

1 **APPENDIX H: COPIES OF COMMENTS, LETTERS, EMAILS, AND**
2 **COMMENT CARDS FROM 2009 SCOPING PROCESS**

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1 **APPENDIX H1: 2009 FEDERAL AGENCIES SCOPING COMMENTS**



DEPARTMENT OF THE ARMY
SOUTH PACIFIC DIVISION, U.S. ARMY CORPS OF ENGINEERS
1455 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94103-1399

REPLY TO
ATTENTION OF

May 14, 2009

Regional Business Directorate

Ms. Lori Rinek
Army Federal Register Liaison Officer
Sacramento Fish and Wildlife Office
2800 Cottage Way, W-2605
Sacramento, CA 95825

Dear Ms. Rinek:

Thank you for the opportunity to provide comments and perspective on behalf of the U.S. Army Corps of Engineers (Corps) regarding the Bay Delta Conservation Plan (BDCP) for the Sacramento-San Joaquin Delta, Environmental Impact Statement/Environmental Impact Report (EIS/EIR). This letter incorporates comment from the South Pacific Division Headquarters, our San Francisco District and our Sacramento District.

The Corps recognizes and embraces our role as a cooperating agency in the preparation of the proposed EIS/EIR (IAW 33 CFR Part 325). The mission of the Corps includes Flood Risk Management; Environmental Protection and Restoration; Navigation; and Emergency Preparedness and Response. We anticipate that the BDCP actions may impact these mission areas. As a result, multiple Corps permissions may be required.

The Corps' regulatory jurisdiction in the BDCP project area primarily falls under three authorities:

1. Section 404 of the Clean Water Act for the discharge of dredged or fill material in waters of the U.S.; (33 USC 1201 et seq.) (Section 404)
2. Section 14 of the Rivers and Harbors Act of 1899 (33 USC 408) for the alteration of a Federal project (to include sea wall, jetty, dike, levee, wharf, pier, or other work);
3. Section 10 of the Rivers and Harbors Act for work in navigable waters. (33 USC 403) (Section 10)

We envision using the BDCP EIS/EIR as a programmatic document; tiering additional NEPA documents for Corps permit actions from it. In addition, it is important that you are aware of ongoing initiatives in the Delta with which the Corps is currently involved.

The Corps' responsibilities include the Federal flood risk reduction system, which involves, in part, the operation of a system of reservoirs. The BDCP actions may have a significant impact on the flood risk reduction system in the Central Valley and the Delta. Any changes or modification to the flood risk reduction system and its operation must be analyzed and may require reauthorization by Congress. Actions and impacts on the levee system will also need to be consistent with the CA Levee Roundtable Framework (Flood System Improvement Framework).

We anticipate that some or all of the proposed projects would result in discharges into waters of the U.S. Accordingly, authorization under Section 404 of the Clean Water Act would be required. In developing alternatives, we encourage you to consider an appropriate range. With a range of alternatives, we are able to use them in subsequent NEPA document(s) that evaluate compliance with the Clean Water Act Section 404(b)(1) Guidelines. Please note that the Corps may only authorize the least environmentally damaging alternative (LEDPA).

Under both Section 10 and Section 404, the Corps performs a public interest review. We expect that the NEPA process will provide adequate information for us to undertake our review in subsequent document(s), but encourage you to continue to keep us informed of the development of alternatives and impact analyses.

In addition to the Regulatory Permits requirements, the Corps has a robust Civil Works project program, with many projects directly or indirectly impacting the Delta. These projects are managed by the two following South Pacific Division Corps Districts, the San Francisco and Sacramento Districts. The Corps recognizes that the scope of the project EIS/EIR must take into account potential project impacts while appropriately balancing environmental issues in its analysis. Three Corps projects the BDCP should coordinate with the San Francisco District staff include: (1) the San Francisco Bay to Stockton navigation improvement study, (2) the Sacramento River Deep Water Ship Channel (DWSC) navigation improvement study, and the (3) the Delta Dredged Sediment Long Term Management Strategy (Delta LTMS).

San Francisco Bay to Stockton navigation improvement study:

The San Francisco Bay to Stockton navigation improvement study is composed of two ship channels with a combined length of more than 85 miles. The John F. Baldwin (JFB) ship channel extends from outside the Golden Gate to the eastern end of Suisun Bay. The JFB channel includes the West Richmond Channel, Pinole Shoal Channel, and the Suisun Bay Channel portion of the JFB Ship Channel. The West Richmond Channel is located within the North Ship Channel just south of the Richmond – San Rafael Bridge and west of the City of Richmond. The area of interest for deepening the Stockton DWSC extends to the Port of Stockton. All channel segments are currently maintained to the water depth of at least 35 feet mean lower low water (MLLW). The proposed project is evaluating deepening the West Richmond and Pinole Shoal Channels to a possible maximum depth of 45 feet MLLW and the remaining segments to a maximum depth of 40 feet MLLW. The total volume of material generated from this project is expected to be up to 31 million cubic yards of material.

The project website, <http://www.sfbaytostockton.org>, provides a project description and map. For coordination the lead environmental manager for the project is Ms. Nancy Ferris (nancy.m.ferris@usace.army.mil); the project manager is Mr. David Patterson (David.R.Patterson@usace.army.mil).

Sacramento River Deep Water Ship Channel:

The Sacramento Deep Water Ship Channel extends 46.5-miles along a route starting at the confluence of the Sacramento and the San Joaquin Rivers and ending at the Port of West Sacramento. The channel

runs along the Sacramento River, into Cache Slough and along a man-made channel to the Port. Construction of a 35-foot deep channel was initiated in 1989, but work was suspended in 1990. Two of the six construction contracts had been completed at that time, from River Mile 43 to 35. The remaining channel is 30 feet deep. The current project is evaluating the resumption of the 35 feet deepening work. The total volume of material generated from this project is expected to be between 6 to 7 million cubic yards of sediment.

The project website, <http://www.sacramentoshipchannel.org>, contains a project description and map of the study area. For coordination, lead environmental manager for the project is Dr. Bill Brostoff (William.N.Brostoff@usace.army.mil); the project manager is Mr. Craig Conner (Craig.S.Conner@usace.army.mil).

The BDCP should coordinate with the Corps on SF Bay to Stockton and Sacramento deep water ship channel projects regarding several modeling efforts. Hydrodynamic and salinity modeling is currently under way for both the SF Bay to Stockton and Sacramento studies. Dissolved oxygen and water quality modeling is being conducted for the Stockton DWSC. These modeling efforts include assumptions about future conditions with and without implementing the BDCP based on the best information available at the time when modeling was initiated. The technical lead for these modeling efforts is Dr. Frank Wu, available via email at Frank.Wu@usace.army.mil.

Delta Dredged Sediment Long Term Management Strategy:

The Delta Long-Term Management Strategy (LTMS) is a cooperative effort to coordinate, plan, and implement beneficial reuse of sediments in the Sacramento and San Joaquin River Delta (Delta). Five agencies (Corps, US Environmental Protection Agency, California Department of Water Resources, California Bay Delta Authority, and Central Valley Regional Water Quality Control Board) are examining dredging, reuse, and disposal needs in the Delta. The goals of the LTMS are to collectively manage dredging activities to support and maintain Delta channel functions for navigation, flood control, water conveyance, and recreation, maintain and stabilize Delta levees that protect land-based activities, water conveyance, and terrestrial ecosystems, and protect and enhance water quality for Delta water supply and ecosystem function. The project website is <http://www.deltaltms.com/>. The Delta LTMS program manager is Mr. Al Paniccia (Al.Paniccia@usace.army.mil), the study manager is Dr. Bill Brostoff (William.N.Brostoff@usace.army.mil).

For coordination on the Delta LTMS regarding current research on threatened and endangered fish species and the permitting process, please contact Dr. Bill Brostoff (415) 503-6867 or Ms. Nancy Ferris at (415) 503-6865.

The Corps projects that the BDCP should consider and coordinate with Sacramento District include: (1) Delta Islands and Levees Feasibility Study, (2) CALFED Levee Stability Program, (3) the Lower San Joaquin River feasibility Study, (4) the Central Valley Integrated Flood Management Study, (5) the Sacramento River Bank Protection Project, and (6) the Sacramento River Flood Control Project.

Delta Islands and Levees Feasibility Study:

The Delta Islands and Levees Feasibility Study (DILFS) will incorporate elements of the State's Delta Risk Management Strategy (DRMS), while reevaluating some of the results, to develop a combined ecosystem restoration and flood risk management plan for Corps involvement in the Delta vision. The Corps and the California Department of Water Resources (DWR) signed a Feasibility Cost Sharing Agreement (FCSA) in May 2006.

For coordination, appropriate points of contact are the project manager, Mr. Russ Rote at (916) 557-6672 or the lead planner, Ms. Brooke Schlenker, at (916) 557-5299.

CALFED Levee Stability Program:

The Levee Stability Program (LSP) allows the Sacramento District to construct high priority levee rehabilitation projects identified in the Sacramento District's "2006 Report to Congress". The small projects are considered interim emergency type repairs to the most fragile reaches of levee. The authorized project purposes include flood risk management, ecosystem restoration, water supply, conveyance, and quality. The DWR has indicated a willingness to partner by providing construction grants to the Reclamation Districts (RDs) for cost sharing on the Federal projects. Projects that will be implemented will first be proven to be consistent with the latest version of the Delta Vision (DV) and other state visioning efforts.

For coordination, appropriate points of contact are the project manager, Mr. Russ Rote at (916) 557-6672 or the lead planner, Ms. Brooke Schlenker, at (916) 557-5299.

Lower San Joaquin River feasibility Study:

The Lower San Joaquin River study is being conducted by the Corps of Engineers in partnership with the San Joaquin Area Flood Control Agency. The study will evaluate the feasibility of implementing flood risk management and ecosystem restoration improvements along the lower San Joaquin River and its tributaries and distributaries. The study is being coordinated with the State of California, San Joaquin County, and various Reclamation Districts.

The study area is located along the lower (northern) portion of the San Joaquin River system in the Central Valley of California. The river flows west to the Central Valley, where it is joined by the Merced, Tuolumne, Stanislaus and Calaveras Rivers, and other smaller tributaries, as it flows north to the Sacramento-San Joaquin Delta. The Lower San Joaquin River study area includes the main stem of the San Joaquin River from the Mariposa Bypass downstream to and including the city of Stockton. The study area also includes the distributary channels of the San Joaquin River in the southern most reaches of the Delta.

For coordination, the project managers are Mike Morgan (Michael.R.Morgan@usace.army.mil) and Claire Marie Turner (Claire.Marie.Turner@usace.army.mil). The lead planner is Miki Fujitsubo (Miki.Fujitsubo@usace.army.mil).

Central Valley Integrated Flood Management Study

The Central Valley Integrated Flood Management Study is being conducted in partnership with the State of California (Central Valley Flood Protection Board and the Department of Water Resources). It is a multi-objective study that will balance flood damage reduction, ecosystem restoration, and other water resource purposes and provide a long-range management program to improve the flood carrying capacity, while restoring and protecting environmental features. It will provide a framework for a management plan that can be effectively implemented and supported by local, state, and Federal agencies.

The study area includes the entire Sacramento River Basin, San Joaquin River and the Delta Basin in Central California. It encompasses about 43,000 square miles, 1,613 miles of federal levees, 1,200 miles of floodways, 56 flood control features, and 1/3 of the state water supply. Numerous projects are within the study area including the Sacramento River Flood Control Project, Sacramento River Bank Protection Project, Folsom Dam, West Sacramento, and the Lower San Joaquin River and Tributaries Project.

For coordination, the project manager for this study is Mr. David VanRijn (David.P.VanRijn@usace.army.mil).

Sacramento River Bank Protection Project:

The Sacramento River Bank Protection Project is a long term project that protects the integrity of the Sacramento River Flood Control Project (SRFCP) through construction of bank protection and set back levees. The State of California's Central Valley Flood Protection Board is the non-Federal project partner. The existing Sacramento levees are seriously threatened by erosion and unless continued corrective measures are taken, levee failures may occur with resultant catastrophic damage and possible loss of many lives.

The project extends from River Mile (RM) 0.0 on the Sacramento River at Collinsville to RM 194.0 above Red Bluff. Existing levees are seriously threatened by erosion that could result in levee failures. Areas protected by levees comprise over 1 million acres, 50 communities, \$38 billion of improvements, and 2.3 million people.

Sac Bank received authorization in Water Resources Development Act of 2007 for an additional 80,000 linear feet. The 2007 authorization adds to the previously authorized project. There are 154 identified erosion sites on the system, totaling approximately 150,000 linear feet. The Corps is designing and will award for construction approximately 9,000 linear feet of bank protection this year at 13 sites. Planning and environmental compliance is underway for Sacramento River Bank Protection Project, Phase II, which is the additional 80,000 linear feet authorized in WRDA 2007. Planning efforts have also begun on Phase III. This phase will look more comprehensively at protecting the integrity of the SRFCP.

For coordination, the project manager for Sac Bank is Mr. Mike Dietl (Michael.L.Dietl@usace.army.mil). The lead planner is Mr. Miki Fujitsubo (Miki.Fujitsubo@usace.army.mil).

Sacramento River Flood Control Project System Reevaluation

The Sacramento River Flood Control Project general reevaluation study will evaluate the condition and performance of this flood risk management system, with particular attention to levees in rural areas. The Sacramento River Flood Control Project is located on the Sacramento River and lower reaches of its principal tributaries in north-central California. It includes a comprehensive system of levees, overflow weirs (including the Sacramento and Fremont Weirs), drainage pump plants and flood bypass channels (including the Yolo Bypass). Most of the project facilities are over 50 years old and were originally locally constructed. They were later upgraded and incorporated into the project after Federal authorization in 1917. Following the floods of 1986, a five-phase program was developed by the Corps of Engineers which divided the flood control system into five study areas the purpose of which was to examine the levees and determine how the system was performing. This study focused particularly on urban areas.

For coordination, the project manager is Mr. Mark Ellis (Mark.A.Ellis@usace.army.mil). The lead planner is Mr. Miki Fujitsubo (Miki.Fujitsubo@usace.army.mil).

These projects geographically overlap the BDCP proposed project footprint and may share both baseline conditions and impacts analysis needs for water quality, hydrodynamics, as well as other environmental and biological effects. BDCP's alternative formulation should consider these projects when creating and evaluating conveyance, infrastructure, restoration, and mitigation options.

We anticipate that the BDCP will appropriately consider and address any hazardous, toxic, and radioactive waste (HTRW) impacts from the proposed project.

We look forward to coordination with the BDCP team to discuss elements of the Draft EIS/EIR. Ms. Cindy Tejada (Cindy.L.Tejeda@usace.army.mil), lead watershed planner, USACE South Pacific Division Headquarters, is coordinating a technical meeting to be scheduled in the near future. Please note that our detailed comments provided are focused on areas of particular interest to the Corps given the information available in the NOI and at the scoping meeting held March 19, 2009.

Sincerely,

A handwritten signature in black ink that reads "Andrew Constantaras". The signature is fluid and cursive, with the first name "Andrew" and last name "Constantaras" clearly legible.

Andrew Constantaras, P.E.
Director, Regional Business Directorate



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

May 14, 2009

Lori Rinek
U.S. Fish and Wildlife Service
Sacramento Office
2800 Cottage Way, W-2605
Sacramento, CA 95825

Subject: Scoping Comments for the Bay Delta Conservation Plan for the
Sacramento-San Joaquin Delta, CA.

Dear Ms. Rinek:

The U.S. Environmental Protection Agency (EPA) has reviewed the Federal Register Notice published February 13, 2009 requesting comments on the U.S. Fish and Wildlife Service (USFWS), U.S. Bureau of Reclamation (USBR), and National Marine Fisheries Service (NMFS) decision to prepare an Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the above action. Our comments are provided pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

As you know, the U.S. Environmental Protection Agency (EPA) agreed to be a cooperating agency in the preparation of this EIS/EIR in its letter dated November 12, 2008.¹ We had previously been following the development of the Bay Delta Conservation Plan (BDCP) over the past two years as an "interested observer," and submitted a short scoping letter in response to the initial Notice of Intent (NOI) issued jointly by the NMFS and the USFWS on January 24, 2008. We also reviewed, but did not comment on, the subsequent NOI issued by those agencies and the USBR on April 15, 2008. In that many of our previous comments are still relevant, we are enclosing copies of the earlier correspondence.

All parties involved in Bay Delta issues recognize that California is at a critical juncture in water resources management. The current multi-year drought has highlighted the fragility of the system's ability to meet both environmental and water supply goals. EPA believes that a

¹ In our letter agreeing to be a cooperating agency, EPA emphasized that our role as a cooperator was technical, and that it did not abridge or otherwise affect our independent NEPA review responsibilities under Section 309 of the Clean Air Act and the related CEQ Regulations. We reiterate that caveat here, and note that recent litigation brought by some parties against state and federal agencies and others participating in the development of the BDCP does not affect our Section 309 responsibilities. See 54 FR 12735 (March 28, 1989)(CEQ accepts EPA's Section 309 "referral" of the CVP contract renewals even though the NEPA issues had been raised in federal defensive litigation.).

successful BDCP could be a useful component of a broader governmental response to water management for all uses.

We understand that the team tasked with preparing the EIS/EIR is developing criteria for evaluating alternatives that will be carried into the EIS/EIR analysis. Given that the alternatives analysis is the “heart” of an EIS/EIR,² we urge the action agencies to choose alternatives carefully and strategically. With that in mind, we offer the following observations and suggestions:

I. Clarify the Purposes of this NEPA Document

EPA believes that the action agencies need to decide and clearly articulate what state and federal actions they want to cover in this NEPA document. As a regulatory agency, we are especially concerned about the need to identify probable regulatory permits, licenses, etc., that will need to be secured in order to move forward with the BDCP process, and to make early decisions about whether those permits, licenses, etc., are intended to be covered by this NEPA document. Those decisions need to be made in conjunction with selecting a range of alternatives, so that any particular requirements of the anticipated permits can be addressed in the NEPA document.

The BDCP program, as it stands now, includes two major components: a large scale habitat restoration program and a major construction project to reconfigure export water conveyance in or around the Delta. The NOI anticipates the potential adoption of a Habitat Conservation Plan (HCP) under the federal Endangered Species Act (ESA), as well as possibly an ESA Section 10 permit. These federal actions will be the primary subject of the EIS/EIR. At the same time, however, implementing this program will most likely require several other permits that are subject to NEPA and the California Environmental Quality Act (CEQA), including:

(1) Clean Water Act Section 404 (33 U.S.C. 1344) permits for discharges of dredge or fill material into waters of the United States (“404 Permits.”). This permitting program is administered jointly by the U.S. Army Corps of Engineers (Corps) and EPA pursuant to a series of interagency agreements and regulations.³

(2) Rivers and Harbors Act Section 10 permits (33 U.S.C. Section 403) authorizing modifications to the “course, condition or capacity” of any navigable water. This program is administered by the Corps.

²CEQ Regulations Section 1502.14.

³Generally, the Corps issues the 404 permits, subject to oversight and potential veto by the EPA. See CWA Section 404(c). See also 73 Fed. Reg. 54398 (09/19/08)(EPA vetoes proposed Corps 404 permit for Yazoo Straits drain project).

(3) Permits for Modifying Corps Projects under Rivers and Harbors Act Section 14 (33 U.S.C. Section 408). This program is administered by the Corps.⁴

(4) Clean Water Act Section 401 water quality certifications, issued in California by the State Water Resources Control Board, which would ordinarily be required for the issuance of a 404 permit, a 408 modification, and/or a Rivers and Harbors Act permit.

This list is not intended to be exhaustive. Our point here is that the BDCP process needs to clarify which permits are intended to be covered in this EIS/EIR, so that the relevant agencies can make sure that their program requirements for NEPA/CEQA coverage are met.⁵ We urge the action agencies to consider entering into memoranda of agreement with any relevant permitting agency, which could allow the agencies to clarify roles and responsibilities in developing an adequate EIS/EIR.

II. Clarify the Level of Analysis for this EIS/EIR

In a related issue, EPA urges the BDCP process to clarify the level of analysis intended for this EIS/EIR. Is this a programmatic document, or is it intended to serve as both the programmatic document and the site-specific document for some or all of the major projects emanating out of the BDCP? Although we note that a single site-specific level document for a project of this scale is rare, EPA is deferring to the action agencies in deciding the level of analysis. We do believe, however, that this decision must be made explicit now so that the alternatives analysis can reflect the chosen level of analysis.

III. Address the Following Broad Scoping Comments

There are a number of major issues that need to be addressed in this EIS/EIR. We are highlighting three of them below:

Water Quality Impacts

Many of the ecosystem enhancement and conveyance changes proposed in the BDCP will likely have significant water quality impacts within the Bay Delta watershed. Proposed conveyance reconfiguration, for example, could significantly alter the relative proportions of tributary waters entering the Delta and the transport routes and times. As a consequence, export and in-Delta water quality would be affected. We understand that the EIS/EIR analysis will evaluate the effects of alternatives on the salinity regime in the system ("X2"). Salinity is a valid parameter for water quality analysis, but it is insufficient to assess all potentially significant

⁴See generally Policy and Procedural Guidance for the Approval of Modification and Alteration of Corps of Engineers Projects, October 23, 2006. Under this guidance, Section 408 approval will generally require a public interest determination as well as appropriate NEPA documentation.

⁵EPA is not suggesting that the BDCP EIS/EIR is *required* to provide NEPA/CEQA coverage for all ensuing permits. Action agencies can choose to deal sequentially, rather than simultaneously, with their permit obligations, and may have legitimate programmatic or legal reasons for doing so.

water quality issues. For example, the CALFED Programmatic Record of Decision identified several water quality constituents for evaluation, including--in addition to salinity--boron, total organic carbon, dissolved oxygen, pesticides, mercury, selenium, and toxicity of unknown origin.⁶ Moreover, substantial additional work on Delta water quality has been done by the State Water Resources Control Board, Central Valley Regional Water Quality Control Board (Regional Board), California Department of Public Health, and CALFED Science Program since the Record of Decision in 2000.

For additional parameters, EPA suggests that the EIS/EIR team build upon the approach to water quality indicators begun in the CALFED Program, adding contaminant topics where appropriate (e.g., ammonia). The CALFED Water Quality Program, in 2008, suggested using organic carbon, bromide, and methylmercury as primary indicators. These parameters were chosen because they reflect conditions of different beneficial uses of Delta waters and are expected to show responses to management actions.⁷ The Water Boards' Strategic Workplan for Activities in the Bay-Delta recognizes the importance of continued work on these parameters. In the case of methylmercury, a Delta methylmercury TMDL is well underway. With respect to sources of drinking water, the Regional Board is developing a Drinking Water Policy.⁸ Both the Drinking Water Policy process and the Delta Regional Ecosystem Restoration Implementation Program (DRERIP), a multi-agency effort, have developed conceptual models for water quality constituents that should serve as useful tools in the BDCP EIS/EIR analyses. We understand that some DRERIP models are being used to evaluate ecosystem restoration proposals for BDCP. DRERIP models could also help evaluate effects of actions under consideration in the BDCP and determine the indicators of greatest relevance for impact assessment and monitoring.⁹

We note that these broad indicators may still be insufficient to capture particular, localized water quality issues of interest. Ammonia and dissolved oxygen, for example, are site-specific water quality problems that should also be evaluated in the EIS/EIR.

