ability to curtail south Delta endangered species take by changing the timing and diversion rate by use of the new North Delta intake system.

Currently, endangered species take by the existing south Delta unscreened forebay diversion operations are controlled by reducing exports. The BDCP will provide a physical means to minimize south Delta diversions. In addition, the added operational flexibility will result in greatly reduced reverse flows and related, improved south Delta water quality, and improved export water quality. The implementing agreement needs to recognize these benefits to allow export diversions to be restored.

Following are our specific comments on the Draft Implementing Agreement.

**Comments In Support of Current Language (Areas where we agree with current Implementing Agreement provisions that should not be changed in ways that would weaken protections to water exports)**

- **Permit Oversight Group Members.** It is appropriate that the state and federal fish and wildlife agency members of the Permit Oversight Group be either the named directors or administrators or designees that are duly authorized to exercise their authority. Delegation to staff members without such authority would lead to inefficiencies and decision-making gridlock.
- **Real Time Operations Purpose.** The stated purpose of Real Time Operations of “maximizing conservation benefits to covered fish species and maximizing water supplies” is appropriate. This reflects a fundamental purpose of the BDCP of restoring and protecting water supplies, and acknowledges that real time operations is a tool that can benefit water supply as well as fish species.
- **Real Time Operations Ultimate Decision.** In the event of disagreement among agency directors over a proposed Real Time Operations adjustment, it is appropriate that the adjustment will not be made.
- **Adaptive Management Team Membership.** Given the SWP and CVP Contractors’ extensive responsibility in funding and implementing the Plan, it is fully appropriate that one SWP Contractor and one CVP Contractor be designated as voting members of the Adaptive Management Team.

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- Funding from the State of California and the United States. Consistent with the Planning Agreement and in recognition that the BDCP is a comprehensive and ambitious plan that provides significant benefits to the public generally, the Implementing Agreement appropriately provides that the State of California and the United States will be responsible for funding the Plan where not otherwise funded by the Authorized Entities.
- Regulatory Assurances. The Implementing Agreement appropriately includes provisions that provide the Permittees with No Surprises and other assurances and protections, consistent with Endangered Species Act (ESA) and Natural Communities Conservation Planning Act (NCCPA) law and regulation.
- Assurances Provided to Reclamation. Given Reclamation's integral role in the BDCP and in coordinated CVP/SWP operations, the assurances provided to Reclamation against additional expenditures of resources, to the maximum extent possible, are appropriate.

#### Comments Seeking Changes

- Ultimate Decision Making Authority and Signatories to the Implementing Agreement (Page 1). It is not clear who will be obligating the commitments of the United States and the State of California that are beyond those of the Authorized Entities. It is recommended that the Secretary of the Interior and the Governor sign the agreement to help ensure that those commitments will be met. As stated in Section 1.0 of the Implementing Agreement, the level of agency signatory has not been determined and will be considered further. Staff suggests that the Governor, Secretary of the Interior, and the Secretary of Commerce should be the signatories for the California Department of Fish and Wildlife, U.S. Fish and Wildlife Service, and the National Marine Fisheries Service, respectively. By having the Governor and the Secretaries sign on behalf these state and federal agencies, it helps ensure that the United States government and the State of California live up to their obligations under the Implementing Agreement. As for the Authorized Entities (Department of Water Resources and State Water Project/Central Valley Project Contractors), it is more clear as who has the ability to legally bind these entities. At minimum, when conflicts arise, decision-making must be moved to the highest levels possible.
- Covered Species (Page 7). Sections 3.20 and 8.5.1 of the Implementing Agreement define "Covered Species" listed in Exhibit "A". Since those species listed in Exhibit "A" link directly to the species for which the Permittees have been given "no surprises" protection, Exhibit "A" is important to understand the risk being undertaken by the Permittees. Exhibit "A" was not attached to the

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Implementing Agreement and should be released for review before the parties enter into the agreement. Listing of all known species is critically important to provide broad coverage.

Furthermore, amended language is needed to allow incorporation of currently unknown native species as "Covered Species" where restoration activities are shown to provide a benefit without going through the full amendment process. It is critical that the listing of "Covered Species" is as broad as possible based on current science and is sufficiently flexible to assure an efficient process.

- Unforeseen Circumstances (Page 10). Section 3.51 of the Implementing Agreement defines "Unforeseen Circumstances" as those "changes in circumstances affecting a Covered Species or geographic area covered by the BDCP that could not reasonably have been anticipated by the Permittees, USFWS, or NMFS at the time of the BDCP's negotiation and development, and that result in a substantial and adverse change in the status of a Covered Species."

