

RTD-245



cafe coop

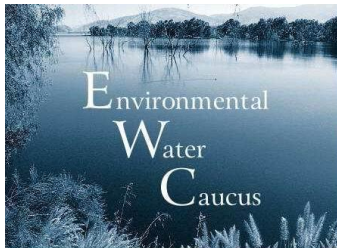


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APSARA

Asian Pacific Self-development And Residential Association



American Friends Service Committee
PROYECTO VOZ



May 28, 2014

BDCP.Comments@noaa.gov (via email)

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Additional Addressees at end of letter

Re: Request for Restarting and Extending Bay Delta Conservation Plan Comment Period Due to Lack of Meaningful Access for Limited English Speakers

Dear Federal and California Agencies, Officers, and Staff Members Carrying out the BDCP:

We are writing on behalf of Restore the Delta, the Environmental Justice Coalition for Water, Asian Pacific Self-Development and Residential Association, Café Coop, American Friends Service Committee Proyecto Voz, Environmental Water Caucus, California Sportfishing Protection Alliance, California Water Impact Network, and Friends of the River, as well as hundreds of thousands of limited English speakers who reside largely in low-income communities of color within the five Delta counties, to request a restart and extension of the public comment period due to the agencies' failure to provide for meaningful access and participation of California limited English speakers, including Delta limited English speakers attempting to engage with the draft Bay Delta Conservation Plan and draft EIS/EIR. In particular, we request that the agencies hold public hearings and provide interpreters; translate vital documents such as, at the very least, the Executive Summary of the draft EIS/EIR; and provide affordable access to documents to allow the thousands of low-income and limited English speakers to have meaningful participation in the process.

While a very limited amount of outreach material can be found on the BDCP website in Spanish, the plan itself and its corresponding EIS/EIR have not been translated into Spanish. In particular, the

EIS/EIR identifies forty-seven significant and unavoidable adverse impacts (Chapter 31 EIR/EIS) that will have a direct impact on residents of the five Delta counties. The majority of Spanish, Cambodian, and Hmong speakers have not been made aware of these impacts, let alone that there is presently an ongoing comment period regarding the BDCP, or even that the project exists. In addition, Cambodian, Hmong, and Spanish speakers who fish for sustenance throughout the Delta have not been made aware of the project and have not been able to access any materials in their native languages. This is especially problematic considering that the EIR/EIS reveals increases of mercury fish tissue concentrations will result from implementation of the BDCP.¹

In California, of the 34 million residents, 19.6% “speak English less than very well” according to the American Community Survey for the last five years. Statistics from the Stockton Unified School District, Lincoln Unified School District, and the River Delta Unified School District reveal that 11% to 30% of households are families in which English is not the primary language. Additionally, statistics from the American Community Survey of 2012 for the five Delta counties reveal that 571,188 individuals speak languages other than English and do not “speak English very well.” These individuals represent roughly 14 % of the 4 million residents who live in the five Delta counties (San Joaquin, Sacramento, Solano, Yolo, Contra Costa).

A review of the BDCP website shows that all public “open house” meetings have been completed and that for these most recent meetings during the public comment period no translation or interpretation services were offered to the public. Attendees of these open house meetings have noted back to us that no interpretation services were advertised at these meetings. Furthermore, a Lexus-Nexus search for Bay Delta Conservation Plan meeting notices shows only four stories in languages other than English discussing the proposed plan, with those stories appearing only between February 2010 and April 2011, with not one reporting on the public comment period for the BDCP. There is no record of media outreach to limited English speakers throughout California, let alone limited English speakers in Delta communities that will bear the brunt of the impacts for this project, or media outreach to non-English speaking communities regarding the release of the public draft of the plan and its EIS/EIR or the public meetings held in the early months of this comment period.

<http://baydeltaconservationplan.com/PublicReview/PublicOpenHouseMeetings.aspx>

Furthermore, the agencies have failed to respond adequately to requests for materials in Spanish, Cambodian and Hmong. Calls made by community members to the Spanish hotline resulted in them being directed to a few webpages, and provided a fact sheet upon request. People are permitted to make written comments in Spanish, but a copy of the BDCP and EIR/EIS documents does not exist in Spanish for people to use to make comments.