⁶ CALFED Bay-Delta Program, Programmatic Record of Decision, Volume 1, at p.36 and p. 65.

⁷ More information about these indicators and the process used to identify them can be found in A Guide For Understanding Implementation of the Phase 2 Performance Measures Process, CALFED Bay-Delta Program Water Quality Subgroup, Draft, March 18, 2008 (available from the California Bay Delta Authority). The CALFED Program's decision to start with methylmercury levels as an indicator of ecosystem and public health was based on availability of information that supported this topic as a priority for monitoring and reporting.

⁸ In August 2008, the Central Valley Regional Water Quality Control Board initiated scoping for a Basin Plan Amendment and CEQA compliance on its Drinking Water Policy. See: Central Valley Regional Water Quality Control Board, "Development of a Drinking Water Policy for Surface Waters of the Central Valley," Staff Report, July 2008. The categories of pollutants addressed are organic carbon, salinity (with bromide), nutrients, and pathogens.

⁹ The conceptual models for the four categories of constituents of concern for drinking water are available online: http://www.swrcb.ca.gov/rwqcb5/water_issues/drinking_water_policy/. For DRERIP, the conceptual models are documented at: http://www.science.calwater.ca.gov/drerip/drerip_index.html. Chemical stressors, pyrethroids, and mercury directly address water pollutants. The sediment model is also directly relevant to sediment-bound pollutants.

Where a proposed alternative (or operations associated with that alternative) may affect water quality, the alternative should incorporate appropriate plans for monitoring, assessment, and reporting those effects. Monitoring should be coordinated with the Regional Board's efforts to establish a Delta Regional Monitoring Program. In some cases, an adaptive approach to implementation may be included in the alternative - for example, in design and management of wetland habitats (associated with conservation measures) that have potential for methylmercury production. EPA recommends that the EIS/EIR analysis rely on the protocols, metrics, and targets already included in programs and policies of the state and regional boards, so that the interested public has a consistent frame of reference for understanding the water quality discussion.

Sea Level Rise and the Design of New Facilities

The Governor's Delta Vision Blue Ribbon Task Force recommended to the Governor that planning assumptions for state investments should assume a sea level rise of 16 inches by year 2050 and of 55 inches by year 2100.¹⁰ This recommendation is in accord with recent California Department of Water Resources evaluations of the impacts of climate change on California water planning, released recently in a draft report from the California Climate Change Center.¹¹

As you know, sea level rise and climate change projections suggest a number of long term challenges in the Delta, especially in terms of increased salinity intrusion, decreased Delta outflow, and potentially greater flood events. Furthermore, the sea level rise itself would increase the hydrostatic pressures on Delta facilities.

With these problems on the horizon, EPA believes it would be important for the EIS/EIR to evaluate the design of the proposed Delta conveyance improvements to assure that they are appropriate. The current design appears to rely on unlined canals, many parts of which are substantially below current sea levels. This issue was discussed in depth at the June 27, 2008 Delta Vision Blue Ribbon Task Force meeting. A number of issues were raised by the Task Force about this design, including seismic safety, excess evaporation from a wide, shallow canal, export water quality problems caused by infiltration, environmental impacts of a large structure in the sensitive areas of the Delta, and the overall issue of construction of a major critical facility below sea level.¹²

¹⁰ See Letters from Phillip L. Isenberg, Chair, to Gov. Schwarzenegger dated September 4, 2008 and March 24, 2008, and accompanying material (available on Delta Vision website at http://www.deltavision.ca.gov/BlueRibbonTaskForce/Communications/SLR_Followup_Letter_To_Governor_9-4-08.pdf).

¹¹ See [Using Future Climate Change Projections to Support Water Resource Decision Making in California](http://www.water.ca.gov/pubs/climate/using_future_climate_projections_to_support_water_resources_decision_making_in_california/usingfutureclimateprojtosuppwater_apr09_dwr_web.pdf), California Climate Change Center, Draft, April 2009 (Available on DWR Website at http://www.water.ca.gov/pubs/climate/using_future_climate_projections_to_support_water_resources_decision_making_in_california/usingfutureclimateprojtosuppwater_apr09_dwr_web.pdf).

¹² The Webcast of this and other Blue Ribbon Task Force meetings are available on the Delta Vision web site.

EPA believes that these issues need to be explored and addressed in the EIS/EIR. Although some of these issues may not be direct environmental concerns, we believe that the integrity of the structural design for the below-sea-level Delta conveyance component is an important consideration in the Section 404 public interest determination.

Reductions in Inflows and Exports

EPA fully appreciates that there is a substantial debate over the likely future scenario of water export regulation in the Bay Delta. In fact, the BDCP process may be one forum for resolving that debate. Generally, NEPA documents analyzing issues with uncertain outcomes will make sure that the range of alternatives at least brackets the range of potential outcomes, and EPA recommends that approach in this EIS/EIR.

Even disregarding different predictions about future regulatory scenarios, however, EPA believes that the EIS/EIR will need to include a significant analysis of alternatives reflecting reduced Delta inflow and reduced exports. Recent Department of Water Resources (DWR) studies of the potential impact of climate change on the Bay and Delta watershed predict significantly reduced inflow and reduced diversions over the next century. Holding regulatory, structural, and operating rules constant, the DWR study estimated climate-change induced reductions in Delta exports and reservoir carryover storage ranging from 7% to 19% at mid-century, and of 21% to 38% by year 2100.¹³ Delta inflows will also be restricted in future years (compared to the historical record) due to changes in Trinity River diversions into the Sacramento River system and due to upstream water resource development by senior water rights holders.¹⁴

Given these predicted developments outside of the regulatory debate, EPA believes that reduced inflow and reduced export scenarios are not just reasonable alternatives to evaluate, but represent a likely future for the Bay Delta basin that needs to be reflected in the EIS/EIR.¹⁵

¹³ See Possible Impacts of Climate Change to California's Water Supply, California Climate Center, Summary Sheet, April 2009 (Available on DWR web site at http://www.water.ca.gov/pubs/climate/climate_change_impacts_summary_sheet__april_2009/climate_change_impacts_summary_sheet_4-16-09_lowres.pdf).

¹⁴ See, for example, discussion of CVPIA Programmatic Environmental Impact Statement analyses on USBR's web site. (Summary of Impact Assessment, p. 12; http://www.usbr.gov/mp/cvpia/docs_reports/fpeis/index.html).

¹⁵ EPA understands that there is an ongoing discussion, at least in the legal community, about the California Supreme Court's decision in In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings, 43 Cal. 4th 1143 (June 5, 2008). One extreme interpretation of that case is that action agencies have unlimited discretion to define multiple project purposes, and that they need not look at alternatives that do not meet all of the stated purposes. Regardless of whether that is a proper reading of the state case, it is not determinative of the federal NEPA obligations in this upcoming EIS/EIR. Federal courts examining NEPA documents do grant significant discretion to action agencies to define the project purposes, but that discretion is not unfettered. See, for example, Simmons v. USCOE, 120 F.3d 664, 666 (7th Cir. 1997)(Rejecting "single-source" definition of project purpose for water supply, noting that "[i]f

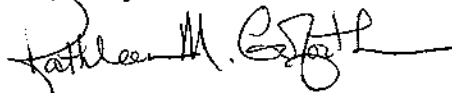
IV. Establish the Baseline

Over the past several years, EPA has worked closely with the USFWS, USBR, and NMFS on a number of large-scale NEPA reviews. One lesson learned in these efforts is that defining the "baseline" for evaluating project impacts is often a complex and contentious issue. EPA suggests that the action agencies establish a workgroup to draft and secure agency agreement on a "baseline report" so that baseline issues can be identified and, if necessary, elevated for resolution. This approach was successfully employed in developing a common baseline for NEPA and ESA evaluation purposes when the Department of the Interior prepared the Central Valley Project Improvement Act Programmatic Environmental Impact Statement.

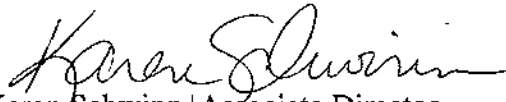
Conclusion

We look forward to our continued constructive involvement in developing the BDCP EIS/EIR. Please send subsequent notices and three copies of the Draft EIS to the address above (mail code: CED-2). If you have any questions about our comments, please call Laura Fujii, the lead NEPA reviewer, or Carolyn Yale, the Water Division lead, for this project. Laura can be reached at (415) 972-3852 or fujii.laura@epa.gov. Carolyn can be reached at (415)972-3482 or yale.carolyn@epa.gov.

Sincerely,



Kathleen M. Goforth, Manager
Environmental Review Office
Communities and Ecosystems Division



Karen Schwinn, Associate Director
Water Division

Attachments: EPA March 17, 2008 BDCP Scoping Letter
EPA November 12, 2008 Cooperating Agency Letter

cc: Ted Meyers, National Marine Fisheries Service
Rosalie del Rosario, National Marine Fisheries Service
Patti Idlof, U.S. Bureau of Reclamation

the agency constricts the definition of the project's purpose and thereby excludes what truly are reasonable alternatives, the EIS cannot fulfill its role." See also Border Power Plant Working Group v. DOE, 260 F. Supp. 3d 997 (S.D. Cal., 2003)(Rejecting and broadening agency's definition of project purpose.); Similarly, Davis v. Mineta, 302 F.3 1104 (10th Cir. 2002). For the reasons outlined above, EPA believes that analyzing alternatives with reduced exports is both factually and legally appropriate and pragmatically necessary to move the BDCP process forward.

Mike Jewell, U.S. Army Corps of Engineers
Dorlores Brown, California Department of Water Resources
Scott Cantrell, California Department of Fish and Game
Karen Scarborough, California Natural Resources Agency
Thomas Howard, State Water Resources Control Board



Prof file

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

**75 Hawthorne Street
San Francisco, CA 94105-3901**

March 17, 2008

Rosalie Del Rosario
National Marine Fisheries Service
650 Capitol Mall
Suite 8-300
Sacramento, CA 95819

Subject: Scoping Comments for the Bay Delta Conservation Plan for the
Sacramento-San Joaquin Delta, CA.

The U.S. Environmental Protection Agency (EPA) has reviewed the Federal Register Notice published January 24, 2008 requesting comments on the National Marine Fisheries Service (NMFS) and Fish and Wildlife Service (FWS) (Services) decision to prepare an Environmental Impact Statement (EIS) for the above action. Our comments are provided pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

The Bay Delta Conservation Plan (BDCP) is being prepared through a collaboration between a number of State and Federal agencies, nongovernmental entities, and "Potentially Regulated Entities" (primarily Delta water diverters) to meet the requirements of the Federal Endangered Species Act (Federal ESA) and California Natural Community Conservation Planning Act. The BDCP may or may not include a Habitat Conservation Plan (HCP) under the Federal ESA. The California Department of Water Resources intends to apply for Incidental Take Permits from the Services based upon the BDCP. These incidental take authorizations would allow the incidental take of threatened and endangered species resulting from covered activities, including those associated with water conveyance and the operations of the California State Water Project and Federal Central Valley Project.

The Points of Agreement (November 16, 2007) of the participants in the BDCP process appear to organize the BDCP process around the question of conveyance in the Delta (existing conveyance, isolated facility, or dual conveyance). To meet the requirements of the Federal ESA, the BDCP EIS would presumably address construction, operations, and species protection measures for each of the possible conveyance alternatives, and would also make provisions for species protection during the multi-year "interim period" prior to the implementation of an alternative conveyance, if any.

Our staff has discussed the Notice of Intent (NOI) with several staff at the Department of the Interior and at NMFS. We understand that there is some discussion of issuing a revised NOI as the planning for environmental compliance for the BDCP advances. EPA believes that a revised NOI is desirable. The project purpose and need statement, proposed federal action, and intended covered activities need significantly greater definition before the interested public can meaningfully comment on the scope of the environmental analysis. We believe the federal action agencies should, at a minimum, discuss the following issues within the context of a revised NOI:

(1) What are the proposed federal actions?

The revised scoping notice should clarify the description of the proposed federal action(s) and the broader project purpose. Although the FWS and NMFS action is, literally, signing a permit, the environmental analysis and review will be of the permitted activities. The revised scoping notice should provide more specificity as to what activities (construction and operation of the existing or new facilities) are intended to be covered by the federal permit.

(2) Who are the appropriate lead agencies?

Given the substantial emphasis on new conveyance alternatives in the Points of Agreement, we believe the BDCP participants should consider whether additional or alternative federal lead agencies are necessary. Most observers of Delta conveyance alternatives believe that the US Bureau of Reclamation (or, potentially, the US Army Corps of Engineers (Corps)) will need to be involved in the construction and operation of at least some part of any new conveyance alternative. To streamline the environmental review process, these agencies should be included as lead agencies in this and any subsequent environmental reviews.

(3) What is the purpose of the document?

Construction of any new conveyance alternatives, as well as significant modification of operations of existing facilities, may trigger the need for a number of federal permits. In particular, Corps permits under Clean Water Act (CWA) Section 404 and Section 10 of the Rivers and Harbors Act will likely be required for implementation of either conveyance changes or many projects under the BDCP. In addition, depending on the configuration of new conveyance alternatives, a CWA Section 401 certification may be necessary. Similar permitting issues under state law may confront state agencies proposing to take action under the BDCP. To avoid unnecessary duplication and delay, EPA recommends that the lead agencies coordinate with the potential regulatory agencies to assure that the proposed EIS meets the needs of regulatory agency NEPA/California Environmental Quality Act (CEQA) compliance.

(4) What is the intended level of review of the proposed EIS?

The revised NOI should clarify the proposed level of review of this document. Typically, large projects include some kind of programmatic review with subsequent documents tiering from the programmatic review to deal with site-specific issues or particular problems. The lead agencies should clarify whether this EIS is intended to serve as a single environmental review covering both programmatic decisions (such as, what form of conveyance will be used, at what size) and site specific issues (actual alignment, rights of way, site specific mitigation). If a tiered or supporting document approach is intended, the lead agencies should discuss their proposed division of issues between the programmatic and the site-specific documents.

EPA appreciates the leadership and significant resources being invested in this effort by the BDCP participants. It is clear that the current condition and uses of the Sacramento-San Joaquin River Delta are unsustainable. We recognize that developing a response to the multiple environmental and water supply problems facing the Delta is a massive undertaking, and that the environmental review process will be similarly complex. EPA believes that "re-scoping" the project to clarify the issues raised above will enable the process to move forward more defensibly and expeditiously.

We appreciate the opportunity to provide comments on the preparation of the EIS. We look forward to continued participation in this process as more information becomes available. Please send subsequent scoping notices and three copies of the Draft EIS to the address above (mail code: CED-2). If you have any questions, please contact me at (415) 972-3846 or Laura Fujii, the lead reviewer for this project. Laura can be reached at (415) 972-3852 or fujii.laura@epa.gov.

Sincerely,



Nova Blazej, Manager
Environmental Review Office
Communities and Ecosystems Division

Cc: Lori Rinek, US Fish and Wildlife Service
Agency Coordination Team



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

November 12, 2008

John Engbring
Assistant Regional Manager
Water and Fisheries Resources
California and Nevada Region
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-2606
Sacramento, CA 95825-1846

Subject: EPA Cooperating Agency Status on Bay Delta Habitat Conservation Plan

Dear Mr. Engbring:

Thank you for your recent letter inviting the U.S. Environmental Protection Agency (EPA) to be a cooperating agency for preparation of the Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Bay Delta Habitat Conservation Plan (BDCP) for the Sacramento-San Joaquin Delta. As you know, EPA has for many years worked with the Department of the Interior and other federal agencies to address the environmental and water management challenges in the Bay and Delta. We believe that a Habitat Conservation Plan (HCP) developed under the federal Endangered Species Act (ESA) could be a useful complement to the other ongoing programs aimed at restoring this important resource. In this spirit, we accept the invitation to participate in the development of the environmental analysis and documentation, consistent with our expertise and jurisdictional interests.

At this point in time, we anticipate involvement of staff from two EPA offices: the Environmental Review Office (ERO, within the Communities and Ecosystems Division) and the Water Division. The corresponding areas of expertise would be (1) compliance with the National Environmental Policy Act (NEPA), (2) protection of the entire range of designated uses as articulated in the Clean Water Act (CWA), (3) protection of drinking water quality under the federal Safe Drinking Water Act (SDWA), and (4) implementation of the CWA Section 404 program, which we cooperatively implement with the U.S. Army Corps of Engineers (Corps).

We have been informally following the development of the BDCP over the past two years. We have also reviewed the initial notice of intent (NOI) issued jointly by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) on January 24, 2008, and the subsequent NOI issued by those agencies and the U.S. Bureau of Reclamation (USBR) on April 15, 2008. In response to the first NOI, EPA submitted a short scoping letter to NMFS and USFWS, a copy of which is attached. We believe that many of our previous scoping comments are still applicable.

EPA continues to be concerned about the broadly stated purpose of the proposed program. Under NEPA, action agencies must examine a reasonable set of alternatives to the proposed action. The range of alternatives will generally mirror the range of the proposed actions. At present, the proposed set of actions is extremely ambitious, and we are concerned that the NEPA evaluation of alternatives could overwhelm the proposed schedule.

We understand from your representative at the October CALFED Agency Coordination Team meeting that the federal action agencies intend to "re-scope" this NEPA document in 2009, after release of the draft Conservation Strategy in late 2008. This release would also roughly coincide with the release of a federal agency BDCP purpose and need statement. Additional scoping would afford an opportunity to consider more specifically the proposed actions, alternatives, and potential impacts. EPA proposes that we meet with the federal action agencies after the above documents are released to discuss specifically where EPA could most usefully apply its expertise and limited resources in this NEPA analysis.

In accepting your invitation to become a cooperating agency, we also offer the following considerations:

First, as you know, EPA's resources are extremely limited. In the event that we identify a significant technical role for EPA in developing parts of the proposed analyses, we will need to work with you to identify the resources for that activity.

Second, you suggest in your letter that this EIS/EIR should serve as the NEPA compliance document for any federal permit actions envisioned in the proposal. Identifying and evaluating the "least environmentally damaging practicable alternative" (LEDPA) under the CWA 404 program requires an alternatives analysis as described in the CWA Section 404(b)(1) Guidelines. This CWA 404 alternatives analysis process could potentially be coordinated with the EIS/EIR effort. EPA will discuss this suggestion with the Corps (co-regulators in the CWA 404 program).

Third, EPA has ongoing review and approval obligations for changes to water quality standards under CWA Section 303. Historically, this review and approval function has involved consultation under the ESA. In some cases, it may be useful to coordinate ESA consultations with the NEPA review process, if doing so can expedite both processes.

Finally, we would like to emphasize that our role as a cooperating agency during document preparation will be technical in nature, and that this assistance does not abridge or otherwise affect our responsibilities for independent review of the Draft and Final EIS under Section 309 of the Clean Air Act and the related Council on Environmental Quality regulations.

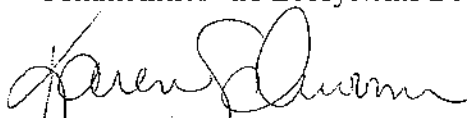
The lead contact for our work will be Carolyn Yale; in the Water Division (415-972-3482; yale.carolyn@epa.gov). She will be coordinating with Laura Fujii in the ERO, which implements our independent NEPA/309 review obligations. At this time, we do not anticipate the need for a memorandum of agreement formalizing our participation.

We look forward to working with USFWS, NMFS, USBR and the other participating agencies in this important effort.

Sincerely,



Kathleen M. Goforth, Manager
Environmental Review Office
Communities and Ecosystems Division



Karen Schwinn, Associate Director
Water Division

Attachment: EPA March 17, 2008 BDCP Scoping Letter

cc: Ted Meyers, National Marine Fisheries Service
Susan Fry, U.S. Bureau of Reclamation
Mike Jewell, U.S. Army Corps of Engineers
Dorlores Brown, California Department of Water Resources
Scott Cantrell, California Department of Fish and Game



United States Department of the Interior

FISH AND WILDLIFE SERVICE



Stone Lakes National Wildlife Refuge
1624 Hood-Franklin Road
Elk Grove, California 95757
(916) 775-4421

May 13, 2009

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

Re: Comments Regarding Environmental Impact Report and Environmental Impact Statement (EIR/S) Project Scoping for Bay Delta Conservation Plan.

Ms. Brown,

I am writing regarding the scope of the Environmental Impact Report and Environmental Impact Statement of the Bay Delta Conservation Plan. The eastern alignment of the proposed conveyance channel runs adjacent to the Stone Lakes National Wildlife Refuge (Refuge) and then crosses the lower third of the Stone Lakes National Wildlife Refuge Project Boundary. The Refuge Project Boundary encompasses the Bufferlands area around the Sacramento Regional Wastewater Treatment Plant and extends south from Freeport between the former Southern Pacific Railroad and along I-5 south to Twin Cities Road (see attached map).

I believe there are a number of issues that have not been adequately addressed in the scoping process including impacts to terrestrial biological resources, potential changes in local hydrology and water quality, and impacts to local agricultural operations. Our primary concern regarding the potential environmental impacts is the loss of habitats for a variety of species that would result from this project, particularly the eastern alignment, including some state and federal special status species and the loss of agricultural lands in the region.

The Refuge, administered by the U.S. Fish & Wildlife Service (Service), was established to protect 18,000 acres of Central Valley agricultural lands and natural habitats to support a wide variety of migratory birds and special status species. The Service completed an EIS in 1994 that established Stone Lakes as the 505th National Wildlife Refuge and approved the legal Project Boundary within Sacramento County. Over 8 million dollars of private and public funds have now been invested in protecting about 6,000 acres of wetlands, grasslands, riparian habitats and

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agricultural lands within the Project Boundary with an eventual goal of linking with the Cosumnes River Preserve to the south. In 2007 the Service completed a Comprehensive Conservation Plan (CCP) for the Refuge that included public review on management activities for the next fifteen years. This Refuge is part of a national network of lands and waters in the National Wildlife Refuge System for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of the present and future generations of Americans.

The scoping process needs to address the potential impacts the eastern alignment of the project could have on over 75 bird species that are currently found on the Refuge, including the following state and federal listed or species of concern: greater sandhill crane, Swainson's hawk, white faced ibis, long billed curlew and western meadowlark. The project could also potentially affect vernal pool species located in the proposed alignments including the federally listed vernal pool fairy shrimp and vernal pool tadpole shrimp, the giant garter snake and the valley elderberry long horned beetle. Furthermore, over one million birds winter in the Central Valley, and the loss of agricultural lands and open space and associated activities with the construction and operation of the canal would likely impact populations and migratory patterns of waterfowl and waterbirds in southern Sacramento County.

The Service has been actively managing wetland and grassland habitats since 1997 and have monitored local movements of migratory waterfowl and waterbirds, particularly white-fronted geese, black-bellied plovers, greater sandhill cranes, long-billed curlews, and white-faced ibis; the last three species being candidates for federal listing. Our observations indicate these species regularly feed and roost both on the Refuge and in winter wheat, corn, clover, and pasture on private lands outside currently managed lands and the Project Boundary. In the case of waterfowl, the birds that roost at the Refuge may be found feeding at the Yolo Wildlife Area in the morning and at Cosumnes River Preserve or private land in the afternoon. We have documented daily movements of greater sandhill cranes between the refuge and privately-owned agricultural fields to the west within Reclamation District 744 (Scribner's Bend). We have also observed movement by white-fronted geese and black-bellied plovers between the refuge and wheat and clover fields within RD 813 to the southwest.