Since the reasonably foreseeable changes in circumstance have been included in the BDCP, the definition should be modified to state that unforeseen circumstances are those "changes in circumstances affecting a Covered Species or geographic area covered by the BDCP that could not reasonably have been anticipated by the Permittees, USFWS, or NMFS at the time of the BDCP's negotiation and development, and were therefore not included in the BDCP, and that result in a substantial and adverse change in the status of a Covered Species."

- Bureau of Reclamation's Role (Page 15). The Bureau of Reclamation is not a party to the Implementing Agreement. Section 5.0 of the outlines the role of the Bureau of Reclamation. It states that the Bureau will enter into a Memorandum, or similar agreement, with the Parties of the Implementing Agreement outlining the Bureau's roles and responsibilities. This memorandum or similar agreement should be attached to the Implementing Agreement as an exhibit and incorporated by reference into the Implementing Agreement, and this section should be changed to reference that exhibit.
- Take Authorizations (Page 19). Section 8.2: Other Authorized Entities - Section 8.2 recognizes that certain third parties may seek take authorizations under the BDCP for ongoing operation of water diversions that are not associated with the SWP or CVP. These parties will be considered Other Authorized Entities. A sentence should be added clarifying that SWP/CVP Contractors shall not be held liable or be asked to take actions by USFWS, NMFS or CDFW as a result of Other Authorized Entities violating the terms and conditions of any take authorization issued by the Department of Water Resources. Also, the section references

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Exhibit C. Exhibit C has not been released, and should be released prior for review to finalization of the Implementing Agreement.

Implementation and Conservation Measures Definitions - The definition of "Implementation" is not provided under the Definition section. It should be noted that it includes construction and operation/maintenance over the 50 year term of the permit. The definition of "Conservation Measures" should be more clearly defined that their implementation means that they meet the "maximum extent practicable" test.

- Neutrality of Permitting and Decision Tree Outcomes (Page 24). The provision related to Decision Tree Outcomes includes a reference to permit terms and conditions including the operational and flow criteria related to the high-outflow scenario. All Decision Tree outcomes should be described at an equal level of detail and fully evaluated with sound science before a decision is made. The high outflow scenarios should not be predisposed as being the permitted outcomes to be included as permit terms and conditions. Refer to MWDOC's BDCP comment letter which raises this issue under "Balancing and Proportionality" and its importance with regard to the issue of outflows and an expanded monitoring program over a reasonable habitat range compared to the historical narrow and limited monitoring program that in all likelihood has understated the Delta and Longfin Smelt populations as well as the effect of other stressors. Improved scientific understanding of the stressors impacting the smelt population is needed.
- Real-Time Operations Adjustments (Page 27-29). Real time operations decisions should not compromise the discretion of the Project Operators to maximize water supply benefits provided the requirements of BDCP are being met. Where exports are reduced due to real time adjustments, they should be made up later in the year through additional exports, so as to remain neutral. Given the SWP and CVP Contractors' vested interest and expertise in water operations, one SWP Contractor and one CVP Contractor should serve as voting (not non-voting) members on the Real Time Operations Team.
- Adaptive Management (Page 29-30). It is not clear how the limits for non-flow actions of Adaptive Management will be defined. A monetary cap for non-flow Adaptive Management Actions needs to be established. For water operations, the Implementing Agreement lists four resources sources and their priority of use. These sources are not defined and specifics on how they would be used and managed are not provided.

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- Reserve System Lands and Funding (Page 42). The maintenance requirements/costs for the tunnels have not yet been finalized. Before implementation is begun, the cost and cost allocation for the Preferred Alternative (Alt. No. 4) should be fully understood. The final costs and performance objectives of the conveyance system must be reflected in contractual agreements to provide certainty that investments in the conveyance facilities result in adequate returns for State and Federal water contractors. This comment should also be addressed as it relates to the amount and who funds the non-wasting endowment required in Section 11.4.1.
- Changed Circumstances (Page 44). As the Implementing Agreement states, "Ecological conditions in the Delta are likely to change as the result of future events and circumstances that may occur during the course of the implementation of the BDCP." Section 12.0 should include a "no surprises" statement guaranteeing Permittees that the Fish and Wildlife Agencies will not require the permit holder to provide any additional land, water, or financial compensation nor impose additional restrictions on the use of land, water or other natural resource without the Permittee consent provided the Implementation Office acts as required in Section 12.1.

Also there does not appear to be a division of responsibility between the Authorized Entities and the State and federal governments for implementing responses to Changed Circumstances. This should be addressed.