Moreover, the environmental justice survey completed to support Chapter 28 of the EIS/EIR (Environmental Justice) excluded non-English speakers within the Delta environmental justice

¹ Bay Delta Conservation Plan, EIR/EIS, Appendix 8I, *Mercury*, Tables I-7a, I-15Aa, I-11Ba, I-11Ca, I-11Da.

community. Of 1400 subjects identified by BDCP to interview throughout California, only 231 were interviewed completely, with only 76 subjects identified from “within or near the Delta.” All interviews were conducted in English. Of those 76 “within or near Delta” subjects, 38 were elected officials, 14 were business or agriculture leaders, and only 24 representatives from community, church, and ethnic groups could be considered as having ties to the environmental justice community. However, even among those 24 subjects, only 3 subjects expressed understanding of the link between the health of the Delta, subsistence fishing, and non-English speaking populations. Since these surveys were completed, the Bay Delta Conservation Plan has failed to continue with outreach to the subsistence fishing community, or to attempt to extend its survey to reach those in the environmental justice community with limited English proficiency. Additionally, not one representative for Delta farm workers was interviewed.

In addition, there are also significant problems regarding public access to the document for low-income communities. The only two ways an individual can review the English-only plan is to request computer discs or to review hard copies of the documents at the BDCP repositories located in Sacramento and West Sacramento. Notably, paper copies of the plan were not placed in libraries throughout the Delta in order to enable greater public access. Furthermore, the BDCP has refused to provide paper copies to individuals who do not have computer access, unless the individual is willing to pay \$6,000 per copy. By not making copies available, low income community members who do not have computer access are barred from participating in the process. The American Community Survey of 2012 identifies 694,000 persons or 17% of the population of the five Delta counties as living below the poverty level.

Consequently, the lack of access to information regarding the project, lack of provision of adequate oral and written bilingual information, failure to notice meetings in various languages, and limited public access to the document through required computer access and exorbitant fees violates the below cited principles of environmental justice and constitutes violations of CEQA and NEPA, as well as federal and state civil rights of a significant population of the five Delta counties. Such violations include but are not limited to:

1. CEQA participation requirements— CEQA requires a process that provides an opportunity for meaningful participation of the public. According to Public Resources Code Section 21061: “The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project can be minimized; and to indicate alternatives to such a project.” Public Resources Code section 21003(b) provides: “Documents prepared pursuant to [CEQA] should be organized and written in such a manner that will be meaningful and useful to decision makers and to the public.” CEQA Guidelines section 15201 explains that “Public participation is an essential part of the CEQA process. Each public agency should include

provisions in its CEQA procedures for wide public involvement . . . in order to receive and evaluate public reactions to environmental issues relating to the agency's activities."²

2. NEPA participation requirements, and Equal Justice Executive Order 12898: Federal Executive Order (EO) 12898 (1994), Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, requires Federal agencies to make environmental justice part of their mission and to develop environmental justice strategies. The Presidential Memorandum accompanying the Executive Order specifically singles out NEPA, and states that "[e]ach Federal agency must provide opportunities for effective community participation in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving the accessibility of public meetings, crucial documents, and notices." (Memorandum from President Clinton, March 1994, available at http://www.epa.gov/fedfac/documents/executive_order_12898.htm.)
3. Title VI of the Civil Rights Act of 1964 provides: "No Person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Executive Order 13166 "Improving Access to Services for Persons with Limited English Proficiency," See 65 Fed. Reg. 50,121 (Aug. 16, 2000). EPA "Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 69 Fed. Reg. 39602. (June 25, 2004). *Lau v. Nichols*, 414 U.S. 563 (1974) providing that National Origin Discrimination to Limited English Speakers.
4. California Government Code section 11135 (a) and implementing regulations in the California Code of Regulations Title 22 Sections 98211 (c) and 98100. Government Code 11135(a) provides: "No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state."

² Indeed, the California court of appeals found that "[e]nvironmental review derives its vitality from public participation," and must be informed of significant impacts. (*Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist.* (2004) 116 Cal. App. 4th 396, 400.) Public review is crucial to ensuring government accountability and informed self-government. Public review serves a dual purpose in that it both bolsters the public's confidence in the government process, and provides lead agencies the appropriate resources and expertise on certain subjects regarding environmental impacts. (*Joy Road Area Forest and Watershed Ass'n v. California Dept. of Forestry and Fire Protection*, (2006) 142 Cal. App. 4th 656, 670.)

5. The Dymally-Alatorre Bilingual Services Act—Government Code Sections 7290-7299.8 which requires that, when state and local agencies serve a “substantial number of non-English-speaking people,” they must among other things translate documents explaining available services into their clients’ languages.

Therefore, we are calling on officials to address these significant language and other access issues and then to restart the public comment period in accordance with the laws and policies discussed above.

Sincerely yours,




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(Encl. two attachments for Comments@NOAA.gov)

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