Specifically in the case of the sandhill crane, the refuge and surrounding agricultural fields are critically important. Greater sandhill cranes have a wintering range of as little as one to three square miles, do not tolerate disturbance and require shallow wetlands for night roosting and loafing sites and a mix of agricultural fields such as alfalfa, corn and irrigated and dry pastures and wetlands for foraging. Already, sandhill cranes have been displaced from traditional feeding grounds because of urbanization. The agricultural lands surrounding the Refuge are vital to maintaining a healthy population of these magnificent birds, because the Refuge cannot provide all the habitat requirements needed by these birds. I am concerned the construction and maintenance activities of the canal could cause major changes in the migratory patterns of these birds pushing them into less suitable habitat, and believe the scoping process has not adequately addressed potential impacts the eastern alignment would have on this species.

The scoping process does not adequately address potential increases in flooding caused by the construction of a large canal and levee system. An increase in flooding could affect the



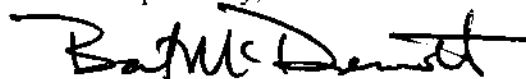
Refuge's infrastructure and its' ability to meet goals and objectives, including the restoration and management of wildlife habitat, public uses including hunting, fishing, environmental education, interpretation, photography and wildlife observation, and maintaining agricultural activities. Increases in stormwater run-off are already projected to double in the Beach-Stone Lakes area with the continued development south of Elk Grove between Interstate 5 and Highway 99. The construction of a 30' high levee would likely alter the flooding pattern, frequency and duration in the Stone Lakes Basin.

The scoping process also did not adequately cover potential mitigation areas and impacts. Mitigation efforts should remain in the general area of impact. For example, mitigation and conservation efforts to protect greater sandhill crane habitat should remain within the current footprint of sandhill crane habitat and not be placed elsewhere in the Delta. This area would include the Stone Lakes Project Boundary as well as Cosumnes River Preserve, Woodbridge Crane Reserve and the privately owned properties between the two conservation areas.

I am also concerned that the impacts of enhancing and developing tidal marsh habitats on species that currently depend on the Delta have not adequately been addressed. Establishing a canal and tidal marsh conservation measures could displace several migratory bird species that relay on conservation and agricultural lands in the Central Valley. Several of the sites being considered as Restoration Opportunity Areas include conservation areas in addition to the Refuge such as the Yolo Bypass Wildlife Area, Cosumnes River Preserve and Woodbridge/Isemberg Sandhill Crane Preserve which provide habitat for waterfowl, shorebirds, raptors and other grassland and shallow wetland dependent birds. The BDCP must incorporate existing plans and goals and obligations these various conservation areas have already developed in the planning process. Lastly, the impact of upstream diversions coupled with continued salt water intrusion and less run-off as a result of climate change will change the current Delta hydrology and salinity thereby affecting farming and the available waste crop in Delta used by cranes and other migratory birds.

In closing, I believe the Bay Delta Conservation Plan needs to address a variety of issues before choosing any alignment and moving forward with this project. Thank you for the opportunity to comment on this document. We look forward to continued communication with you and other concerned interests on this and other projects related to biological resources in the Stone Lakes Basin.

Respectfully,



Bart McDermott
Project Leader

Attachments:








Stone Lakes NWR Project Map (CCP figure 2)

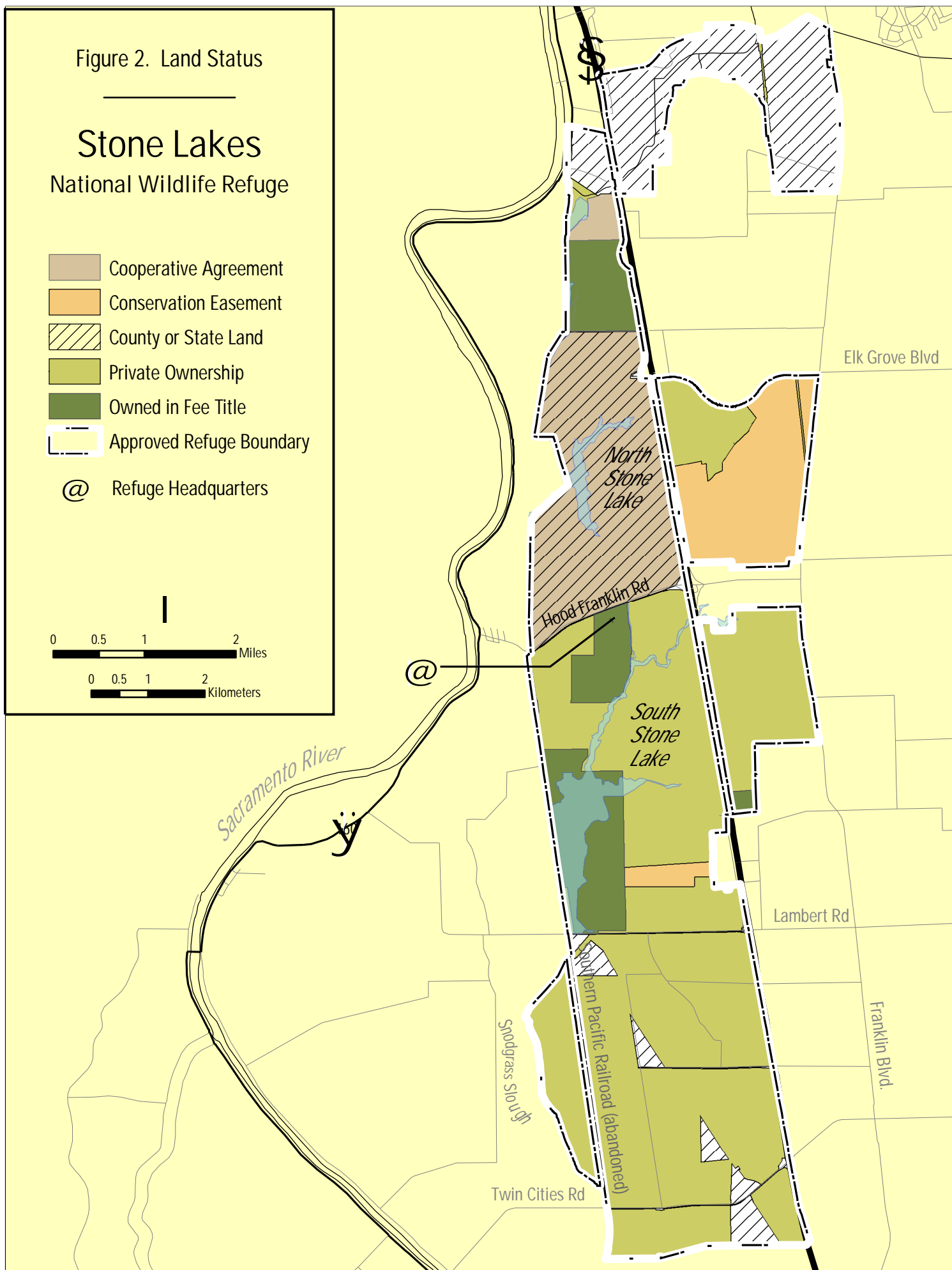
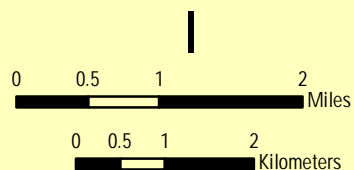


Figure 2. Land Status

Stone Lakes

National Wildlife Refuge

-  Cooperative Agreement
-  Conservation Easement
-  County or State Land
-  Private Ownership
-  Owned in Fee Title
-  Approved Refuge Boundary
-  Refuge Headquarters



1 **APPENDIX H2: 2009 TRIBAL NATIONS SCOPING COMMENTS**



Hoopa Valley Tribal Council

HOOPA VALLEY TRIBE

Regular Meetings on the First and Third Thursday of Each Month

P.O. Box 1348 • HOOPA, CALIFORNIA 95546 • Phone 625-4211 • Fax 625-4594



Clifford Lyle Marshall, Sr.
Chairman

Comments of the Hoopa Valley Tribe Regarding the Delta Conservation Plan EIR/EIS Presented March 19, 2009

For thousands of years the Hoopa Valley Tribe (Tribe) has resided on the Trinity River. The Trinity River is the focal point of our culture, religion and economy. In its natural course the river is a tributary of the Klamath River. With the Bureau of Reclamation's completion of the Trinity River Division (TRD) of the Central Valley Project (CVP) in 1963, the Trinity River also became an artificial tributary of the Sacramento/San Joaquin watershed and the only source of imported water to the Central Valley. The TRD enabled irrigation of substantial areas on the west side of the San Joaquin Valley.

Contrary to law that prohibited diversion of Trinity River water required for in-basin needs, the Bureau of Reclamation diverted up to 90 percent of the annual flow of the Trinity River into the Central Valley for use as far south as the west side of the San Joaquin Valley. For 45 years, that diversion has brought enormous wealth to water and power beneficiaries in the Central Valley, as well as having provided significant benefits to the State and National economies. The price of the transfer of wealth from the Trinity River to the San Joaquin Valley was severe reductions in Trinity River fish populations and economic and cultural devastation to the Hupa people and the north coast communities who rely on the Trinity River.

Decades of bipartisan effort by our Tribe and many others, supported by past and present members of Congress and successive Administrations, have produced critical legislation intended to restore the Trinity River. The centerpiece of the restoration effort is the Central Valley Project Improvement Act (CVPIA) (Public Law 102-575 Title XXXIV, October 30, 1992, 106 Stat. 4706). The CVPIA makes environmental restoration a CVP purpose and requires CVP water and power contractors to pay restoration costs.

In 2000, the Tribe and Secretary of the Interior signed the Trinity River Restoration Record of Decision (ROD). However, judicial and administrative attacks from water and power contractors delayed the start of restoration by four years. San Joaquin water contractors have filed administrative appeals to impede individual Trinity River fish habitat improvement projects as late as 2006. In addition, failure by the Department of the Interior to enforce restoration repayment provisions, fishery restoration remains a distant goal and restoration science and program management have suffered. The depressed state of Klamath and Trinity fish populations is so serious that in July, 2006, the Secretary of Commerce's declared a Fishery Resources Disaster for California's north

coast and southern Oregon fishery. A real twist of bureaucratic irony occurred when the National Marine Fishery Service recently informed the Tribe that our situation in 2006 does not qualify for federal economic assistance under their guidelines since the economy of our Trinity River fishery was destroyed in the late 1970s. Unlike the agricultural industry that typically receives federal subsidies, funding for water banks and the like, our tribal fishery has never received any type of federal economic assistance even though federal regulations completely close down our commercial fishing rights in 1978 due to depressed fish populations.

The ongoing environmental issues associated with conveyance of federal and state water supplies through the Bay Delta reached crisis proportions with recent judicial decisions restricting pumping to avoid harm to endangered species. The cost of resolving those issues bears directly on the funds available for ongoing Trinity restoration needs. Those issues also implicate Trinity River water supplies required by statute, federal contract and state permit to be made available for use from the Trinity River Division.

The Department of the Interior has a federal trust responsibility to implement the Trinity River restoration program while deliberations on addressing the problems in the Delta move forward. The Ninth Circuit Court of Appeals characterized the federal trust responsibility for the Trinity River in the following terms.

As a part of its harms-balancing analysis, the district court concluded that "the government is also in breach of its general and specific independent federal trust obligation to the Hoopa and Yurok Tribes." Order, 275 F. Supp. 2d at 1232. It also stated that the purpose of the CVPIA § 3406(b)(23) was to "fulfill[] the federal government's trust obligation to the Indian Tribes." *Id.* at 1234. These statements are significant in that they provide support for the court's order implementing portions of the Preferred Alternative as injunctive relief.

Westlands Water Dist. v. U.S. Dept. of Int., 376 F. 3d 853, 877. (9th Cir. 2004).

The trust responsibility bars the United States from putting itself in opposition to its fiduciary responsibility to the Hoopa Valley Tribe. Moreover, it requires the federal trustee not to act in conflict with its tribal beneficiary on an issue of fishery restoration that also affects thousands of non-Indians who are dependent on fishing. We are concerned that the Federal agencies, who have a responsibility to protect our tribal interests, have been silent on how they plan on protecting Trinity River funding and water supply as the plans for addressing problems in the Delta evolve.

We are committed to work with State and Federal agencies on solutions to California's water issues that honors the trust responsibility, secures needed restoration funding, and assures timely implementation of restoration.

On a related matter, the 110th Congress adopted Pay-As-You-Go (PAYGO) rules for new program authorizations. As the Administration and Congress consider solutions for the

Delta crisis, they should not subordinate ongoing and prior responsibilities for Trinity River restoration. PAYGO should not be a constraint on Trinity River restoration because section 3406(b)(23) of the CVPIA requires CVP contractors to pay the full cost of the restoration program as part of the annual operation and maintenance charges for use of CVP water and power. The fact that the Department of the Interior has not included mandatory cost reimbursement provisions in water contracts does not excuse that obligation.

Recommendations:

- 1) Full and timely implementation of the Trinity River Record of Decision and reform ROD administration.
- 2) Funding for Trinity River restoration at the levels identified in the February 26, 2007 determination of costs by the Secretary of the Interior in consultation with the Hoopa Valley Tribe. (attached)
- 3) Full integration of the fish and wildlife restoration Central Valley Project purpose established in the CVPIA based on the best science available and adjust deliveries to water contractors accordingly.
- 4) Implementation of CVPIA contract reform provisions, particularly those in section 3404 requiring contractors to pay for environmental restorations and in section 3406(b)(23), which make the costs of Trinity restoration fully reimbursable operation and maintenance costs.
- 5) Ensure transparent implementation of the CVPIA so that no Tribal Governments are excluded from deliberations affecting California Water Resources.
- 6) Ensure that decision making respects the senior priority of Indian rights in natural resources and the federal responsibility for the resources that the United States holds in trust for the Hoopa Valley Tribe.
- 7) Fulfill obligations under the 1955 Trinity River Division authorization requiring annual availability of 50,000 acre feet of TRD water for uses in the Trinity River, as set forth in contracts and permits.
- 8) Remedy the adverse impacts on CVPIA implementation due to the double-counting provision contained in the San Joaquin Settlement, S. 22 Sec. 10007(2), 111th Cong., 1st Sess. The Tribe concurs with the analysis of the Bureau of Reclamation and U.S. Fish and Wildlife Service regarding CVPIA implementation funding that "the amount available for CVPIA activities will be reduced sooner" following enactment of the San Joaquin Settlement Agreement by Congress. (CPAR at 14).

We appreciate the opportunity to present our views on the Delta Plan. If you have questions or are in need of further information please contact me at the above address.

Contact: Daniel Jordan, Self Governance Coordinator 530 625-4211 ext 106

Trinity River Restoration Program
Projected Costs for Construction and O&M: FY2008 to FY2030¹
(all dollars in millions)

	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	Average Annual FY2015-FY2030
Construction	6.6-6.8 ²	6.6-9.8	5.9-6.6	6.2-7.8	3.1-4.3	0.0-0.2	0.0-0.2	0.0-0.2
First 5-Year Construction Average ³	6.4							
Operations and Maintenance⁴	9.5-10.2	10.1-10.3	9.5-9.5	9.6-9.9	10.4-10.8	11.7-11.8	11.0-11.6	10.8-11.0
First 5-Year O&M Average	10.0							
Total Costs	16.1-17.0	16.8-20.2	15.3-16.1	15.7-17.6	13.6-15.0	11.8-11.9	11.2-11.6	10.8-11.2
First 5-Year Average All Costs	16.4							

¹These cost estimates are companion to a drafting service provided by the Department of the Interior in response to a request from Senator Feinstein's office, regarding legislation proposed by the Hoopa Valley Tribe. As such, the estimates they are unconstrained by the typical limitations on the Program's appropriation requests.

²These ranges in cost estimates reflect different assumptions and/or methodologies used by the Hoopa Valley Tribe and DOI/Reclamation. Initial differences in projected costs were largely resolved during several review sessions. Each entity has figures at the upper and lower end of the ranges, depending on the fiscal year in question.

³A five-year average was developed for use in the draft legislation, which would specify a construction component and an operations and maintenance component. FY2012 represents the last year when major construction activities would be expected to occur.

⁴Amounts for Construction and Operations and Maintenance would be reviewed annually according to provisions in the proposed legislation.

BDCP

BAY DELTA CONSERVATION PLAN

ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT

Comment Card

Please Print

Name: Daniel Jordan Organization: Hoopa TribeTelephone: 530 / 625-4211 X106 e-mail: _____Address: P.O. Box 1348City: Hoopa State: Ca. Zip: 95546☐ Yes, I would like to be added to your e-mail list.

Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 14, 2009.

Cultural + Historic Issues

There are 109 federally recognized Indian Tribes in California. The 1937 CVP specifically provides that one of the Purposes of the CVP is to provide for the water needs of Indian land. There is not a single water contract today between the Bureau of Reclamation and an Indian Tribe or individual Indian allottee.

Many Tribes and Indian allottees possess senior water rights, however the Federal Government has ignored them when allocating CVP water.

The Federal Government has a Trust obligation to determine how these water rights will be provided in water allocations.

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:

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

You may also e-mail your comments to BDCPcomments@water.ca.gov. Comments must be received by May 14, 2009.

1 **APPENDIX H3: 2009 STATE AGENCIES SCOPING COMMENTS**



Gold Fields District
7806 Folsom-Auburn Road
Folsom, CA 95630

May 14, 2009

Delores Brown
Division of Environmental Services
California Department of Water Resources
901 P Street, Bonderson Building, 4th Floor
PO Box 942836
Sacramento, CA 95814

Dear Ms. Brown,

This letter is in response to the Notice of Preparation (NOP) for the Bay Delta Conservation Plan (BDCP) Environmental Impact Report/Environmental Impact Statement (EIR/EIS) (SCH#2008032062). This project may include the development of new conveyance and diversion facilities, habitat restoration projects, changes in the operation of both the Central Valley Project and the State Water Project within the Delta, projects (such as tidal gates) to improve salinity conditions and other potential facilities.

The Gold Fields District of California State Parks owns and/or manages five State Park units or properties within the BDCP project area. These park properties include Delta Meadows, the Locke Boarding House, Brannan Island State Recreation Area (SRA), Franks Tract State Recreation Area and State Park property within the Stone Lakes Wildlife Refuge which is managed by the U.S. Fish and Wildlife Service. All of these park properties could be affected directly or indirectly by the BDCP project. Additionally, the Gold Fields District manages Folsom Lake State Recreation Area, which could be affected by the BDCP Project if the BDCP Project results in changes to the operation of the Folsom Dam and Reservoir which is part of the Central Valley Project (CVP).

State Parks concerns with the BDCP Project broadly include potential impacts to recreation use and facilities, impacts to the natural and cultural resources within all of these park units, and the potential loss of portions of the State Park units within the Delta to the facilities proposed as part of the BDCP Project. Below are some specific concerns regarding the park units within the Gold Fields District.

Delta Meadows is a 470-acre property adjacent to the Town of Locke and along portions of Snodgrass and Meadows Sloughs. State Parks acquired and manages the property primarily to preserve and protect one of the last remaining areas of the northern Sacramento-San Joaquin River Delta that exhibits remnants of the natural conditions that existed prior to Euro-American Settlement. The property contains important riparian and oak woodland habitat. Delta Meadows is enjoyed by an estimated 10,000 to 12,000 visitors annually. State Parks is concerned with the potential

impacts of BDCP project construction and operation on the natural resources of the Delta Meadows property.

The Locke Boarding House is an historic structure within the Town of Locke which was acquired by State Parks in 2005. State Parks has restored the Boarding House and it now serves as a visitor and interpretive center in the Town of Locke. State Parks is concerned with the potential impacts to access to the Locke Boarding House due to traffic and circulation impacts during the construction phase of BDCP Project facilities.

Brannan Island SRA is a 336-acre park unit on the southern end of Brannan Island which provides camping, picnicking, boat launching and other recreation activities to approximately 130,000 visitors annually. Brannan Island is an important recreation amenity in the Delta region. State Parks is concerned that the BDCP Project could impact recreation use and facilities at Brannan Island SRA either directly or indirectly, both during construction of BDCP facilities and during operation.

As part of the Franks Tract Project, the Department of Water Resources has already initiated planning and is considering locating one or more tidal gates which could directly or indirectly impact recreation use and facilities at Brannan Island. State Parks submitted a November 20, 2008 letter to DWR in response to the NOP for that project (SCH #2008092081). State Parks is unclear regarding the relationship of the Franks Tract Project and the BDCP Project, which also seems to include the potential for tidal gates in the vicinity of Brannan Island SRA. If the BDCP project is now encompassing the proposals made in the Franks Tract Project, please consider November 20, 2008 letter sent to DWR regarding the Franks Tract Project as part of our comments for this NOP. A copy of this letter is attached.

Franks Tract SRA is a 3,500-acre property consisting primarily of two flooded islands within the Delta, Franks Tract and Little Franks Tract. All types of boating, fishing, waterfowl hunting are the primary recreation activities at Franks Tract SRA. Visitation is estimated to be between 15,000 to 20,00 visitors annually. Again, State Parks is concerned how the BDCP may impact recreation use at Franks Tract. It is our understanding that tidal gates or other types of operable barriers across some of the sloughs connected to Franks Tract may be considered as part of the BDCP Project.

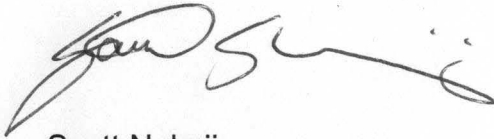
Folsom Lake SRA is comprised of the 17,300 acres of federal property around Folsom and Nimbus Dams and the two reservoirs, Folsom Lake and Lake Natoma. The SRA also includes an additional 2,200 acres of State-owned lands. California State Parks manages Folsom Lake SRA through an agreement with the U.S. Bureau of Reclamation. Folsom Lake SRA is one of the most heavily visited park units in the State Park System with approximately 1.5 million visitors annually. The SRA provides a wide range of recreation opportunities and facilities, but water dependent recreation activities account for about 85% of the park visitation. The extent of lake access and the quantity and quality of aquatic recreation opportunities available at Folsom Lake are directly connected to the operation of the reservoir and Folsom Lake levels, particularly during the primary recreation season, from April through October. To the extent that the BDCP Project could result in changes in CVP operations which would affect Folsom Lake levels, State Parks is extremely concerned about potential impacts on recreation and revenues.

Because the BDCP Project potentially involves State Park units, as delineated in the California Environmental Quality Act Guidelines (Section 15386), California State Parks is a trustee agency for the park units within the State Parks system and may also be a responsible agency for this project.

California State Parks requests that the lead agencies, DWR and Reclamation, consider both the direct and indirect impacts to recreation to all of the State Park units potentially affected by the BDCP, both during construction and operation. This could include direct use of State Park lands for BDCP facilities, temporary and permanent impacts to recreation use resulting from changes to traffic routes and circulation, impacts to recreation use and water access due to operable barriers or other facilities on waterways connected to State Park units. Additionally, State Parks requests that the potential impacts to the natural and cultural resources of any affected State Park units are addressed in the environmental analysis. Potentially significant effects, to recreation or resources, would need to be mitigated.