Contributions for a changed circumstance action for any particular Conservation Measure should be on a pro-rata basis according to the overall funding for that measure.

- Inadequate Funding and Rough Proportionality (Page 47). Section 13.2 Inadequate Funding references the requirement for rough proportionality and permit suspension and revocation. This section needs to be revised as discussed below.
  - Timing - The Implementing Agreement provides only 45 days to regain rough proportionality or develop an acceptable plan to do so. Given the scope and complexity of the BDCP, this timeframe is unreasonably short and unrealistic.
  - Suspension and Revocation Standard - No metric is provided for when a failure of rough proportionality would trigger a partial suspension or revocation of the Permits. Consistent with the shortfall in funding provision, a failure to maintain rough proportionality due to a shortfall in state or federal funding should not be a basis for partial suspension or

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revocation of the permits provided the Permittees are fully meeting their obligations.

- Minimal Effect – Consistent with “no surprises” assurances, the Implementing Agreement should provide that as long as the Permittees are fully meeting their obligations, the permits may not be revoked or suspended. At a minimum, the meaning of “more than a minimal effect” needs to be defined in order to protect the Permittees’ from backstopping the obligations of the state and federal government.
- Funding Shortfalls - Section 13.2 states that “In the event of a shortfall in State or federal funding, a Fish and Wildlife Agency(ies) shall not suspend or revoke the State and/or Federal Permits or invalidate Reclamation’s take statement if the shortfall in funding is determined to be likely to have no more than a minimal effect on the capacity of the Plan to advance the biological goals and objectives.” This language allows the Permittee’s permits to be revoked as a result of something outside of their control – this needs to be changed to protect the Permittees. Also the funding obligations of California and the United States are lumped together. The funding split between California and the United States needs to be identified.
- Authority of the Fish and Wildlife Agencies (Page 74-78). The Fish and Wildlife Agencies maintain too much authority in decision-making with respect to Plan implementation based on their defined roles in the Permit Oversight Group and Adaptive Management Team. The proper role for the Fish and Wildlife Agencies with respect to Plan Implementation is advisory and to insure overall compliance with permit requirements.
- Miscellaneous Provisions (Page 88 -93). The following provisions should be included in this section.
  - Provision Needed Regarding Inconsistent Permits by State Board/Others - An “off-ramp” provision should be provided in the event permits inconsistent with the BDCP are ultimately issued by the State Water Board or others (e.g, USACOE).
  - Provision Needed Regarding Consistent Positions in Other Regulatory Proceedings - A provision is needed wherein the Parties agree not take positions inconsistent with the BDCP in other documents and proceedings such as under NEPA, CEQA, Clean Water Act, Porter-Cologne Water Quality Control Act, and California Water Code.

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- Miscellaneous Comments

On page 45, the second paragraph under Section 13.0 indicates that the Permittees agree to provide such funds as may be necessary to carry out their obligations under the BDCP. This indicates an unlimited funding commitment and this is incorrect and should be clarified as noted under Section 13.1 of the Implementing Agreement.

On page 64, Stakeholders Council should also include at least one representative from southern California in addition to Metropolitan Water District of Southern California.

**Summary: Implementation of the BDCP is critical to Orange County's future**

- Orange County has invested heavily to diversify our water portfolio but the SWP is a critical source of low salinity water supply that is currently unacceptably jeopardized by the unsustainability of the current Bay-Delta system.
- Orange County relies on the SWP to support groundwater conjunctive use programs and water recycling programs - it is an essential part of our water reliability strategy that sustains our citizens and businesses.
- It is time to adopt and move the BDCP to implementation in order that we can achieve the co-equal goals of a reliable water supply for California and ecosystem restoration for the Delta.
- The 9,000 cfs twin tunnel BDCP Preferred Alternative (No. 4) will improve export water supply operations, reliability and water quality from the Delta in a manner that is protective of endangered species in the Delta.
- We support the 9,000 cfs twin tunnel Preferred Alternative (No. 4) provided reasonable assurances are included regarding governance and future decision-making in the process. We strongly advocate for a seat at the table for the water Permittees in the various oversight groups. The investment and decision-making must be structured to achieve a positive outcome for both the SWP and Permittees and the ecosystem restoration in a collaborative, partnership manner.

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Thank you for your time and consideration of these comments. If you should have any questions please do not hesitate to call me at (714) 593-5026.

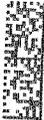
Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Hunter", with a long horizontal flourish extending to the right.

Robert J. Hunter  
General Manager

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BDCP/CA Water Fix

Comments

P.O. Box 1919

SACRAMENTO, CA 95812

OCT 29 2015