If you have any further questions regarding this matter, please contact the Gold Fields District Planner Jim Micheaels at (916) 988-0513. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott Nakaji', written in a cursive style.

Scott Nakaji
District Superintendent



Gold Fields District
7806 Folsom Auburn Road
Folsom, CA 95630
(916) 988-0205, FAX (916) 988-9062

November 20, 2008

Mr. Ajay Goyal, Project Manager
California Department of Water Resources
1416 Ninth Street, Room No. 252-18
Sacramento, CA 94236-001

RE: Notice of Preparation, Environmental Impact Statement/Environmental Impact Report for the Franks Tract Project – SCH #2008092081

The purpose of this letter is to provide comments regarding the Notice of Preparation for the Franks Tract Project for the Gold Fields District of California State Parks. The Gold Fields District manages Brannan Island State Recreation Area (SRA) and Franks Tract State Recreation Area. The Franks Tract Project is assessing five potential locations for flow control gates in the Delta, along Three Mile Slough and False River. Two of the proposed locations would directly involve portions of Brannan Island SRA. State Parks staff has had several meetings with Department of Water Resources (DWR) project managers regarding the Franks Tract Project. State Parks has granted a right of entry permit to DWR data gathering and geotechnical investigations at Brannan Island SRA associated with the environmental review of this Franks Tract Project.

State Parks supports the goals of the Franks Tract Project of improving the water quality conditions in the Delta and protecting and enhancing for fish species of concern which are dependent on the Delta environment. However, this project does have the potential to impact both existing and future recreation use and facilities at Brannan Island SRA and Franks Tract SRA.

Affected State Park Units

Brannan Island SRA is 328 acres of land owned by State Parks located at the confluence of Three Mile Slough and the Sacramento River. The average visitor attendance at Brannan Island SRA over the past dozen years is 130,000 visitors annually. Facilities at Brannan Island include a six lane paved boat ramp and parking, a small marina, a developed campground with 140 sites, a large group picnic area, a day use picnic and beach area, a group campground and a small visitor center. Camping, picnicking, swimming, beach use, and boating access for fishing and other aquatic recreation are all important recreation activities at Brannan Island SRA. The management of Brannan Island SRA is guided by several planning documents including the "General Plan for Brannan Island and Franks Tract State Recreation Areas" (February 1988) and the "Recreation Assessment, Brannan Island State Recreation Area" (June 2008). State parks can provide copies of these documents to DWR.

Franks Tract is 3,522 acres of primarily water, a flooded former reclaimed Delta island, also owned by State Parks. Franks Tract is only accessible via boat and the primary recreation uses are fishing and waterfowl hunting. Over the past twelve years attendance at Franks Tract has averaged 14,000 visitors annually.

As delineated in the California Environmental Quality Act Guidelines (Section 15386), California State Parks is a trustee agency for the park units within the State Parks system and may also be a responsible agency for this project.

Potential Land Use and Construction Impacts

As previously mentioned, two of the proposed flow gate locations would involve lands within Brannan Island SRA along Three Mile Slough and would have impacts to existing and future facilities and uses. Site 2 in the Franks Tract NOP would have impacts to the existing campground at Brannan Island SRA. Site 1 would impact an existing dirt service road which is used as an informal trail. Fishing and other informal use of the Three Mile Slough shoreline occurs in the area of both Sites 1 and 2. Use of Site 1 may have impacts to potential future facilities and use of this area for group camping area or trails. In addition to the potential direct impacts to facilities and future use of these areas for the purposes of the SRA, the construction of the flow gate facility may have impacts on public access to and recreation use of Brannan I SRA.

The construction of the gate facility at either Site 1 or 2 may involve impacts to vegetation within Brannan Island SRA, including elderberry which is the host of the federally listed Valley Elderberry Longhorn Beetle.

Potential Operational Impacts – Boating and Recreation Use

State Parks understanding of the operation of the flow gates is that they may be closed on a daily basis for periods of hours depending upon tides and season. We also understand that the gates would include a lock system to allow boating traffic to pass through the gate when closed. The operation of the gates, including the delays involved in use of the lock, has the potential to have substantial impact to recreational boating traffic along Three Mile Slough and the use of Brannan Island SRA as a launching point. This could have long term impact to the recreation use of Brannan Island SRA which in turn would impact revenues generated from park user fees. A gate facility at Sites 1 or 2 may affect the quality of the camping and other upland recreation experiences at Brannan Island SRA, including noise, lighting and other issues associated with the facility.

The operation of the flow gates could also impact boating access to and use of Franks Tract SRA, particularly if a gate were constructed at the False River site.

Mitigation for Impacts to Recreation Use and Facilities

State Parks believes there may be options to mitigate the impacts to recreation use resulting from project construction and operation. This could include development of new recreation facilities or improvements to existing facilities at Brannan Island SRA such as assistance with the development of a new small visitor center or other improvements to the existing day use or overnight facilities. State Parks believes that interpretation and education regarding the purpose of the flow gate, the resources it is designed to protect and the complex ecology, hydrology and human use of the Delta would help the recreating public better understand and accept the flow gate facility which will have impacts on recreation and boating use. A new visitor center would provide a better opportunity to provide this education and interpretation. State Parks could envision an ongoing partnership or collaboration with DWR regarding such a visitor center. Another option is to provide improved facilities for boating, such as improvements to the boat launch or marina which may help mitigate impacts to boating use. State Parks is interested in further exploring

mitigation possibilities with DWR.

State Parks looks forward to working with DWR and participating in the environmental review process for this project. If you have any questions regarding this letter, please contact Jim Micheaels, Senior Park and Recreation Specialist on the Gold Fields District at (916) 988-0513. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott Nakaji', with a long horizontal flourish extending to the right.

Scott Nakaji
District Superintendent



PO Box 942896
1416 9th Street
Sacramento CA 94296-0001

May 14, 2009

Delores Brown
Division of Environmental Services
California Department of Water Resources
901 P Street, Bonderson Building, 4th Floor
PO Box 942836
Sacramento, CA 95814

Dear Ms. Brown,

This letter is in response to the Notice of Preparation (NOP) for the Bay Delta Conservation Plan (BDCP) Environmental Impact Report/Environmental Impact Statement (EIR/EIS) (SCH#2008032062). This project may include the development of new conveyance and diversion facilities, habitat restoration projects, changes in the operation of both the Central Valley Project and the State Water Project, and other potential facilities.

The Gold Fields District of California State Parks has already written to you outlining its recommendations about assessing the BDCP's potential impacts on the State Park units or properties that it manages within the BDCP project area. In my role as California State Parks' planning division chief, I am writing to alert you to other State Park units that may be affected by potential changes in CVP or SWP operations that may result from the BDCP. These include these units at SWP or CVP reservoirs:

- Bethany Reservoir SRA. This State Park unit is comprised of 609 acres. About 45,000 visitors are estimated to recreate at this State Park annually.
- Castaic Lake SRA. This State Park unit is operated by Los Angeles County.
- Lake Del Valle SRA. This State Park unit is operated by the East Bay Regional Park District.
- Lake Oroville SRA. This State Park unit is comprised of 29,446 acres, including 902 acres owned by State Parks. Almost 1.05 million visitors recreate at this State Park annually.
- Lake Perris SRA. This State Park unit is comprised of 6674 acres, including 1429 acres owned by State Parks. Over 702,000 visitors recreate at this State Park annually.
- Millerton Lake SRA. This State Park unit is comprised of 6079 acres, including 303 acres owned by State Parks. Almost 312,000 visitors recreate at this State Park annually.
- San Luis Reservoir SRA. This State Park unit is comprised of 26,035 acres. About 542,000 visitors recreate at this State Park annually.
- Silverwood Lake SRA. This State Park unit is comprised of 2201 acres owned by State Parks. Over 354,000 visitors recreate at this State Park annually.

These State Park units provide a wide range of recreation opportunities and facilities, but water-dependent recreation activities account for most of the parks' visitation. The extent of lake access and the quantity and quality of aquatic recreation opportunities available at these units are directly connected to the operation of the reservoirs and the reservoirs' water levels, particularly during the primary recreation season, from April through October. To the extent that the BDCP could result in changes in CVP or SWP operations which would affect lake levels, State Parks is extremely concerned about potential impacts on recreation, other park resources, and revenues.

Other State Park units are located on rivers that may be affected by potential changes in CVP or SWP operations that may result from the BDCP. These include William B. Ide State Historic Park, Woodson Bridge SRA, Bidwell-Sacramento State Park (SP), the state park property at Butte City, Colusa-Sacramento SRA, and Great Valley Grasslands SP. To the extent that the BDCP could result in changes in CVP or SWP operations which would affect river flows suitable for recreation, State Parks is concerned about potential impacts on recreation and revenues at these units. The effects on other park resources caused by changes in river flows attributable to the BDCP should also be assessed.

Finally, California State Parks is completing its *Central Valley Vision Implementation Plan*, a 20-year plan for improving the State Park System in the Central Valley. The plan outlines potential projects to improve recreation and resource protection at existing State Park units in the Central Valley and identifies areas potentially suitable for addition to the State Park system. A draft of the plan is posted online at http://www.parks.ca.gov/default.asp?page_id=23483. Opportunities should be considered for synergies between the Central Valley Vision Implementation Plan's recommendations and the habitat restoration or other projects recommended in the BDCP. The implementation plan's recommendations may include some actions that might offset impacts to recreation or other park resources attributable to the BDCP.

Because the BDCP potentially involves State Park units, as delineated in the California Environmental Quality Act Guidelines (Section 15386), California State Parks is a trustee agency for the park units within the State Park System and may also be a responsible agency for this project.

California State Parks requests that the lead agencies, DWR and Reclamation, consider both the direct and indirect impacts to recreation to all of the State Park units potentially affected by the BDCP, both during construction and operation. This could include direct use of State Park lands for BDCP facilities, temporary and permanent impacts to recreation use resulting from changes to traffic routes and circulation, or impacts to recreation use and water access due to new water management facilities on waterways connected to State Park units. Additionally, State Parks requests that the potential impacts to the natural and cultural resources of any affected State Park units are

addressed in the environmental analysis. Potentially significant effects to recreation or resources would need to be mitigated.

If you have any further questions regarding this matter, please contact Dan Ray, Chief, Planning Division, California State Parks at (916) 651-0305. Thank you.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dan Ray", with a long horizontal flourish extending to the right.

Dan Ray
Chief, Planning Division



Linda S. Adams
*Secretary for
Environmental Protection*

State Water Resources Control Board

Executive Office

Charles R. Hoppin, Chairman
1001 I Street • Sacramento, California • 95814 • 916.341.5615
P.O. Box 100 • Sacramento, California • 95812-0100
Fax 916.341.5621 • www.waterboards.ca.gov



Arnold Schwarzenegger
Governor

ELECTRONIC MAIL

May 15, 2009

Delores Brown, Chief
Office of Environmental Compliance
Department of Water Resources
P.O. Box 942836
Sacramento, CA 95236
delores@water.ca.gov

Dear Ms. Brown:

COMMENTS ON FEBRUARY 13, 2009 REVISED NOTICE OF PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT REPORT AND ENVIRONMENTAL IMPACT STATEMENT FOR THE BAY DELTA CONSERVATION PLAN

This letter responds to the California Department of Water Resources' (DWR) February 13, 2009 Revised Notice of Preparation (NOP) of a Draft Environmental Impact Report and Environmental Impact Statement (EIR/EIS) for the Bay Delta Conservation Plan (BDCP). As a responsible agency under the California Environmental Quality Act (CEQA) for this project, the State Water Resources Control Board (State Water Board) appreciates the opportunity to provide comments on the revised NOP and additional comments related to this project. Previously, the State Water Board provided comments to you on the March 17, 2008 NOP for the BDCP by letter dated May 30, 2008. The State Water Board reaffirms all of the comments in its May 30, 2008 letter and incorporates them by reference. I will not repeat those comments here.

Since the March 17, 2008 NOP was issued, additional information concerning the BDCP project has been made available. Specifically, as referred to in the revised NOP, a draft conservation plan for the BDCP was released. However, many specifics regarding the proposed project are still not available. Accordingly, the State Water Board continues to reserve the right to provide additional comments on the environmental review for the BDCP as additional information becomes available. Again, this information may be provided in writing or through participation in the BDCP Steering Committee, technical teams, workgroups, or environmental coordination team meetings.

Implementation of the BDCP will likely result in new water conveyance and habitat restoration measures. In addition to changes in water right terms and conditions to facilitate these measures, the State Water Board may need to consider changes to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta

California Environmental Protection Agency

Estuary (Bay-Delta Plan) and to water rights implementing that plan to ensure that beneficial uses are protected in light of those measures. Thus, as indicated in the State Water Board's May 30, 2008 letter, the State Water Board will have discretionary approval over aspects of the BDCP project related to potential changes to the State Water Project's (SWP) and Central Valley Project's (CVP) water rights (such as changes to the points of diversion and operational requirements) and to water right conditions associated with water quality requirements for the two projects. In order for the State Water Board to consider any water quality and water right applications or petitions related to these aspects of the project, environmental documentation must be prepared that evaluates the environmental effects of the proposed actions, identifies a reasonable range of interim and long-term alternatives that would reduce or avoid the potential significant environmental effects of the actions, and discusses the significant effects of the alternatives. Similarly, any environmental analysis associated with changes to the Bay-Delta Plan must evaluate the significant environmental impacts of any such changes and identify a reasonable range of potentially feasible alternatives to such changes. The State Water Board and BDCP lead agencies will need to continue to coordinate their activities to assure that adequate environmental documentation is prepared to address the State Water Board's and BDCP's environmental review needs.

One issue in particular that will require coordination is environmental review of the SWP's and CVP's interim and long-term exports from the Delta. As noted in the State Water Board's May 30, 2008 letter, a reduced diversion alternative should be analyzed to inform the State Water Board and others of the potential tradeoffs between delivering water for consumptive uses and protection of fish and wildlife beneficial uses. While SWP and CVP exports are not the only factor contributing to the current degraded state of the Bay-Delta ecosystem, exports remain an important factor requiring analysis. Uncertainty remains concerning the amount of water that can be diverted from the estuary without significantly impacting fish and wildlife beneficial uses. These impacts must be analyzed under CEQA before significant changes are made to the plumbing and hydrology of the Delta. In addition, independent of CEQA, the State Water Board has an obligation to consider the effect of the proposed project on public trust resources and to protect those resources.

A reduced diversion alternative should be lower than diversions allowed for in the current delta smelt biological opinion and soon-to-be released salmonid and green sturgeon biological opinions for the Long-Term CVP and SWP Operations, Criteria, and Plan. This reduced diversion alternative should be low enough to assure not only continued existence of the species, but also some level of rehabilitation for the estuary. To determine what this level should be, State Water Board staff suggests reviewing historic fisheries data and water export data to arrive at a low export level that is reflective of the quantity of water that could be diverted from the Delta with reasonable confidence of not causing significant or long term impacts to the estuary. Through environmental analysis of such an alternative and higher export alternatives, the State Water Board and other responsible agencies will have information on which to consider the various environmental tradeoffs related to export restrictions. Once the salmonid

and green sturgeon biological opinion has been finalized, staff would be willing to provide technical assistance to the BDCP environmental review team.

Combined with analyzing potential reductions in exports, an alternative for changes to Delta outflows (and potentially inflow requirements) should also be analyzed that reflects a more natural hydrograph. Current outflows and operations have tended to flatten the natural hydrograph and produce more static flow conditions in the Delta. Outflows and export regimes that support a more natural variable hydrograph should be analyzed, including both the naturally high outflow and naturally low outflow ends of the hydrograph for both the interim and long-term. One way to conduct this analysis would be to analyze the effects of providing various percentages of the unimpaired Delta inflow and outflow, and managing storage releases and exports to attempt to parallel this pattern.

As the State Water Board previously commented on the first BDCP NOP, the State Water Board is currently conducting a review of the southern Delta salinity and San Joaquin River flow objectives included in the Bay-Delta Plan. This review is not necessarily intended to address or inform the evaluation of any similar issues (i.e., salinity or other issues) that may arise during the BDCP process. Accordingly, the BDCP environmental review will need to address any southern Delta salinity or other issues associated with the BDCP project that are not addressed by the State Water Board in its water quality control planning review.

Finally, in order to assure that the environmental review and permitting activities associated with the BDCP project for which the State Water Board has regulatory authority are adequately addressed (water rights application and petitions, water quality certification pursuant to Clean Water Act section 401, and potentially others), State Water Board staff request additional focused discussions with the environmental review team on these issues.

State Water Board staff look forward to continue working with the BDCP environmental review effort for this project. If you have any questions concerning this matter, please contact Diane Riddle, Staff Environmental Scientist with the Division of Water Rights at (916) 341-5297 or driddle@waterboards.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dorothy Rice", with a long horizontal flourish extending to the right.

Dorothy Rice
Executive Director

cc: See next page.

cc: (First Class Mail)

Pamela Creedon
Central Valley Regional Water Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Karen Larsen
Central Valley Regional Water Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Jerry Bruns
Central Valley Regional Water Board
11020 Sun Center Drive, Suite 200
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Bruce H. Wolfe
San Francisco Bay Regional Water Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Wil Bruhns
San Francisco Bay Regional Water Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Thomas Mumley
San Francisco Bay Regional Water Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Clarksburg

BDCP

BAY DELTA CONSERVATION PLAN

ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT

— Comment Card —

Please Print

Name: JACK BROADBENT Organization: ~~CLARKSBURG~~ CALTRANS

Telephone: _____ e-mail: JACK_BROADBENT@DET.CA.GOV

Address: 8665 RIVER ROAD

City: SAC State: CA Zip: 95832

☒ Yes, I would like to be added to your e-mail list.

Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 14, 2009.

WORK WITH CALTRANS ON
THE VISUAL IMPACTS OF
YOUR PROPOSAL AS YOU
WILL BE IMPACTING A
STATE SCENIC HIGHWAY
RT 160.

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:

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

You may also e-mail your comments to BDCPcomments@water.ca.gov. **Comments must be received by May 14, 2009.**

DELTA PROTECTION COMMISSION

14215 RIVER ROAD

P.O. BOX 530

WALNUT GROVE, CA 95690

Phone (916) 776-2290 / FAX (916) 776-2293

E-Mail: dpc@citlink.net Home Page: www.delta.ca.govContra Costa County Board of
SupervisorsSacramento County Board of
SupervisorsSan Joaquin County Board of
Supervisors

Solano County Board of Supervisors

Yolo County Board of Supervisors

Association of Bay Area Governments

Sacramento Area Council of
Governments

San Joaquin Council of Governments

Central Delta Reclamation Districts

North Delta Reclamation Districts

South Delta Reclamation Districts

West Delta Reclamation Districts

Bay Delta Authority

Department of Boating and Waterways

Department of Fish and Game

Department of Food and Agriculture

Department of Water Resources

State Lands Commission

State Parks

Delta Landowner –
Outdoor RecreationDelta Landowner –
Production AgricultureDelta Landowner –
Wildlife Conservation

March 13, 2009

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

SUBJECT: Notice of Preparation for the Bay Delta Bay Delta Conservation Plan
Draft Environmental Impact Report (SCH# 2008032062)

Dear Ms. Brown:

The staff of the Delta Protection Commission (Commission) has received the
subject document dated February 13, 2009.

As cited in the May 30, 2008 letter from staff of the Commission to you, the
proposed project site is in the Primary and Secondary Zones of the Legal Delta.
Therefore, the project is subject to consistency with the policies of the Delta
Protection Act, and the Land Use and Resource Management Plan for the Primary
Zone of the Delta. The May 30, 2008 letter is enclosed for your convenient
reference and consideration in the processing of the subject proposal.

Please contact me at (916) 776-2292 or lindadpc@citlink.net if you have any
questions about the Commission or the comments provided in the May 30, 2008
letter.

Sincerely,

Linda Fiack
Executive Director

Enclosure

cc: State Clearinghouse

DELTA PROTECTION COMMISSION

14215 RIVER ROAD
P.O. BOX 530
WALNUT GROVE, CA 95690
Phone (916) 776-2290
FAX (916) 776-2293
E-Mail: dpc@citlink.net Home Page: www.delta.ca.gov



May 30, 2008

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

Dear Ms. Brown,

SUBJECT: Notice of Preparation of Joint ERI/EIS for the Bay Delta Conservation Plan (BDCP)

The staff of the Delta Protection Commission (Commission) has reviewed the Notice of Preparation document dated March 17, 2008 in relation to the Commission's Land use and Resource Management Plan for the Primary Zone of the Delta (Management Plan). The following information and comments are provided for your consideration in the environmental review process for the subject project.

The Delta Protection Act (Act) was enacted in 1992 in recognition of the increasing threats to the resources of the Primary Zone of the Delta from urban and suburban encroachment having the potential to impact agriculture, wildlife habitat, and recreation uses. Pursuant to the Act, a Management Plan was completed and adopted by the Commission in 1995.

The Management Plan sets out findings, policies, and recommendations resulting from background studies in the areas of environment, utilities and infrastructure, land use, agriculture, water, recreation and access, levees, and marine patrol/boater education/safety programs.

The goals, findings, policies, and recommendations from the Management Plan that are relevant to this project include, but are not limited to, the following:

Environment

- Finding 1: The physical environment which existed prior to 1850 has been permanently and irretrievably modified through levee construction, drainage of wetlands, and introduction of agriculture.
- Finding 5: While over 95% of all wetlands in the Delta have been lost, the Delta area is used by 10% of the wintering waterfowl traveling within the Pacific Flyway.
- Finding 7: The value to wildlife of levee habitat and habitat within the levees is lessened by on-going human impacts such as levee maintenance, farm practices, human habitation, and recreational use of the levees and waterways. Activities such as water transport and boating use have eroded Delta channel islands, berms, and levees destroying habitat areas. Without levee maintenance, the habitat on the levees and within the islands will be lost.

- Finding 8: The native population of fish and other aquatic species has been modified by hydromodification including water diversion, etc., through introduction of exotic species and other causes. Numbers of both native and of some introduced fish have dropped dramatically since the late 1960's; numbers have dropped so low that winter-run Chinook salmon and Delta smelt have been listed as endangered and threatened, respectively. However, the population of some introduced species of fish and other introduced aquatic species throughout the aquatic food chain has substantially increased.
- Finding 9: There is no Delta regionwide management plan for wildlife resources.
- Finding 13: Delta channel islands and levees serve as habitat for several burrowing species, including beaver and muskrat. Some species have created burrows large enough to endanger levee stability.
- Policy 3: Lands managed primarily for wildlife habitat shall be managed to provide several inter-related habitats. Deltawide habitat needs should be addressed in development of any wildlife habitat plan. Appropriate programs, such as "Coordinated Resource Management and Planning" [Public Resources Code Section 9408(c)] and "Natural Community Conservation Planning" (Fish and Game Code Section 2800 et seq.) should ensure full participation by local government and property owner representatives.
- Recommendation 1: Seasonal flooding should be carried out in a manner so as to minimize mosquito production. Deltawide guidelines outlining "best management practices" should be prepared and distributed to land managers.
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- Recommendation 4: Feasible steps to protect and enhance aquatic habitat should be implemented as may be determined by resource agencies consistent with balancing other beneficial uses of Delta resources.
- Recommendation 5: Publicly-owned land should incorporate, to the maximum extent feasible, suitable and appropriate wildlife protection, restoration and enhancement as part of a Deltawide plan for habitat management.

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Utilities and Infrastructure

- Finding 2: High voltage transmission lines have disrupted wildlife use patterns and resulted in the loss of birds due to collision with those lines.
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Land Use

- Recommendation 1: A program by non-profit groups or other appropriate entities should be developed to promote acquisition of wildlife and agricultural conservation easements on private lands with the goal of protecting agriculture and wildlife habitat in the Delta.

- Recommendation 2: Public agencies and non-profit groups have or propose to purchase thousands of acres of agricultural lands to restore to wildlife habitat. The amount, type, and location of land identified to be enhanced for wildlife habitat should be studied by wildlife experts to determine goals for future acquisition and restoration. Lands acquired for wildlife habitat should also be evaluated for recreation, access, research and other needed uses in the Delta. Habitat restoration projects should not adversely impact surrounding agricultural practices. Public-private partnerships in management of public lands should be encouraged. Public agencies shall provide funds to replace lost tax base when land is removed from private ownership.
- Recommendation 3: Multiple use of agricultural lands for commercial agriculture, wildlife habitat, and, if appropriate, recreational use, should be supported, and funding to offset management costs pursued from all possible sources. Public agencies shall provide funds to replace lost tax base when land is removed from private ownership.
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Agriculture

- Finding 11: Programs at State and federal level support land management to enhance habitat values on private agricultural lands. Some programs will result in permanent conversion of agricultural land. Examples include: creation of wetlands on agricultural lands; seasonal flooding of agricultural lands; deferred tillage; deferred harvesting of grains; enhancement of field edges as habitat; and planting native plants along roadways and between fields. However, many of the existing programs do not reflect the unique Delta resources and opportunities.
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Water

- Goal: Protect long-term water quality in the Delta for agriculture, municipal, industrial, water-contact recreation, and fish and wildlife habitat uses, as well as all other designated beneficial uses.
- Finding 13: Water is needed to enhance seasonal and year-round wildlife habitat in the Delta such as flooding agricultural fields in fall and winter. Seasonal flooding is of particular value to migratory waterfowl.
- Finding 17: Transport of State and federal project water through the Delta does result in levee erosion and reverse flows and may detrimentally affect some fish species.
- Policy 1: Local governments shall ensure that salinity in Delta waters allows full agricultural use of Delta agricultural lands, provide habitat for aquatic life, and meet requirements for drinking water and industrial uses.
- Recommendation 3: Programs to enhance the natural values of the State's aquatic habitats and water quality will benefit the Delta and should be supported.
- Recommendation 5: Water for flooding to provide seasonal and year-round wildlife habitat should be provided as part of State and federal programs to provide water for wildlife habitat.

Recreation and Access

- Finding 5: The Delta waterways are recognized as valuable habitat for resident and migratory species, including fish, amphibians, birds, and mammals.
- Finding 6: Some recreational activities are detrimental to habitat values; such as those that create loud noises, create waves or wakes; or disturb sediments. Recreational boating adversely impacts the stability of some levees through creation of wakes increasing costs of maintenance. Wake erosion also adversely impacts wildlife habitat areas, such as channel islands.
- Finding 10: The marina permit application process is long, expensive and difficult due to: difficulty in obtaining upland sites and leases for underwater lands, land ownership issues, possible impacts to the environment including rare and endangered fish and plant species, limitations on dredging, and protection of riparian vegetation.
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- Recommendation 2: Support a scientifically-valid study of the carrying capacity of the Delta waterways for recreation activities without degradation of habitat values which minimize impacts to agriculture or levees.

- Recommendation 5: To protect rare and endangered fish species from adverse impacts of poaching, the Department of Fish and Game (DFG) should study the feasibility and value of banning night fishing in the Delta.
- Recommendation 10: New, expanded, or renovated marinas should minimize toxic discharges (including paint, paint chips, chemicals, heavy metals, tributulin, oil, grease, and fuel) and prohibit discharges of untreated sewage as required under local, State, and federal laws and regulations.
- Policy 2: To minimize impacts to agriculture and to wildlife habitat, local governments shall encourage expansion of existing private water-oriented commercial recreational facilities over construction of new facilities. Local governments shall ensure any new recreational facilities will be adequately supervised and maintained.
- Policy 3: Local governments shall develop siting criteria for recreation projects which will ensure minimal adverse impacts on: agricultural land uses, levees, and public drinking water supply intakes, and identified sensitive wetland and habitat areas.

Levees

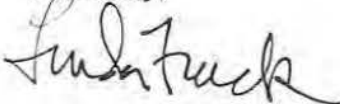
- Finding 8: Materials for levee construction and repair have routinely been dredged from adjacent waterways. Environmental regulations to protect endangered fish and other restrictions have limited access to this traditional source of material. Historically lower costs of using dredged material have been offset by increased regulatory costs. Other sources of levee maintenance material include: on-island deposits; quarries; construction projects, including habitat enhancement projects; and spoils from authorized maintenance dredging projects by ports or flood control districts.
- Finding 13: Loss of Delta levees could result in loss of life; lowered water quality for water diverted by local water systems and for export through the State and federal water systems; loss of freshwater due to increased evaporation; loss of property, including crops and structures; and loss of habitat. Rodent dens and tunnels, particularly those created by beaver and muskrat, can adversely affect levee stability and are thought to have been the cause of numerous levee failures.
- Policy 1: Local governments shall ensure that Delta levees are maintained to protect human life, to provide flood protection, to protect private and public property, to protect historic structures and communities, to protect riparian and upland habitat, to promote interstate and intrastate commerce, to protect water quality in the State and federal water projects, and to protect recreational use of the Delta area. Delta levee maintenance and rehabilitation shall be given priority over other uses of the levee areas. To the extent levee integrity is not jeopardized, other uses, including support of vegetation for wildlife habitat, shall be allowed.
- Recommendation 1: Levee maintenance, rehabilitation, and upgrading should be established as the first and highest priority of use of the levee. No other use whether for habitat, trails, recreational facilities, or roads should be allowed to unreasonably adversely impact levee integrity or maintenance.

- Recommendation 2: Landowners, through reclamation districts, should pay a portion of levee maintenance costs. The overall citizenry of California and the United States that benefits from the state and federal water projects, commerce and navigation, travel, production of crops, recreation, and protection of fish and wildlife habitat should also pay a substantial portion of the cost of maintaining the Delta levees. New programs of determining assessments on mineral leases and other beneficiaries should be evaluated by reclamation districts.
- Recommendation 8: To lower levee maintenance costs, streamlined permitting systems for authorization of dredging for levee maintenance and rehabilitation work, including the improvement of wildlife habitat and habitat mitigation sites, and for levee upgrading to mandated standards to protect public health and safety, should be instituted, with one state agency designated as lead agency and one federal agency designated as lead agency. Federal agency concurrence in such designations should be obtained.
- Recommendation 12: Levee maintaining agencies and fish and wildlife agencies should continue to cooperate to establish appropriate vegetation guidelines. Continuation of the SB 34 Program with its incentive funding for mitigation should be supported as the best way to accomplish the goals of levee maintenance with no net long term loss of habitat.

It is also worth noting, relative to the Commission's Management Plan that pursuant to the Commission's adopted 2006-2011 Strategic Plan and in response to the Governor's recommendation in February of 2008, the process for updating the Management plan has been initiated with anticipated completion by the end of the year. Delta initiatives and processes underway (including DBCP and Delta Vision) that may be of relevance to the Commission's policies and mandates are being taken into consideration in this process.

A copy of the Management Plan and the Act are available at the Commission's web site www.delta.ca.gov for your reference. Please contact me at (916) 776-2292 or lindadpc@citlink.net if you have any questions regarding the Commission or the comments provided herein.

Sincerely,



Linda Fiack
Executive Director

DELTA PROTECTION COMMISSION

14215 RIVER ROAD

P.O. BOX 530

WALNUT GROVE, CA 95690

Phone (916) 776-2290 / FAX (916) 776-2293

E-Mail: dpc@citlink.net Home Page: www.delta.ca.govContra Costa County Board of
SupervisorsSacramento County Board of
SupervisorsSan Joaquin County Board of
Supervisors

Solano County Board of Supervisors

Yolo County Board of Supervisors

Association of Bay Area Governments

Sacramento Area Council of
Governments

San Joaquin Council of Governments

Central Delta Reclamation Districts

North Delta Reclamation Districts

South Delta Reclamation Districts

West Delta Reclamation Districts

Bay Delta Authority

Department of Boating and Waterways

Department of Fish and Game

Department of Food and Agriculture

Department of Water Resources

State Lands Commission

State Parks

Delta Landowner –
Outdoor RecreationDelta Landowner –
Production AgricultureDelta Landowner –
Wildlife Conservation

May 6, 2009

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

Dear Ms. Brown:

**SUBJECT: Revised Notice of Preparation for the Bay Delta Conservation Plan
Draft Environmental Impact Report/Environmental Impact
Statement (SCH# 2008032062)**

The staff of the Delta Protection Commission (Commission) has reviewed the subject Notice of Preparation. Based on the information received at this time, staff has determined that portions of the potential area to be covered by the proposed Bay Delta Conservation Plan (Plan) will be located within the Primary and Secondary Zones of the Legal Delta (see enclosed maps). Pursuant to the Delta Protection Act (Act), approvals for projects in the Primary Zone shall take into consideration consistency with the provisions of the Commission's Land Use and Resource Management Plan for the Primary Zone of the Delta (Management Plan).

The Commission serves as an appeal body in the event the actions of a local entity on a project within the Primary Zone are challenged as being inconsistent with the provisions of the Act or the policies of the Management Plan. While actions for approval or denial of projects in the Secondary Zone are not subject to appeal to the Commission, the analysis of the proposed project Plan scope should address any potential impacts to the resources of the Primary Zone resulting from activities in the Secondary Zone.

The May 30, 2008 comment letter from staff of the Commission relevant to the scope of the proposed Plan and potential area involved within the Primary and Secondary Zones is enclosed for your reference and consideration in the environmental review process.

Additionally, please consider the Commission's comments provided to the Delta Vision Blue Ribbon Task Force on September 29, 2008 (cited below) relative to characteristics that should be taken into consideration when proposing to convert lands to habitat.

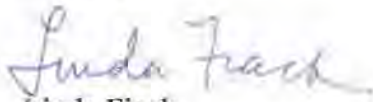
Delores Brown, Chief
May 6, 2009
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Programs proposing the conversion of lands to habitat should take into consideration characteristics of highly productive agriculture lands, and compatible uses, such as: nationally recognized wine growing regions; islands mapped out of the 100-year flood zone; lands with well/deep well drained soils; areas where permanent trees and vines are planted; levees maintained with state-of-the art systems; areas of highly maintained water quality; outstanding crop yields regionally recognized; and lands supporting existing homes, shops and value added ag components.

Please note that the Commission is in the process of revising the policies of the Management Plan and it is anticipated that amendments will be considered for adoption by the Commission by the end of the year. It is therefore recommended that you take into consideration the intent of the draft revisions (available on the Commission's website) in addition to adhering to the existing policies for consistency.

I am available at (916) 776-2292 or lindadpc@citlink.net if you have any questions about the comments provided herein or in the May 30, 2008 letter.

Sincerely,

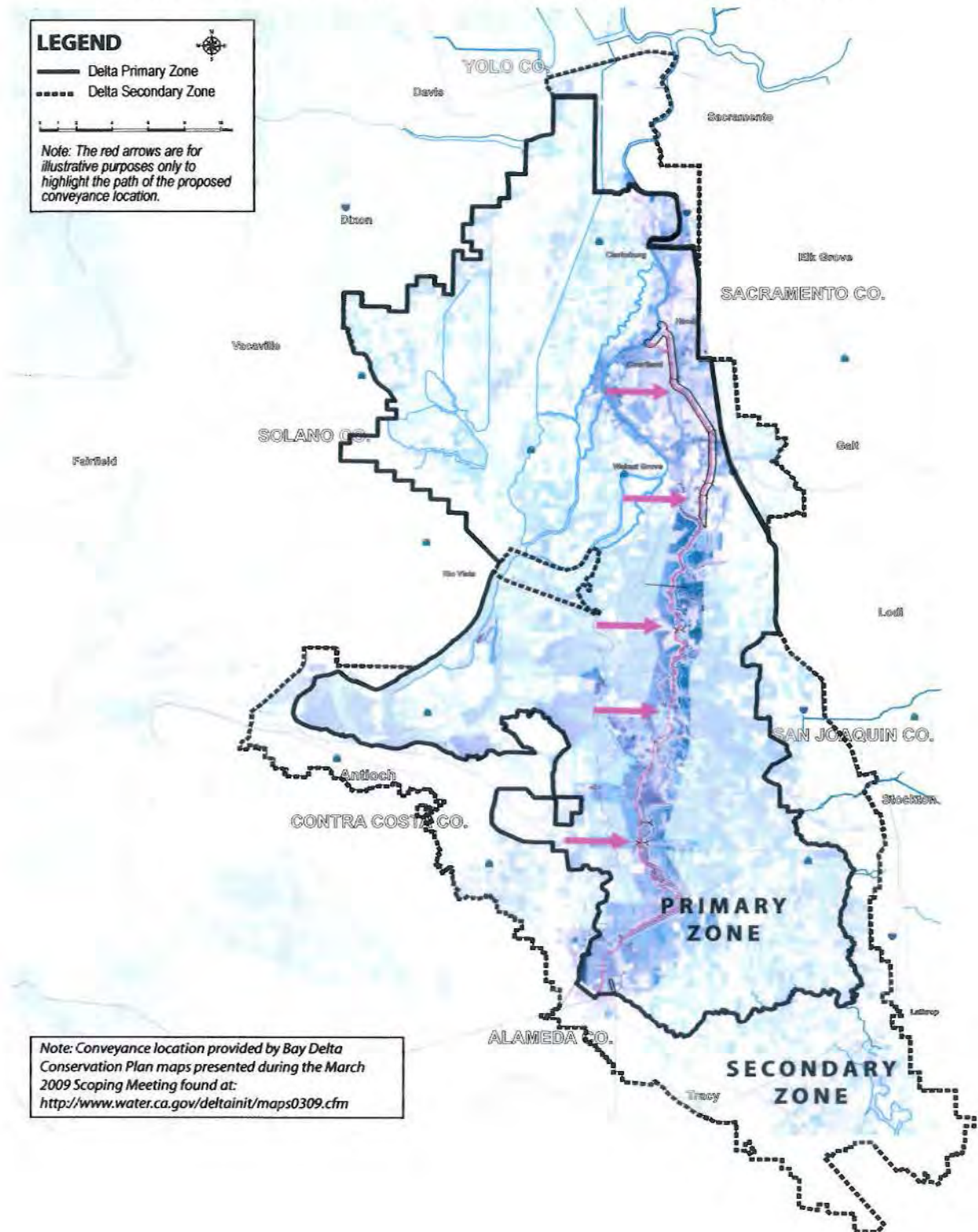
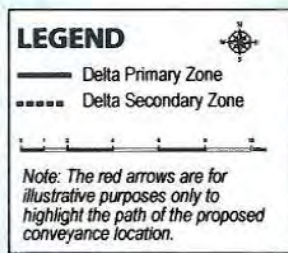


Linda Fiack
Executive Director

Enclosures

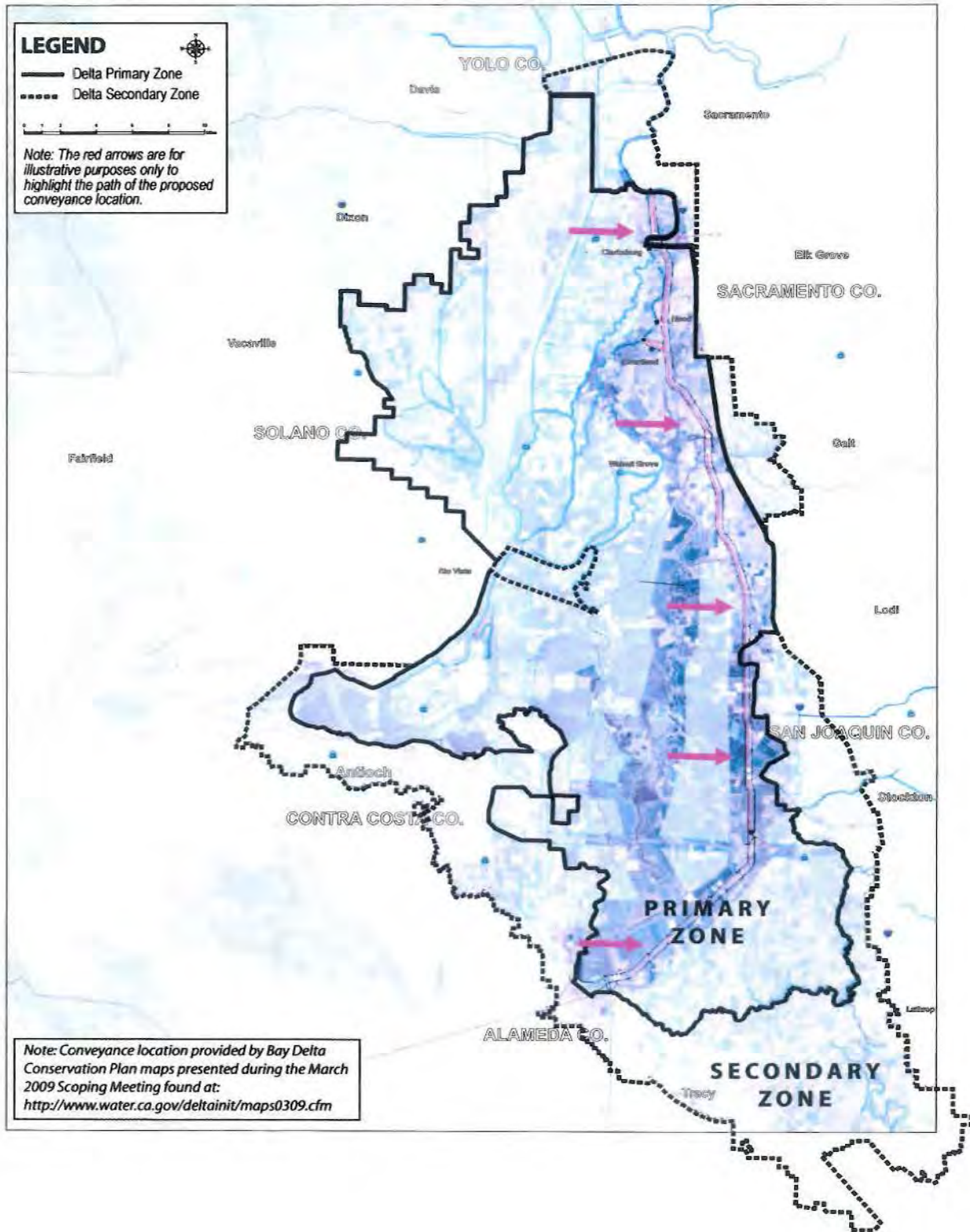
cc: State Clearinghouse
Chair, Contra Costa County Board of Supervisors
Chair, Sacramento County Board of Supervisors
Chair, San Joaquin County Board of Supervisors
Chair, Solano County Board of Supervisors
Chair, Yolo County Board of Supervisors
Members, Delta Protection Commission

Proposed Conveyance Through Delta location relative to Delta Protection Commission Primary and Secondary Zone

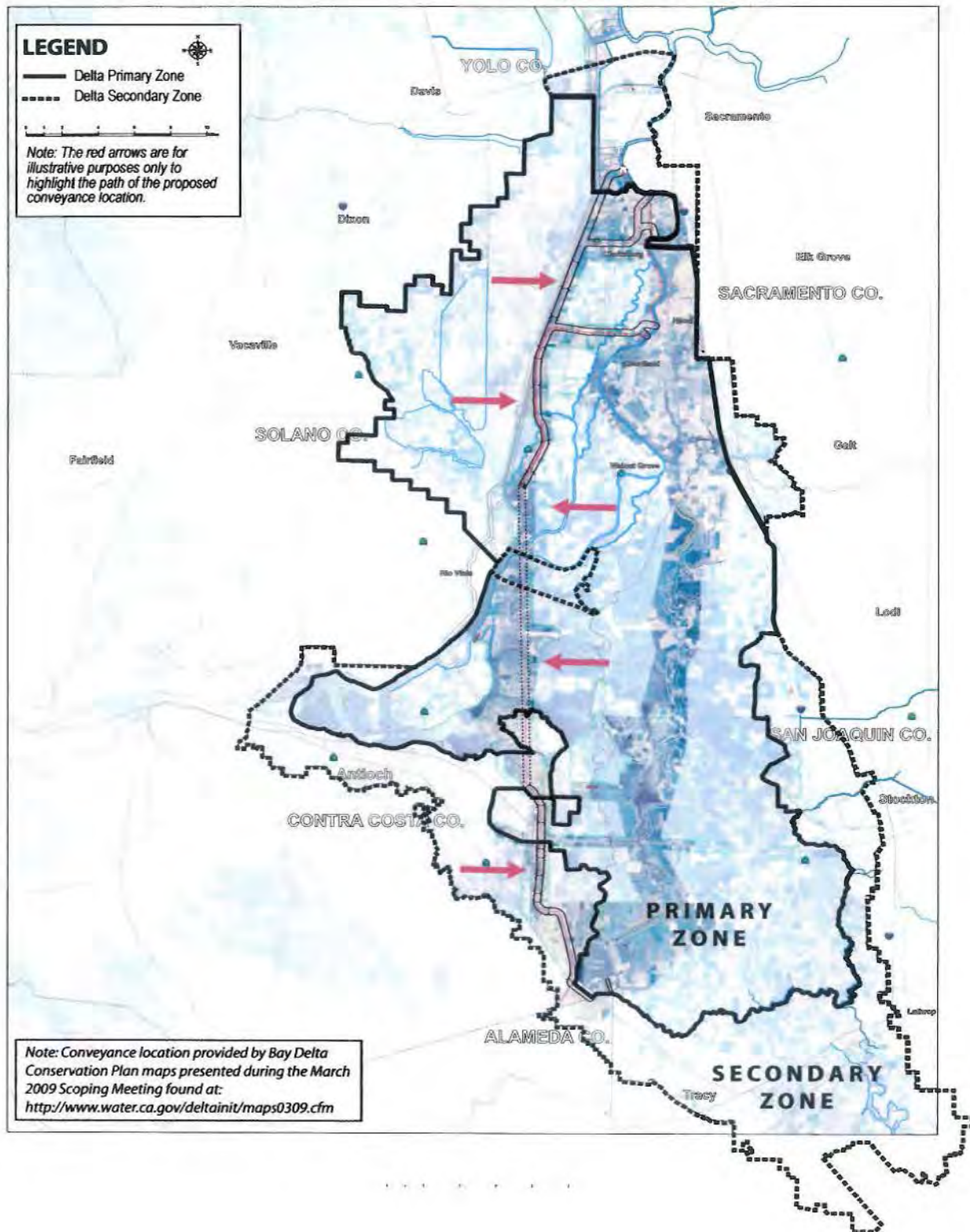


Note: Conveyance location provided by Bay Delta Conservation Plan maps presented during the March 2009 Scoping Meeting found at: <http://www.water.ca.gov/deltainit/maps0309.cfm>

Proposed Conveyance East location relative to Delta Protection Commission Primary and Secondary Zone



Proposed Conveyance West location relative to Delta Protection Commission Primary and Secondary Zone



DELTA PROTECTION COMMISSION

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May 30, 2008

Ms. Delores Brown, Chief
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Department of Water Resources
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Ms. Delores Brown

May 28, 2008

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- Recommendation 2: Support a scientifically-valid study of the carrying capacity of the Delta waterways for recreation activities without degradation of habitat values which minimize impacts to agriculture or levees.

- Recommendation 5: To protect rare and endangered fish species from adverse impacts of poaching, the Department of Fish and Game (DFG) should study the feasibility and value of banning night fishing in the Delta.
- Recommendation 10: New, expanded, or renovated marinas should minimize toxic discharges (including paint, paint chips, chemicals, heavy metals, tributyltin, oil, grease, and fuel) and prohibit discharges of untreated sewage as required under local, State, and federal laws and regulations.
- Policy 2: To minimize impacts to agriculture and to wildlife habitat, local governments shall encourage expansion of existing private water-oriented commercial recreational facilities over construction of new facilities. Local governments shall ensure any new recreational facilities will be adequately supervised and maintained.
- Policy 3: Local governments shall develop siting criteria for recreation projects which will ensure minimal adverse impacts on: agricultural land uses, levees, and public drinking water supply intakes, and identified sensitive wetland and habitat areas.

Levees

- Finding 8: Materials for levee construction and repair have routinely been dredged from adjacent waterways. Environmental regulations to protect endangered fish and other restrictions have limited access to this traditional source of material. Historically lower costs of using dredged material have been offset by increased regulatory costs. Other sources of levee maintenance material include: on-island deposits; quarries; construction projects, including habitat enhancement projects; and spoils from authorized maintenance dredging projects by ports or flood control districts.
- Finding 13: Loss of Delta levees could result in loss of life; lowered water quality for water diverted by local water systems and for export through the State and federal water systems; loss of freshwater due to increased evaporation; loss of property, including crops and structures; and loss of habitat. Rodent dens and tunnels, particularly those created by beaver and muskrat, can adversely affect levee stability and are thought to have been the cause of numerous levee failures.
- Policy 1: Local governments shall ensure that Delta levees are maintained to protect human life, to provide flood protection, to protect private and public property, to protect historic structures and communities, to protect riparian and upland habitat, to promote interstate and intrastate commerce, to protect water quality in the State and federal water projects, and to protect recreational use of the Delta area. Delta levee maintenance and rehabilitation shall be given priority over other uses of the levee areas. To the extent levee integrity is not jeopardized, other uses, including support of vegetation for wildlife habitat, shall be allowed.
- Recommendation 1: Levee maintenance, rehabilitation, and upgrading should be established as the first and highest priority of use of the levee. No other use whether for habitat, trails, recreational facilities, or roads should be allowed to unreasonably adversely impact levee integrity or maintenance.

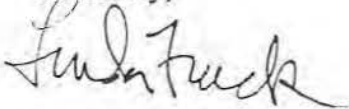
Ms. Delores Brown
May 28, 2008
Page Seven

- Recommendation 2: Landowners, through reclamation districts, should pay a portion of levee maintenance costs. The overall citizenry of California and the United States that benefits from the state and federal water projects, commerce and navigation, travel, production of crops, recreation, and protection of fish and wildlife habitat should also pay a substantial portion of the cost of maintaining the Delta levees. New programs of determining assessments on mineral leases and other beneficiaries should be evaluated by reclamation districts.
- Recommendation 8: To lower levee maintenance costs, streamlined permitting systems for authorization of dredging for levee maintenance and rehabilitation work, including the improvement of wildlife habitat and habitat mitigation sites, and for levee upgrading to mandated standards to protect public health and safety, should be instituted, with one state agency designated as lead agency and one federal agency designated as lead agency. Federal agency concurrence in such designations should be obtained.
- Recommendation 12: Levee maintaining agencies and fish and wildlife agencies should continue to cooperate to establish appropriate vegetation guidelines. Continuation of the SB 34 Program with its incentive funding for mitigation should be supported as the best way to accomplish the goals of levee maintenance with no net long term loss of habitat.

It is also worth noting, relative to the Commission's Management Plan that pursuant to the Commission's adopted 2006-2011 Strategic Plan and in response to the Governor's recommendation in February of 2008, the process for updating the Management plan has been initiated with anticipated completion by the end of the year. Delta initiatives and processes underway (including DBCP and Delta Vision) that may be of relevance to the Commission's policies and mandates are being taken into consideration in this process.

A copy of the Management Plan and the Act are available at the Commission's web site www.delta.ca.gov for your reference. Please contact me at (916) 776-2292 or lindadpc@citlink.net if you have any questions regarding the Commission or the comments provided herein.

Sincerely,



Linda Fiack
Executive Director



Making San Francisco Bay Better

May 14, 2009

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

SUBJECT: Revised Notice of Preparation of an Environmental Impact Report and
Environmental Impact Statement for the Bay-Delta Conservation Plan

Dear Ms. Brown:

On February 13, 2009, the State Clearinghouse, Governor's Office of Planning and Research, received the Revised Notice of Preparation (NOP) of an Environmental Impact Report and Environmental Impact Statement (EIR/ EIS) for the Sacramento-San Joaquin Bay-Delta Conservation Plan (BDCP). Pursuant to the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), the California Department of Water Resources (DWR), National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), and the U.S. Bureau of Reclamation (Reclamation) are preparing a joint EIR/ EIS that will include analysis of improved water conveyance infrastructure and other habitat conservation measures that will be developed to advance the goals and objectives of the BDCP. DWR will serve as the State lead agency and the California Department of Fish and Game will be a responsible and trustee agency under CEQA. Reclamation is the lead agency and NMFS and FWS are co-lead agencies under NEPA.

Although the San Francisco Bay Conservation and Development Commission (Commission) itself has not reviewed the NOP, the staff comments discussed below are based on the McAteer-Petris Act, the Suisun Marsh Preservation Act, the Commission's *San Francisco Bay Plan* (Bay Plan), the *Suisun Marsh Protection Plan* (Marsh Plan), the Commission's federally-approved coastal management plan for the San Francisco Bay, and the federal Coastal Zone Management Act (CZMA).

The Commission staff supports the BDCP's goal of enhancing and restoring ecosystem processes and functions, including seasonal floodplain habitat, subtidal and intertidal habitat, hydrologic conditions, and salinity within the Delta estuary, as well as reducing direct losses of fish and other aquatic organisms. The staff also supports the BDCP's purpose of providing for the conservation of threatened and endangered species in the Delta and improving the reliability of the water supply within a stable regulatory framework. However, the staff believes it will be critical for the BDCP agencies to coordinate closely with other Bay and Delta initiatives, such as the *Delta Vision Strategic Plan* recommendations, the Delta Risk Management Strategy, and other ongoing and planned habitat restoration efforts in the estuary.

Jurisdiction. The Commission's permit jurisdiction includes all tidal areas of the Bay up to the line of mean high tide or, in areas of tidal wetlands, up to five feet above Mean Sea Level or the extent of tidal wetland vegetation; all areas formerly subject to tidal action that have been filled since September 17, 1965; and the shoreline band that extends 100 feet inland from and parallel to the Bay jurisdiction. The Commission also has jurisdiction over certain managed wetlands adjacent to the Bay, salt ponds, and certain waterways, and the Suisun Marsh.

The proposed project would cross the eastern limit of the Commission's Bay jurisdiction, which is defined by a line across the Sacramento River between Stake Point and Simmons Point, extending northeast to the mouth of Marshall Cut. A section of the proposed project would be located in portions of the Suisun Marsh and Suisun Bay within Solano County and, thus, also in the Commission's primary management jurisdiction of the Suisun Marsh.

Commission permits are required for placement of fill, construction, dredging, and substantial changes in use within its jurisdiction. Permits are issued when the Commission finds proposed activities to be consistent with its laws and policies. In addition to any needed permits under its state authority, federal actions, permits, licenses and grants affecting the Commission's coastal jurisdiction are subject to review by the Commission, pursuant to the federal CZMA, for their consistency with the Commission's federally-approved coastal management program for the Bay.

From reviewing the NOP, it appears that the proposed project may include the following activities within the Commission's Bay and Marsh jurisdictions: (1) maintenance, improvement or changes in operation of water management facilities, such as the Suisun Marsh Salinity Control Gates; (2) habitat restoration; and (3) new power lines and rights of way. In addition, new water conveyance facilities and changes in operation of existing facilities outside the Commission's jurisdiction in the Delta have the potential to alter circulation patterns, affect water quality, or result in other impacts in the Commission's Bay and Marsh jurisdictions.

Fresh Water Inflow. The Bay Plan and Marsh Plan policies call for adequate freshwater inflow to the Bay and Suisun Marsh and provide additional guidance regarding legal requirements promulgated by the State Water Resources Control Board.

The Bay Plan recognizes the importance of fresh water inflows to the ecosystem of the Bay. Bay Plan findings state that "conserving fish, other aquatic organisms and wildlife depends, among other things, upon availability of ...proper fresh water inflows, temperature, salt content, water quality, and velocity of the water."

The Bay Plan's Fresh Water Inflow policies state, in part:

Diversions of fresh water should not reduce the inflow into the Bay to the point of damaging the oxygen content of the Bay, the flushing of the Bay, or the ability of the Bay to support existing wildlife....

High priority should be given to the preservation of Suisun Marsh through adequate protective measures including maintenance of freshwater inflows....

The impact of diversions of fresh water inflow into the Bay should be monitored by the State Water Resources Control Board, which should set standards to restore historical levels (1922-1967) of fish and wildlife resources. The Bay Commission should cooperate with the State Board and others to ensure that adequate fresh water inflows to protect the Bay are made available.

The Marsh Plan recognizes that the Suisun Marsh, located where salt water and fresh water meet and mix, contains "the unique diversity of fish and wildlife habitats characteristic of a brackish marsh."

Marsh Plan policies state, in part:

There should be no increase in diversions by State or Federal Governments that would cause violations of existing Delta Decision or Basin Plan standards....

Water quality standards in the Marsh should be met by maintaining adequate inflows from the Delta.

To address these policies, we recommend that the EIR/ EIS include analysis of the fresh water flow needs of the entire estuary, not just the Delta. This includes the need for peak flows that transport sediment and nutrients to the Bay, increase mixing of Bay waters, and create low salinity habitat in Suisun Bay, San Pablo Bay and the upper part of central San Francisco Bay.

The *Delta Vision Strategic Plan* (October 2008) included recommendations regarding adequate flows for the Bay-Delta ecosystem. Strategy 3.4 calls for restoring Delta flows and channels to support a healthy Delta estuary, including:

- Flows to produce sufficient volumes of open water habitat of the appropriate water quality, including salinity, temperature, and concentrations of dissolved oxygen and contaminants, e.g., adequate low salinity fall habitat for the Delta smelt;
- Flows to reduce fish entrainment in pumps and other water facilities; and
- Flows to provide adequate fish migration cues, e.g., high flows that trigger migration of salmonids.

The EIR/ EIS should analyze the flow recommendations in the *Delta Vision Strategic Plan* and other recent publications in order to determine the appropriate flows needed support ecosystem processes as well as the recovery of individual species in the Bay and Suisun Marsh.

Wetland Restoration. Much of the Bay's historic tidal wetlands have been lost, including 80 percent of tidal marshes and 40 percent of tidal flats. The Bay Plan and Marsh Plan encourage wetland restoration and enhancement.

The Bay Plan's policies state, in part:

Where and whenever possible, former tidal marshes and tidal flats that have been diked from the Bay should be restored to tidal action in order to replace lost historic wetlands or should be managed to provide important Bay habitat functions, such as resting, foraging and breeding habitat for fish, other aquatic organisms and wildlife. As recommended in the *Baylands Ecosystem Habitat Goals* report, around 65,000 acres of area diked from the Bay should be restored to tidal action....

If the owner of any managed wetland withdraws any of the wetlands from their present use, the public should make every effort to buy these lands and restore to tidal or subtidal habitat, or retain, enhance and manage these areas as diked wetland habitat for the benefit of multiple species. This type of purchase should have a high priority for any public funds available.

Ongoing large-scale efforts to restore Bay wetlands have great potential to benefit the entire estuary, including species of concern, yet these projects could inadvertently be adversely affected if Delta management actions, such as restoring Delta islands, result in the capture of sediments that would otherwise flow to the Bay. We request that the EIR/EIS include analysis of sediment dynamics throughout the whole system, including potential impacts on the Bay.

The Bay Plan's dredging policies encourage the reuse of dredged material in wetland restoration projects, as appropriate, and support efforts to fund the additional costs associated with transporting dredged material to project sites. We suggest that the BDCP agencies encourage the coordination of use of dredged material in the Bay and Delta as part of a regional sediment management strategy.

The Commission has a long and successful history of managing natural resources in the Suisun Marsh. The Commission is currently participating in the Suisun Marsh Charter Group to develop a new Habitat Management, Preservation and Restoration Plan for Suisun Marsh. Our priorities for the new plan include enhancing seasonal and managed wetlands that provide essential wintering habitat for waterfowl of the Pacific Flyway, supporting tidal restoration, and supporting maintenance of Suisun Marsh levees.

Suisun Marsh Protection Plan policies state, in part:

The diversity of habitats in the Suisun Marsh and surrounding upland areas should be preserved and enhanced wherever possible to maintain the unique wildlife resource....

Where feasible, historic marshes should be returned to wetland status, either as tidal marshes or managed wetlands. If, in the future, some of the managed wetlands are no longer needed for private waterfowl hunting, they should be restored to tidal or subtidal habitat, or retained as diked wetland habitat and enhanced and managed for the benefit of multiple species....

The Suisun Resource Conservation District should be empowered to improve and maintain exterior levee systems as well as other water control facilities on the privately owned managed wetlands within the primary management area.

Our staff urges the BDCP agencies to incorporate Marsh Plan and Bay Plan policies, as well as the information in the Commission's draft staff report on climate change, as it develops the BDCP in order to ensure that wetland restoration in the Bay and Delta are coordinated to maximize public benefits.

Climate Change. Climate change and accelerating sea level rise could result in devastating impacts to the Bay and Delta. As the Commission has noted in the draft staff report *Living with a Rising Bay: Vulnerability and Adaptation in San Francisco Bay and on the Shoreline* (April 2009):

Salinity increases due to climate change may dramatically impact the brackish and freshwater marshes found in Suisun Marsh....

Since brackish and freshwater tidal marshes tend to be more productive and provide habitat for a greater diversity of plants than salt marshes, elimination of these valuable wetlands or their conversion to salt marshes could reverberate throughout the food

web and reduce the habitat available to rare and endangered species (Callaway et al. 2007, Newcombe and Mason 1972, Baye et al. 2000, Lyons et al., 2005).

Efforts to use water control structures, such as salinity gates, to artificially reduce salinity in Suisun Marsh in dry years are likely to become increasingly difficult in the face of climate change. The Suisun Marsh Salinity Control Gates restrict the flow of higher salinity water from incoming tides and retain [lower salinity] Sacramento River water from the previous outgoing tide. An eastward shift of the salinity gradient caused by sea level rise will likely reduce opportunities for importing freshwater into the Suisun Marsh.

We therefore request that the EIR/EIS evaluate the proposed project in relation to potential climate change impacts on the Bay and Delta, particularly on the brackish wetlands of the Suisun Marsh.

Multiple Levee Failures. The Delta Risk Management Strategy and other recent publications have explored the potential impacts of multiple levee failures and the simultaneous flooding of several Delta islands. These analyses focused on the disruption of water exports and economic consequences. As the DRMS report states, "Impacts to aquatic species were not quantified in the DRMS Project and require further study." Similarly, impacts to water quality were not quantified in the DRMS Project. The EIR/EIS should address the potential impacts of multiple levee failures on the ecosystems of Suisun Marsh and the Bay and how those impacts might vary in different conveyance and water project operations scenarios.

Minimize Harmful Effects to the Bay. The proposed project would need to be consistent with all applicable Bay Plan policies. Therefore, the EIR/EIS should address other applicable Bay Plan policies, including a discussion about the Commission's regulatory requirements governing the protection of the Bay's natural resources, including fish, other aquatic organisms, and wildlife, and certain habitat needed for their protection, including tidal flats and marshes and subtidal areas. The Bay Plan policies on fish, other aquatic organisms, and wildlife, state that marshes, mudflats, and subtidal habitat should be "conserved, restored, and increased." Furthermore, the Commission must consult with and give appropriate consideration to the state and federal resource agencies, and not authorize any project resulting in a "taking" of a listed species unless the appropriate authorization has been issued by the resource agencies. According to the Bay Plan policies on tidal marshes and tidal flats, and subtidal areas, all projects subject to Commission consideration should also be sited and designed to minimize or avoid adverse resource impacts in these areas.

The EIR/EIS should analyze how the entire project, not just the portion within the Commission's permit jurisdiction, will affect the hydrology, sediment dynamics, water quality and biological resources of the Bay. As mentioned above, it should include analysis of climate change impacts, including the potential impacts of sea level rise, precipitation patterns, and changes in air and water temperature. It should also analyze cumulative impacts, including the potential impacts of other projects being planned for the Bay-Delta estuary and its watershed, such as dam construction, habitat restoration, levee repairs and upgrades, and the deepening of the Stockton and Sacramento Ship Channels. The EIR/EIS should discuss the Commission's regulatory authority governing the protection of the Bay's and the Marsh's natural resources and habitats.

Water Quality. Pursuant to the Commission's water quality policies in the Bay Plan, pollution in the Bay's water "should be prevented to the greatest extent feasible." Further, in considering this project, the Commission would need to consult with and base its decision on the San Francisco Bay Regional Water Quality Board's evaluation of and advice on the proposed project and any potential water quality impacts. Therefore, the Commission encourages the project proponents to continue conducting early consultation with and working to obtain all necessary authorization from the Regional Board to aid the Commission in determining whether the project would adversely impact the Bay's water quality. The EIR/EIS should analyze the impacts of the project on salinity, temperature and concentrations of dissolved oxygen and contaminants in the Bay.

Utilities and Improvements. The Marsh Plan policies on utilities, facilities and transportation state, in part, that "New electric power transmission utility corridors should be located at least one-half mile from the edge of the Marsh." In light of this policy, the EIR/EIS should: (1) clearly show the location of any proposed new power lines in relation to the boundary of the Suisun Marsh; (2) identify any potential project-related impacts to wetlands in the Marsh and measures for mitigating these effects; and (3) provide a construction schedule for any work affecting wetland area in the Marsh.

Mitigation. In the event that the proposed project would result in adverse environmental impacts that cannot be avoided, the EIR/EIS should discuss mitigation measures. The Commission's policies regarding mitigation state, in part, that "projects should be designed to avoid adverse environmental impacts to [the] Bay" and, further, that "[w]henver adverse impacts cannot be avoided, they should be minimized to the greatest extent practicable....[and] measures to compensate for...impacts should be required."

Coastal Zone Management Act. We request that the EIR/EIS indicate that under CZMA (16 USC 1456(c) and (d)) the Commission is authorized to review any federal actions, permits, licenses and grants affecting any land or water use or natural resources within the Commission's coastal jurisdiction (i.e., San Francisco Bay and Suisun Marsh) for consistency with the Commission's laws and regulations.

Thank you for the opportunity to comment on this NOP. If you have any questions regarding this letter or the Commission's policies, please call me at (415) 352-3660 or email me at jessicah@bcdca.gov.

Sincerely,



JESSICA HAMBURGER
Coastal Program Analyst

JH/rca

By U.S. Mail and e-mail (delores@water.ca.gov)

1 **APPENDIX H4: 2009 LOCAL AGENCIES SCOPING COMMENTS**



Central Contra Costa Sanitary District

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JAMES M. KELLY
General Manager

KENTON L. ALM
Counsel for the District
(510) 808-2000

ELAINE R. BOEHME
Secretary of the District

May 14, 2009

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

Dear Ms. Brown:

Comments in response to Revised Notice of Preparation – Environmental Impact Report and Environmental Impact Statement for the Bay Delta Conservation Plan

The Central Contra Costa Sanitary District (District) appreciates the opportunity to offer comments on the Environmental Impact Report/Environmental Impact Statement (EIR/EIS) that will be prepared to evaluate the environmental impacts of a proposed Bay Delta Conservation Plan (BDCP).

The District currently discharges an average of 44,000 acre feet per year (AFY) or 40 million gallons per day (mgd) of secondary treated effluent to the Suisun Bay just upstream of the Carquinez Bridge. In light of the current drought situation, we have been aggressively promoting recycled water and particularly a project that would use existing transmission and reservoir facilities to serve approximately 22,000 acre feet per year of water to the Shell and Tesoro refineries located nearby in Martinez. These refineries currently utilize about 22,000 acre feet per year of raw water supplied by the Contra Costa Water District. We would like to bring this project to your attention and ask that it be considered as a component of any analysis of the Delta, due to its potential to reduce diversions from the Delta by replacing water that is currently being diverted with recycled water. You may find our comment letter on the Los Vaqueros Reservoir Expansion Project DEIS/EIR (attached) of interest, as it covers many issues relevant to the development of the BDCP.

We also have an interest in ensuring that any projects implemented as a result of the Bay Delta Conservation Plan not have an adverse impact on Delta Outflow such that the dilution available at our outfall is impacted. We encourage you to include our discharge and potential for recycling as a component of your Delta modeling effort so that impacts and benefits can be identified and addressed in the planning process.

Finally, we were recently included in the list of wastewater treatment facilities that contribute ammonia to the Delta. This ammonia contribution is listed as a possible "Other Stressor" to the Delta ecology. Available research on this topic is limited and our District and the wastewater industry as a whole are very concerned that proper scientific study be conducted to substantiate and quantify this potential impact. As you are probably aware, the addition of technology to remove ammonia is extremely expensive and energy intensive. Therefore, it

would be a disservice to the public to speculate on the impacts of ammonia and rush to a judgment whose costs would be significant. We encourage you to weigh the theoretical impact of ammonia discharges against the very real impact of the timing, location, and quantity of water exports to ensure that public monies are spent appropriately and where the conservation benefits would be greatest.

The District appreciates the opportunity to provide these comments at this stage in the development of the BDCP EIR/EIS and looks forward to continued and increased involvement in development of a BDCP that will lead to the recovery of the Delta Ecosystem.

Sincerely,



Ann E. Farrell
Director of Engineering

AEF/mvp

Attachment



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JAMES M. KELLY
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ELAINE R. BOEHME
Secretary of the District

April 21, 2009

Ms. Marguerite Naillon
Contra Costa Water District
P.O. Box H20
Concord, CA 94524

Mr. Louis Moore
US Bureau of Reclamation
2800 Cottage Way, MP-700
Sacramento, CA 95825

Dear Ms. Naillon and Mr. Moore:

Comments on the Los Vaqueros Reservoir Expansion Project DEIS/EIR

The Central Contra Costa Sanitary District (CCCSD) appreciates the opportunity to comment on the Draft Environmental Impact Statement/Environmental Impact Report (EIS/R) for the Los Vaqueros Reservoir Expansion Project (LVRE). The Project as proposed has many attributes that we support. It will provide needed water supply reliability and allow for improved environmental water management. In addition, it brings regional and state-wide partners to the table and creates opportunities to transfer any supplemental water created to these partners. For these reasons, the project creates benefits for our common rate payers and for the region and the State.

However, as you are aware, CCCSD believes recycling of treated wastewater and the Martinez Refinery Recycled Water Project (Refinery Project) should have been included and analyzed as part of the LVRE project and would significantly increase the benefits created. In fact, our estimates show adding recycled water to LVRE Alternative 1, Expansion to 275 TAF, could increase CCWD Water Supply Reliability Benefits from the project by 1100%. By adding recycled water to LVRE Alternative 4, Expansion to 160 TAF, water available for Environmental Water Management could be increased by up to 1650% over the stand alone project. In letters submitted August 21, 2003, we provided the CALFED Bay-Delta Authority and Contra Costa Water District (CCWD), respectively, with information expressing our position regarding the LVRE and our request for the inclusion of recycling of treated wastewater in the environmental review process. CCCSD also submitted verbal testimony at the LVRE public hearing held on March 31, 2009 in Concord, California. Copies of these letters and public testimony are attached for your review.

Background of the Central Contra Costa Sanitary District and the Martinez Refinery Recycled Water Project

Water recycling is an integral part of CCCSD's mission. CCCSD currently discharges an average of 44,000 acre feet per year (AFY) or 40 million gallons per day (mgd) of secondary treated wastewater to the Suisun Bay. If this amount of recycled water were used to create an offset of potable water, the offset would result in enough potable water to serve 100,000 single

family residences. This water could also be used to provide additional water supply reliability for existing uses or to enhance the Delta environment.

Currently, CCCSD has a modest recycled water program that supplies high-quality, tertiary-treated recycled water primarily for landscape irrigation purposes. Due to the substantial amount of additional recycled water that could be made available, CCCSD has been working for many years to expand use of recycled water to include supplies for industrial uses with consistent year-round demand. The table below illustrates the amount of recycled water that could be produced by CCCSD.

Treated CCCSD Effluent Available for Recycling			
	AFY	MGD	CFS
Current Annual Average Treated Wastewater Discharge	44,000	40	62
Average Dry Weather Treated Wastewater Flow Available ¹	40,000	36	56
Average Daily Existing Recycled Water Use ²	7,000	6	16
Remaining Recycled Water Available for Use	33,000	30	46
Potential Recycled Water Demand Identified for Martinez Refineries	22,000	20	31
Remaining Recycled Water Available for Potable or Environmental Use	11,000	10	16

¹In dry summer months

²In hottest summer month with highest recycled water demand

In the early 1970s, a pipeline and storage tanks were constructed with public dollars to enable the supply of recycled wastewater from CCCSD's treatment facility in Martinez to the nearby Shell and Tesoro refineries, also in Martinez. More than 30 years later, the benefits of those facilities remain largely unrealized because the facilities have hardly been used. Currently, CCCSD is seeking \$100 – 150 million dollars in federal, state, and local funds to realize this opportunity. CCWD is the water purveyor in north-central Contra Costa County and shares ownership of a portion of the pipelines to the refineries. In light of these facts, CCCSD has actively engaged in discussions with CCWD for the past 15 years in an effort to implement this long-planned Refinery Project. We share the common goals of providing good quality, affordable water to our customers while reducing the burden on the fragile Delta ecosystem. Providing refineries and other users with recycled water frees up potable water supplies to meet environmental or other demands as well as improving the reliability of water supplies. CCCSD firmly believes that the Refinery Project and recycled water in general should be a component of the LVRE for the reasons stated below.

Recycling CCCSD's Treated Effluent Would Enhance Meeting LVRE Objectives

We believe that the Refinery Project, and recycling in general, meets the primary and secondary objectives of the project:

- **Develop water supplies for environmental water management that support fish protection, habitat management, and other environmental water needs.**

The LVRE project purpose and need statement indicates that, during dry periods, the U.S. Department of the Interior, Bureau of Reclamation's (Reclamation) Central Valley Project (CVP) has difficulty meeting its environmental water requirements required by the Central Valley Project Improvement Act and meeting its contractual water supply obligations. Our Refinery Project could free up 22,000 acre-feet per year (AFY) of fresh water that could be used for environmental enhancement by leaving it in the Delta to augment Delta outflows to meet flow requirements necessary to protect declining fish species. Additional water recycling projects could free up another 11,000 AFY of fresh water.

- **Increase water supply reliability for water providers within the San Francisco Bay Area, to help meet municipal and industrial water demands during drought periods and emergencies or to address shortages due to regulatory and environmental restrictions.**

The benefits derived from CCCSD's proposed Refinery Project and other similar projects are multifold. The Refinery Project alone would create up to an additional 22,000 AFY of new water supply for industrial users currently serviced by CCWD. This new supply is drought-resistant and would provide a more reliable source of water for industrial demands. This would free up a significant amount of water that Reclamation, CCWD and the South Bay project participants could use to: (a) store in Los Vaqueros Reservoir; (b) reduce diversions from the Delta; or (c) meet municipal water demands during drought, emergencies or other times of shortage. If industries were served 22,000 AFY by the Refinery Project water in lieu of CCWD potable water, CCWD would have enough potable water to meet the demands of 50,000 families or alternatively, more fresh water could be released upstream in the Delta for environmental enhancement.

Acknowledging the importance of recycled water use in its service area, CCWD specifically included recycled water in its year 2005 Draft Urban Water Management Plan (UWMP). Table 5-2 of the UWMP lists "Potential Uses of Recycled Water" wherein there are 35,900 AFY identified as being available from CCCSD (9,000 AFY for urban irrigation and 26,900 AFY for oil refinery process use). However, the UWMP goes on to estimate actual and projected future use of recycled water as only 12,000 AFY by the year 2030 – more than 20 years from now.

The CCWD UWMP anticipates that a multi-year drought would result in mandatory water supply reductions and that the second and third years of a multi-year drought would result in year 2030 supply deficiencies of 17% and 18%, respectfully. In addition, the plan calls for purchasing supplemental water from others which puts farmers at an economic disadvantage in the competition for scarce resources and could lead to land being taken out of production. Unfortunately some of this land has been planted in fruit trees and grape vines and cannot simply be taken out of production like land planted in rice or cotton. This can result in significant economic hardship to the impacted businesses and communities. Greater development and reliance upon recycled water could alleviate this possible demand reduction response to anticipated multi-year droughts. The use of recycled water in the CCWD service area would also free up water that could be transferred to the South Bay Water Agencies, who are potential project participants.

In short, CCCSD maintains that the Refinery Project and all potential recycled water projects create *new* water supply that translates into increased water supply reliability and flexibility to meet demands and increased environmental benefits resulting from a reduction in fresh water diversion from the Delta.

■ **Improve the quality of water deliveries to municipal and industrial customers in the San Francisco Bay Area.**

The Refinery Project would result in improved water quality for industrial customers because its supply of water is steady and reliable and the quality of the water is predictable. As stated in the background of the need for the project, Delta water currently supplied to municipal and industrial users is subject to seasonal variations (and often degraded water supply) with elevated salinity, total dissolved solids, bromides and other constituents. This variation requires industries to alter their operations or provide additional water treatment to ensure the quality is acceptable for use in their cooling tower operations. The Refinery Project could help address these problems for these industrial users. The CCWD UWMP acknowledges that recycled water projects could supply highly-treated recycled wastewater to selected industrial customers for process and cooling purposes.

As a general comment, the stated objective is to improve water quality for industrial customers; however, the background of the need for the project focuses solely on the need for improved *drinking* water quality for San Francisco Bay Area municipal customers. The need for improved water quality for industrial uses is not clearly stated or addressed.

Recycled Water Inadequately Considered in Alternatives Analysis

According to CEQ NEPA Regulations (40 C.F.R. 1502.14), the alternatives section of a Draft EIS is required to rigorously explore and objectively evaluate all reasonable alternatives. CCCSD's readily available supply of high-quality recycled water and the Refinery Project in particular were not adequately considered as an alternative to increased storage or as a component that would require less storage and result in fewer environmental effects or result in an increase in yield for the same amount of storage.

The EIS/R summarily dismisses the consideration of recycled water programs in its alternatives analysis stating in Table B-1 that "recycled water programs are being actively pursued by other CALFED agencies and by individual agencies in the Bay Area." Table B-1 also states that the potential to address LVRE project objectives is limited by acceptable uses of recycled water, yet no specific examples are given.

It is true that Bay Area agencies are pursuing recycled water programs, but there are few that have the potential to deliver the yield of 22,000 AFY as the CCCSD Refinery Project. In addition, the spirit and intent of the CALFED Water Supply Reliability Program are to look at actions synergistically to achieve the overall goal. In point of fact, Reclamation is one of the implementing agencies for the CALFED Water Use Efficiency (WUE) Program – one of five elements of the CALFED Water Supply Reliability Program. WUE Program actions, including recycled water actions, were considered in the CALFED Water Supply Reliability Program. The actions of all five program elements were to be implemented in concert to achieve CALFED's overall goal of water supply reliability.

As a CALFED WUE implementing agency, the role of Reclamation is to "support local agencies implementing WUE actions at the local level through assistance programs and in overcoming implementation constraints." Given its CALFED role as a WUE implementing agency, and its role as federal lead on the LVRE, Reclamation has a responsibility to more rigorously consider recycling actions as part of the LVRE project.

In addition, through the LVRE project or other avenues, Reclamation could play a key role in overcoming CCCSD's Recycled Water Program implementation constraints and assist in coordinating efforts between CCWD and CCCSD to find acceptable, creative and mutually-beneficial solutions to address CCWD's potential loss of revenue.

The Alternatives Development further explains that

... initial concepts related to water use efficiency, such as additional water conservation and recycled water use, were not carried forward beyond Step 1. In general, substantial programs are already in place at each Bay Area water agency to improve water use efficiency. Additional efforts in these concepts would not contribute to the two primary objectives defined for the project: environmental water management and water supply reliability. Further reducing Bay Area water agency demand for Delta water would result in a very small decrease in Delta diversions and the associated environmental water benefit. Additional water conservation without storage to hold water for dry years would provide little benefit in dry years and reduce the effectiveness of drought management (rationing) programs that most Bay Area water agencies would rely on to maintain deliveries through extended drought periods.

Again, we believe that the Refinery Project, and recycled water in general, meet the LVRE project objectives. Moreover, the statement regarding further reduction of demand resulting in a very small decrease in Delta diversions is not correct when you consider the 22,000 AFY yield the Refinery Project would produce. In our discussion of the Benefits of the Refinery Project, below, you will see the significant percentage of increase in yield it would create for any of the project alternatives. Furthermore, this statement would appear to conflict with the CALFED Record of Decision, which viewed "investment in recycling as a cost-effective way to better balance supply and demand in the near-term, especially compared to surface storage and major conveyance improvements that were estimated to take at least 5–10 years to complete." The recycling actions in the CALFED ROD are intended to "address the growing mismatch between water supply demand caused by rapidly growing urban populations and static supplies."

Table B-6, Summary Comparison of Initial Plans, compares the ability of an initial plan to meet the federal Principles and Guidelines criteria of completeness, effectiveness, efficiency and acceptability without providing any detail on estimated costs of each initial plan. Determinations of low, moderate or high are made to provide comparison of an initial plan's ability to meet efficiency criteria. These determinations often indicate that the cost per unit of output is high or low compared to other plans. However, there is no information in the table outlining these estimated costs. To enable the public and responsible state and local agencies to fully understand how the LVRE project alternatives were developed and to compare these alternatives with other potential alternatives projects with similar benefits, such as recycling, the Alternatives Development should include the cost estimates upon which these determinations were made.

Benefits of the Refinery Project and Recycled Water

Significant Additional Yield

The CCCSD Refinery Project is one of the few potential recycled water projects in the state of California that could generate such a significant yield on a continuous annual basis. Including this project as a component of the LVRE project would result in significantly higher yields. Alternative 1 has the higher expanded capacity of 275 thousand acre feet (TAF), and Alternative 4 has the lower expanded capacity of 160 TAF. The following two tables demonstrate the range of increase the Refinery Project could produce in additional yield and percentage of increase for Alternatives 1 and 4. To provide a further point of comparison, the table notes the additional yield that could be achieved if all of CCCSD's available recycled water was used. The benefits of the additional yield in a 6-year drought situation are significant with an up to 1,100% increase in CCWD Water Reliability yield if recycled water is added to LVRE Alternative 1 and an up to 1,650% increase in Environmental Water Management yield if recycled water is added to LVRE Alternative 4.

LVRE Alternative 1 – 275 TAF Expanded Storage with South Bay Connection Summary of Benefits in 6-Year Drought —With Added Benefits of Recycled Water			
Operations	Average Annual Yield (Table ES-2)	With Additional Annual 22 TAF Yield from Refinery Project (% increase)	With Additional Annual 33 TAF Yield from recycling all available CCCSD effluent (% increase)
Environmental Water Management	135 TAF/yr	157TAF/yr (16%)	168 TAF/yr (24%)
South Bay Water Agencies Water Supply Reliability	30 TAF/yr	52 TAF/yr (73%)	63 TAF/yr (110%)
CCWD Water Supply Reliability	3 TAF/yr	25 TAF/yr (733%)	36 TAF/yr (1,100%)

LVRE Alternative 4 – 160 TAF Reservoir Expansion with No South Bay Connection Summary of Benefits in 6-year Drought —With Added Benefits of Recycled Water			
Operations	Annual Average TAF Yield (Table ES-4)	With Additional Annual 22 TAF Yield from Refinery Project (% increase)	With Additional Annual 33 TAF Yield from recycling all available CCCSD effluent (% increase)
Environmental Water Management	2 TAF/yr	24 TAF/yr (1100%)	35 TAF/yr (1650%)
Water Supply Reliability	10 TAF/yr	32 TAF/yr (220%)	43 TAF/yr (330%)

No Significant Increase in Environmental Impacts

Alternative 1, which represents the largest expansion and has the greatest extent of associated facilities, includes an expansion of the reservoir from 1,500 acres to 2,500 acres, raising the dam, constructing an additional intake facility and expanding pipelines and transfer facilities. The impacts of this alternative include those on biological resources, cultural resources and

some significant and unavoidable impacts on habitat for the San Joaquin kit fox, with accompanying considerable mitigation costs.

Comparatively, the pipeline and storage tanks for the Refinery Project are already in place. Construction of additional recycled water treatment facilities would have no significant impacts as it would be constructed on the already disturbed site of the CCCSD wastewater treatment facilities. The construction of the Refinery Project in combination with Alternatives 1, 2, 3 or 4 would result in no significant increase in environmental impacts from those expected from a stand alone LVRE Project.

Making the Best Collective Use of Tax Dollars

In addition to the benefit of increased yield with no significant increase in environmental impacts, the Refinery Project makes the best collective use of already expended public dollars and future proposed tax dollars. Given the current economic climate in the state of California and the world economy, the public expects reasonable returns on their public investments and more responsible, thoughtful spending of current and future tax dollars.

LVRE Project Impacts on Net Delta Outflow Greater than from Recycling all CCCSD's Effluent

As discussed in the LVRE environmental documentation, seasonal variations in Delta outflow play an important role in determining the reproductive success and survival of many estuarine species, including salmon, striped bass, delta smelt and others. Those flows from February through June are especially important.

The Delta Outflow Analysis for LVRE summarized in Tables 4.3-11 and 4.3-12 in average years notes the most significant impact in the month of May. With an outflow of 22,275 cfs in 2005 and 22,122 cfs in 2030 under Severe Fishery Restrictions, the LVRE reduces outflow by 1.5% in 2005 and 1.6% in 2030. Recycling all 46 cfs of CCCSD available treated effluent reduces Delta Outflow by less than 0.2% in May 2005 and 2030, significantly less impact than the LVRE on Delta Outflow.

The same Delta Outflow Analysis summary also notes a significant average year impact in the month of November. With an outflow of 9,743 cfs in 2005 and 9,389 cfs in 2030 under Severe Fishery Restrictions, the LVRE reduces outflow by 1.1% in 2005 and 1.5% in 2030. Recycling of 46 cfs of CCCSD available treated effluent reduces Delta Outflow by only 0.5% in November 2005 and 2030, again, significantly less impact than the LVRE on Delta Outflow.

While CCWD has consistently maintained that recycling CCCSD effluent has a negative impact on the Delta by reducing Delta Outflow, the environmental documentation for LVRE shows Delta Outflow reductions as high as 1.6% in average years and claims they are less than significant. If these levels of Delta Outflow reduction are less than significant for LVRE, then recycling CCCSD treated effluent would also have less than significant impacts on Delta Outflow.

Conclusion

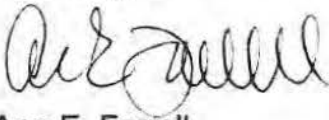
The LVRE Project will provide needed water supply reliability and allow for improved environmental water management. In addition, it brings regional and state-wide partners to the

table and creates opportunities for more efficient and environmentally responsible use of our scarce water resources. For these reasons, we believe the project creates benefits for our common ratepayers, the region and the State as a whole.

However, CCCSD believes that making the Refinery Project and recycled water integral components of the LVRE project would greatly enhance its benefits to water supply reliability and to the Delta ecosystem. Reclamation and CCWD should more rigorously analyze the Martinez Refinery Project and recycled water as a potential component of the LVRE project. The benefits of recycled water include significant additional yield with no significant increase in environmental impacts and the best collective use of public dollars.

CCCSD recognizes that with any water supply project in California there are hurdles to implementation. However, our state is facing economic, environmental and water supply issues on an almost unprecedented scale. We feel that we are mandated as public agencies to work cooperatively in an environmentally and economically sensible manner to the benefit of the people and environment of California.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ann E. Farrell', written over a horizontal line.

Ann E. Farrell
Director of Engineering

AEF/mvp

Attachments



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May 14, 2009

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Re: Scoping BDCP NOI 74FR7257 (Feb. 13, 2009) and NOP State
Clearinghouse No. 2008032062 (Feb. 13, 2009)

Dear Ms. Rinek and Brown:

The following comments are intended to supplement previous comments which are attached hereto and incorporated by this reference thereto.

Assumption that Adverse Impacts to Certain Listed Species and Ecosystem Will be Improved by Relocation of SWP and CVP Export Pumping Intakes of the SWP and CVP is Unsupported and Requires Thorough Analysis.

Most of the fish, most of the water and the better water quality in the Delta watershed are in the Sacramento River. It would appear that relocation to the Sacramento River will result in the diversion and export of a greater percentage of Sacramento River water at any given rate of exports and therefore the adverse impact on fish dependent upon Sacramento river water will be increased. Removal of more Sacramento River water from the Delta pool and Delta outflow including the Sacramento River downstream of the intakes will result in degradation of the water quality and temperature thereby adversely impacting in-Delta and adjoining area water users, as well as fish and wildlife including waterfowl which are dependent upon such water.

Direct damage to fish, eggs and larvae from fish screens including related predation would appear to be greater with intakes on the Sacramento River due to the proximity to greater numbers of fish, eggs and larvae and the greater percentage of channel flow diverted at the screen locations. With degradation of quality in other portions of the Delta, it is likely that fish will move to the good water quality locations and thereby aggravate the problem.

The Stated Purpose and Objective to Restore and Protect the Ability of the SWP and CVP to Deliver Up to Full Contract Amounts Consistent With Law and Contract Terms Is Inappropriate as Related to the Conservation Plan and Natural Community Conservation Plan.

The mix of objectives to foster exports and conserve species results in an inappropriate conflict for those trust agencies with the responsibility to protect the identified species. The conservation planning process should be solely directed at conservation of the species impacted by the activity or project sought to be considered.

Fostering SWP and CVP deliveries is appropriately relevant only to define the scope of the planning effort. Conceptually it may be impossible to conserve species of concern while permitting any SWP or CVP deliveries or any particular level of deliveries.

Restoring and Protecting the Ability of the SWP to Deliver Water assumes that the SWP has water to deliver. The planning for the SWP recognized that by the year 2000, 5 million acre feet of supplemental water from North Coast watersheds would be required to supplement inflow to the Delta to meet in-basin requirements and export deliveries. Since the SWP contract entitlements are about 4.25 million acre feet and the 5 million acre feet has not been provided, there is no SWP water for delivery. Restoring and Protecting the Ability of the SWP to Deliver Water is to restore and protect zero deliveries.

Excepting to some extent water right settlement contracts, the contracts of both the SWP and CVP are contracts only to deliver water which is surplus to the present and future water needs including environmental needs within the Delta and other areas of origin, the water needs to protect other senior water rights and the water needs to meet other requirements such as salinity control, CVPIA requirements for restoration of anadromous fish populations and water quality standards. Until it is determined that there is surplus water available for SWP and CVP delivery, there is no delivery to be restored. As discussed below, historical hydrology and projected climate change may result in no water for SWP and CVP delivery regardless of other constraints.

Essential to the Consideration of a Conservation Plan Including a Natural Community Conservation Plan As Proposed Is a Determination of What If Any Quantity of Water Is Available For SWP and CVP Delivery and When Is It Available.

The Sacramento and San Joaquin Rivers Watershed was never intended to provide the water currently desired to be exported from the Delta. The State Water Project in particular was to provide an additional 5 million acre feet of supplemental water to the Delta from North Coast watersheds by the year 2000. The availability of water for export from federal Central Valley Project facilities which formerly was focused on firm yield at the end of a six year dry cycle such as 1929-1934 is now over-subscribed. This over-subscription is due in major part to the desire to firm the delivery of non-firm supply. Permanent crops have been planted in federal service areas based on non-firm supply. Environmental needs which are greater than previously estimated and reduced natural flow due to possible climate change further constrain the availability of water for export. The determination of the real export water yield from the Delta requires an estimate of the present and future consumptive water needs for full development within the Sacramento and San Joaquin Rivers Watershed including the Delta. The Watershed Protection Act/Area of Origin Law, W.C. 11460 et seq., provides for priority and right of recapture as to exports by both the SWP and CVP. Additionally, the instream flow needs for fish and other environmental features, recreation, navigation, maintenance of water levels and salinity control must be determined. The needs for fish must include the water necessary to provide full mitigation of SWP and CVP impacts including restoration of the natural production of anadromous fish to sustainable levels not less than twice the average levels during the period of 1967-1991 as required by the CVPIA (Public Law 102-575) and to meet the narrative salmon objective in the 1995 Water Quality Control Plan. Public Trust needs and water needed to meet water right permit terms and conditions and other regulatory requirements must be considered. The instream flows and Delta outflow must be sufficient to restore and support the interconnected ecosystem of the Bays, the Delta and the tributaries. The future availability of water for export if any will vary from year to year and it is probable that no water will be available during dry cycle hydrology such as occurred in 1929 through 1934 and 1987 through 1992. Climate change could produce dry cycles which are far more extended than those experienced in the last 100 years.

The Impacts Associated With So-called Restoration and Protection of Ability of the SWP and CVP Extend Well Beyond the Delta and Must Be Fully Considered.

There are numerous impacts associated with SWP and CVP water deliveries throughout the State some of which impact species of concern within the Delta. By way of example, deliveries to agricultural and refuge areas in the San Joaquin Valley increase salt concentrations in the San Joaquin River and add constituents such as selenium and boron. Such deliveries are being made without a suitable drainage solution and are causing waterlogging of lands in the trough of the valley and increasing the accumulation of salt in the soils and groundwater which will ultimately result in the loss of productivity of the land.

Evaporative losses of water and electrical power consumption associated with transportation of the water are significant.

There are obvious growth-inducing impacts. As development extends, there are the obvious impacts associated with changes in land use. Development including lakes and swimming pools in the desert consume more water per capita than development in cooler climates. Differences in losses of water to unusable surface water bodies and groundwater basins may also be significant.

Impacts associated with extraction of water from the Trinity River which is outside the Delta Watershed must be considered. Impacts associated with export of water from the Delta tributaries including impacts of water transfers must be considered. Groundwater basins in both the Sacramento River and San Joaquin River basins is currently overdrafted. SWP and CVP deliveries of water in areas upstream of the Delta have induced greater upstream use of natural flow thereby impacting the Delta and Bay.

The Vulnerability of SWP and CVP Existing and Proposed Facilities to Hazards Such As From Floods, Earthquakes, Sea Level Rise, Climate Change, Fire and Terrorist Attack Must Be Considered.

Delta levees are only part of the concern. The peripheral canal will of course build two new Delta levees which cross identified faults and connect to existing SWP and CVP export facilities which are located near active earthquake faults. The SWP and CVP export aqueducts and related facilities appear to parallel in close proximity to high hazard active faults. The Delta Risk Management Strategy effort appears to be seriously flawed and should not be used as a basis for planning without truly independent review.

The Goals of the Conservation Planning Effort Must Be To Comply With All Laws.

While the focus of the effort is to develop conservation-related plans, administrative agencies of both the State and United States must seek to comply with existing law.

Among the laws which must be met are the Delta Protection Act (California Water Code section 12200 et seq.); the Watershed Protection Act (California Water Code section 11460 et seq.); the San Joaquin River Act (California Water Code section 12230 et seq.); the Davis Dolwig Act (California Water Code section 11900 et seq.); the Central Valley Project Improvement Act (Public Law 102-575); the Water Supply, Reliability and Environmental Improvement Act (Public Law 108-361) and the so-called Coordinated Operations Agreement Act (Public Law 99-546).

Conservation Plans Must Address both Aquatic and Terrestrial Species and Must Not Transfer Adverse Impacts to Other Species.

The focus on listed aquatic species such as fish should not detract from the need to protect terrestrial species and otherwise address all environmental concerns. The improper joinder of water deliveries/conveyance as goals in the conservation planning effort appears to have the real purpose of simply circumventing court-ordered restrictions involving Delta smelt. The conservation planning effort must not result in significant adverse impacts to other species such as terrestrial species including without limitation migratory waterfowl.

Incorporation of Power Transmission Lines in the Project Requires Analysis of the Impacts Throughout the Interconnected System.

The scope of area of impact must include all areas served or impacted by the interconnected power transmission facilities. More locally, the transmission lines in the Delta greatly interfere with bird life and in particular waterfowl. The foundations for towers have created paths for critical underseepage. Because development within the primary zone of the Delta has been restricted, it has obviously become a lower cost target for construction of facilities to serve other areas. Such a result is contrary to the intent to preserve the area for agriculture and related compatible wildlife friendly agricultural practices.

Yours very truly,



DANTE JOHN NOMEILLINI
Manager and Co-Counsel

DJN:ju



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May 30, 2008

Via Email at delores@water.ca.gov

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

Re: Comments on the Notice of Preparation for the EIS/EIR for the Bay Delta
Conservation Plan

Dear Ms. Brown:

The Central Delta Water Agency and South Delta Water Agency previously submitted comments on the *federal* "Notice of Intent" to prepare an EIS/EIR for the BDCP on March 24, 2008. Since such comments relate to the same topic at issue herein, those comments are hereby incorporated by reference and enclosed herewith. We hereby take the opportunity to supplement those comments with the following.

1. **The Feasibility of "the Project" Has Not Yet Been Demonstrated and Must be Demonstrated *Prior to the Initiation of the CEQA Process.***

CEQA at least implicitly, if not explicitly, assumes that the "project" which is subjected to environmental analysis under CEQA is a project that is feasible. Guidelines section 15364 defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors."

CEQA is not meant to be the process to determine whether the proposed project is feasible. (CEQA *is*, however, an appropriate process to evaluate whether *alternatives* to the project are feasible.) Thus, before the CEQA process ever begins the project must be fairly determined to be feasible. This is especially important since EIS/EIRs are inevitably biased towards justifying why the project should be carried out and why all the alternatives to the project are not feasible and should be rejected. Moreover, it would involve a colossal waste of the resources of all of the public responsible and trustee agencies as well as the general public

and stakeholders to embark on the CEQA process with a project that, from the get-go, has not been proven to be feasible, i.e., “capable of being accomplished in a successful manner within a reasonable period of time” (Guidelines, § 15364.)

While as discussed below the project at issue has not yet been defined, and, as a result, this entire Notice of Preparation and Scoping Process is legally inadequate and premature, it is clear that at the present time it would be unwarranted and unlawful for the ultimate project to include any form of an isolated conveyance facility. In its “Vision for the California Delta,” the Delta Vision’s Blue Ribbon Task Force, which was specifically directed by the Governor to “develop a durable vision for sustainable management of the Delta” (Governor’s Exec. Order No. S-17-06 (Sept. 28, 2006)), readily recognizes and concedes that the feasibility of any isolated conveyance to accomplish the purposes for which it is sought has not yet been demonstrated. For example, the Task Force explains:

“One way to manage water exports is to create isolated facilities that take water around the Delta. *Perhaps* this would enhance the reliability of exports, create fewer problems for selected species, be less exposed to seismic risk, and result in higher water quality. *But at this point, there is not sufficient specific information to guarantee these outcomes.*

Similarly, the concept of a “dual” conveyance, joining an isolated facility to improved conveyance through the Delta, *might* increase reliability and capture more high-water flows, but again, *not enough information is available at this point to ensure this.*” (Delta Vision, Blue Ribbon Task Force’s “Our Vision for the California Delta,” p. 13.)

Once the lead agencies for the BDCP EIS/EIR figure out and articulate what basic objectives they are trying to accomplish, then *before* the lead agencies develop the project which they believe is the preferred course of action (i.e., alternative) to accomplish those objectives, the lead agencies must ensure under CEQA, as well as the rule of good faith and fair dealing and other laws and principles, that whatever project they develop and bias the entire EIS/EIR process in favor of is “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.” (Guidelines, § 15364.)

a. An Isolated Conveyance Facility Is Not “Legally” Feasible.

With regard to “legal” feasibility, two paramount questions regarding any form of an isolated facility include whether such a facility can be legally constructed and, if so, whether such a facility can be legally operated in a manner which successfully accomplishes the purposes for which it is constructed. Unless existing law is substantially overhauled the answer is “no” on both counts.

i. **Delta Protection Act of 1992.**

“The Legislature finds and declares that the Sacramento-San Joaquin Delta is a natural resource of statewide, national, and international significance, containing irreplaceable resources, and it is the policy of the state *to recognize, preserve, and protect those resources* of the delta for the use and enjoyment of current and future generations.” (Pub. Resources Code, § 29701, emphasis added.)

“The Legislature further finds and declares that the basic goals of the state for the delta are the following:

- (a) *Protect, maintain, and, where possible, enhance and restore* the overall quality of the delta environment, including, but not limited to, *agriculture, wildlife habitat, and recreational activities.*
- ...
- (c) Improve flood protection by structural and nonstructural means to ensure an increased level of public health and safety.” (Pub. Resources Code, § 29702, emphasis added.)

“The Legislature further finds and declares as follows:

- (a) The delta is an agricultural region of great value to the state and nation and *the retention and continued cultivation and production of fertile peatlands and prime soils are of significant value.*
- (b) The agricultural land of the delta, while adding greatly to the economy of the state, also provides a significant value as open space and habitat for water fowl using the Pacific Flyway, as well as other wildlife, and the *continued dedication and retention of that delta land in agricultural production contributes to the preservation and enhancement of open space and habitat values.*
- (c) *Agricultural lands located within the primary zone should be protected from the intrusion of nonagricultural uses.”* (Pub. Resources Code, § 29703, emphasis added.)

The construction of a huge isolated facility through the Delta will constitute a massive “intrusion of nonagricultural uses” by taking considerable acreage of agricultural land out of production, and, hence, result in the destruction of the associated economic, open space and habitat values associated therewith, which is squarely contrary to State’s goal and policy to “recognize, preserve, and protect” such agricultural lands and values. (Pub. Resources Code, §§ 29703 & 29701, respectively.)

Similarly, with regard to the “operation” of an isolated facility, how is the diversion of substantial amounts of fresh water flows into such a facility consistent with the basic goal of the state to “[p]rotect, maintain, and, where possible, enhance and restore the overall quality of the delta environment, including, but not limited to, agriculture, wildlife habitat, and recreational activities”? (Pub. Resources Code, § 29702.) Clearly, it is not.

ii. **Water Code sections 12980 et seq.**

“The Legislature finds and declares that the delta is endowed with many invaluable and unique resources and that *these resources are of major statewide significance.*” (Wat. Code, § 12981, subd. (a), emphasis added.)

“The Legislature further finds and declares that the delta’s uniqueness is particularly characterized by its hundreds of miles of meandering waterways and the many islands adjacent thereto; that, in order to preserve the delta’s invaluable resources, which include highly productive agriculture, recreational assets, fisheries, and wildlife environment, *the physical characteristics of the delta should be preserved essentially in their present form; . . .*” (Wat. Code, § 12981, subd. (b), emphasis added.)

Neither the construction of a huge isolated facility through the Delta, nor the diversion of fresh water inflows into such a facility, come anywhere near “preserv[ing]” “the physical characteristics of the delta . . . in their present form; . . .” (*Ibid.*) Such construction and operation constitute an obvious and drastic alteration of the present physical characteristics of the Delta in direct contravention of the Legislature’s finding and declaration in section 12981.

iii. **Delta Protection Act of 1959.**

“The Legislature finds that the maintenance of an adequate water supply in the Delta sufficient to maintain and expand agriculture, industry, urban, and recreational development in the Delta area as set forth in Section 12220, Chapter 2, of this part, *and to provide a common source of fresh water for export to areas of water deficiency* is necessary to the peace, health, safety and welfare of the people of the State . . .” (Wat. Code, § 12201, emphasis added.)

If water is exported at the northernmost tip of the Delta via an isolated facility, then such water is plainly *not* providing a “common source of fresh water for export,” instead, it is providing an *isolated* source of fresh water for export which is entirely devoid of common benefits to essentially the entirety of the Delta and, hence, which is squarely contrary to section 12201 and “to the peace, health, safety and welfare of the people of the State.”

Moreover, Water Code section 12205 provides:

“It is the policy of the State that the operation and management of releases from storage into the Sacramento-San Joaquin Delta of water for use outside the area in which such water originates *shall be integrated to the maximum extent possible in order to permit the fulfillment of the objectives of this part.*” (Emphasis added.)

Since, as just noted, one of the “objectives of this part” is to “provide a *common* source of fresh water for export” (Wat. Code, § 12201), the Projects have a duty to integrate their releases from storage into the Delta “to the maximum extent” possible to provide that “common” source. Diverting any amount of such releases in an isolated canal, which by definition is entirely devoid of the required commonality of benefits, is obviously not providing the “common” source of fresh water to the maximum extent possible. Rather, it would be blatantly disregarding that mandate.

Water Code sections 12203 and 12204, respectively, provide:

“It is hereby declared to be the policy of the State that no person, corporation or public or private agency or the State or the United States should divert water from the channels of the Sacramento-San Joaquin Delta to which the users within said Delta are entitled.”

“In determining the availability of water for export from the Sacramento-San Joaquin Delta no water shall be exported which is necessary to meet the requirements of Sections 12202 and 12203 of this chapter.”

Even assuming that the “common pool” mandate can somehow be disregarded, before one drop of water is placed in an isolated facility, there needs to be a comprehensive analysis regarding how many drops of water, and at what times of year, and during what hydrological and ecological situations, etc., can such drops of water be legally deemed to be surplus to what “users within [the] Delta are entitled” (Wat. Code, § 12203) and surplus to what is “necessary to meet the requirements of Sections 12202 and 12203 of this chapter.” (Wat. Code, § 12204.) Once that amount of water is determined, then, and only then, can the economic and other feasibility considerations be fairly and meaningfully evaluated.

iv. **Watershed Protection Act.**

Water Code section 11460 provides:

“In the construction and operation by the department of any project under the provisions of this part a watershed or area wherein water originates, or an area immediately adjacent thereto which can conveniently be supplied with water therefrom, *shall not be deprived by the department directly or indirectly of the prior right to all of the water reasonably required to adequately supply the*

beneficial needs of the watershed, area, or any of the inhabitants or property owners therein."

Similar to the discussion immediately above, in order to fairly and meaningfully evaluate the feasibility of an isolated facility, there needs to be a comprehensive determination of what amount of water, at what times of year, and under what hydrological and ecological situations, etc., is "reasonably required to adequately supply the [human and environmental and public trust, etc.] beneficial needs of the watershed, area, or any of the inhabitants or property owners therein." Assuming the result of that determination reveals that there is indeed some amount of water that is surplus to such needs, does it make sense, economically or otherwise, to construct such a massive and expensive, and economically and environmentally disruptive, facility for the purpose of exporting that amount of water?

As noted above, whereas prior to the use of such an isolated facility water diverted into the Delta for export from the southern Delta provides some measure of "common" benefits, with an isolated facility any and all such common benefits are eliminated thereby making the deprivation of area of origin needs reasonably foreseeable, if not, clearly inevitable.

v. State and Federal Anti-degradation Laws.

The Federal Environmental Protection Agency ("EPA") requires all states to adopt an "antidegradation policy" similar to the State Water Resources Control Board's ("SWRCB") Resolution 68-16. (40 C.F.R. 131.12.) Resolution 68-16 is further intended to, and does, implement Water Code section 13000 which requires the SWRCB to regulate all "activities and factors which may affect the quality of the waters of the state" such that they "attain the highest water quality which is reasonable."

The State Water Resources Control Board's ("SWRCB") "Resolution 68-16 [commonly referred to as the SWRCB's "Anti-Degradation Policy"] provides in pertinent part:

"Whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies."

This Anti-Degradation Policy is yet another example of a policy which must be duly assessed before the feasibility of any proposed project which proposes to substantially disrupt the current distribution of water throughout the Delta, such as what an isolated facility would do, can be meaningfully determined. It does not take a degree in hydrodynamics to recognize the clear

potential, if not inevitability, of a substantial reduction in water quality in the Delta as the result of a substantial diversion of fresh water inflow into an isolated canal that would otherwise flow into the Delta.

This policy along with all other applicable policies and laws must be duly assessed before any project is deemed feasible and worthy of subjection to the CEQA process as “the project” and, hence, as the “preferred project alternative” course of action which the EIS/EIR process will inevitably be biased towards implementing.

b. The EIS/EIR’s Range of Alternatives Must Also be Comprised of Feasible Alternatives.

In a similar vein, since Guidelines section 15126.6, subdivision (a), provides that “[a]n EIR *shall* describe a range of reasonable alternatives to the project, or to the location of the project, *which would feasibly attain* most of the basic objectives of the project” (emphasis added), not only does the feasibility of the project itself need to be assessed but so does the feasibility of all of the alternatives in that range. Potential alternatives which include an isolated facility or other unlawful component and, thus, which cannot pass the *legal* feasibility test, cannot not be properly credited for CEQA purposes as being included within the EIS/EIRs mandatory “range” of *feasible* alternatives.

2. The Instant Notice of Preparation and Scoping Process Are Premature and Legally Inadequate.

Guidelines section 15082, subdivision (a)(1) provides:

The notice of preparation shall provide . . . sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response. At a minimum, the information shall include: (A) Description of the project, (B) Location of the project . . . , and (C) Probable environmental effects of the project.

The NOP is inadequate since it does not provide “sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response.” Instead, the NOP makes it clear that the project has not even been developed at this stage. For example, the NOP states:

[DWR] is initiating preparation of a joint [EIS/EIR] for the [BDCP], that will include analysis of improved water conveyance infrastructure and other habitat conservation measures *that will be developed* to advance the goals and objectives of the BDCP.

[¶] The planning effort for the BDCP *is in the preliminary stages of development*, . . .

(NOP, p. 1, emphasis added.)

Because the project has not yet been developed the NOP cannot, and does not, sufficiently describe the actual project, the location of the project nor the probable environmental effects of the project as required by Guidelines section 15082.

The NOP states:

The purpose of the scoping process is to solicit early input from the public and responsible, cooperating and trustee agencies regarding the development of reasonable alternatives and potential environmental impacts to be addressed in the EIR/EIS for the BDCP.

(NOP, p. 1.)

Because neither the project itself, nor its location, are adequately described, meaningful comment on the potential environmental impacts of the project is thwarted. With regard to the development of reasonable alternatives to the project, Guidelines section 15126.6, subdivision (a), provides:

An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which [1] would feasibly attain most of the basic objectives of the project but [2] would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.

Meaningful comment on proposed alternatives to the project is also substantially thwarted since neither the project's "basic objectives" nor the potentially significant effects of the project have been articulated.

With regard to the project's basic objectives, the NOP states:

Although the BDCP planning efforts are in the preliminary stages, the collective goals of the [Potentially Regulated Entities] *will provide the basis for* the project objectives under CEQA and the purpose and need statement under NEPA.

(NOP, p. 4, emphasis added.) "[W]ill provide the basis for" suggests that those goals will provide the basis *for the establishment of* the project's basic objectives or, in other words, the project's basic objectives will be derived from those goals. Whatever the case, the NOP does not adequately describe the project's basic objectives which the lead agency will ultimately use to

accept and/or reject proposed alternatives to the project. As a result, meaningful comment on proposed alternatives is thwarted and the lead agency's rejection of any suggested alternatives during this scoping process on the grounds that such alternatives do not have the potential to feasibly attain most of the project's basic objectives would be fundamentally unfair and entirely misplaced. (See Guidelines, § 15126.6, subd. (c) ["The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination"].)

For similar reasons, the mandatory "scoping meeting" required by CEQA, as well as the "Notice of Intent" and "scoping process" requirements of NEPA, are likewise unduly premature and legally inadequate. (See Guidelines, § 15082, subd. (c)(1) and 40 C.F.R. § 1508.22 & 1501.7, respectively.)

3. **Inadequate Identification and Description of the Project's Basic Objectives.**

Since the project's basic objectives play such a critical role in the lead agency's decision of which alternatives should be included in the EIR's detailed analysis of a "reasonable range" of alternatives to the project, as well as the lead agency's ultimate decision of which alternative it should ultimately select to carry out, the lead agency must very clearly identify and describe the precise "basic objectives" of the project. As discussed above, thus far, the lead agency has not done so.

The NOP states on page 4:

The BDCP is being developed to set out near-term and long-term approaches to meet the objectives of providing for the conservation of covered species and their habitats, addressing the requirements of the federal and State endangered species laws, and improving water supply reliability.

If those three objectives are meant to be the project's basic objectives, then, once again, the NOP and upcoming EIS/EIR must make it crystal clear that those are the project's basic objectives. While the project's basic objectives must be sufficiently broad to enable a broad range of alternative courses of action to be formulated to meet most of those objectives, the objective of "improving water supply reliability" needs some more specificity to avoid confusion and disputes as to what that objective really means.

For example, improving water supply reliability *for whom?* For water users within the Central Delta Water Agency? For *all* water users using water from the Delta watershed? For just those water users that use that watershed water in areas located *outside* that watershed? For just the so-called "Potentially Regulated Entities" or PREs?

What constitutes an "improvement" of water supply "reliability" in the eyes of the lead

agencies? This objective must ultimately be broad enough to allow for consideration of alternatives that seek to make the water supplies of the Project's export contractors more reliable by providing *non*-Delta watershed water supplies to those contractors in lieu of the inherently unreliable and variable Delta water supplies.

As you are aware, the legal sufficiency of the CALFED Bay-Delta Programmatic EIS/EIR under CEQA is currently under review by the California Supreme Court. One of the central disputes in that case is in fact, "what are the project's basic objectives"? While none of the project's "basic" (or even "secondary") objectives stated that total annual Project exports from the Delta must increase, the lead agency, and other export interests, unfairly argued that any alternative that did not increase such exports was somehow contrary to the project's basic objectives. Such monkey business, for a lack of a better word, with regard to the project's basic objectives should be avoid at all costs in the instant EIS/EIR.

Accordingly, great care should be given to the articulation of the project's basic objectives and the EIS/EIR should clearly articulate what those objectives are and it should use the terminology of "basic objectives" so that it tracks CEQA's language and there is no confusion as to what constitutes the basic objectives of the project.

4. Proposed Alternatives.

While as noted above, the suggestion of potential alternatives is substantially thwarted at this stage by the lack of articulation of the project's basic objectives as well as the lack of identification of the potentially significant impacts from the project, not to mention the lack of a meaningful description of the "project" itself, some alternatives concepts which should be consider either as stand alone alternatives or components of various alternatives include the following:

Alternatives which comply with the statutory "common pool" mandate and, thus, do not have any form of an isolated facility, dual or otherwise.

An alternative of "regional self-sufficiency" where Peter (human and environmental water users within the Delta watershed) are not robbed to pay Paul (i.e., export contractors). Instead, every feasible effort is made to the maximum extent possible to develop new non-Delta watershed water and/or make better use of existing non-Delta watershed water to meet the needs of export contractors. The intended result being, that such export contractors can ultimately wean themselves off Delta watershed water, substantially or entirely, such that the Delta watershed water can be used to meet the needs within that watershed.

Ultimately there should be several alternatives which contemplate a *reduction* in exports from the Delta over historical levels.

With regard to the feared apocalyptic collapse of numerous Delta levees from an earthquake. Numerous alternatives should be considered to address such a collapse. To the extent the desire is to avoid the disruption of export deliveries the EIS/EIR should first thoroughly explain as precisely as possible what the water quality will likely be under existing conditions should the Projects desire to continue exporting water during such a apocalyptic failure. Then the EIS/EIR should clearly explain how long that water quality will likely remain in that state assuming the recently adopted emergency preparedness plans are in place, etc. to close those levee breaches. The EIS/EIR should then thoroughly explain whether the Projects can still divert and utilize water of that level of quality for agricultural beneficial uses, urban, etc. in either blended form with water stored in San Luis or blended with other water supplies. Assuming the water cannot be used in its current "degraded" state, the EIS/EIR should explain what facilities could be constructed to desalinize that water, or better allow for the blending of that water with other higher quality supplies, etc., and the costs of the construction and operation of such facilities.

In the event, the Projects simply cannot feasibly use the water in the Delta after an apocalyptic levee failure and/or cannot get by with other supplies while the levees breaks are being repaired, then the fortification of various master levee scenarios should be considered to minimize the intrusion of bay waters in the event of such failures much like what is already being implemented at the present time. So called "polders" should also be considered whereby areas are protected by master levees such that not all levees need to be substantially upgraded. Rather, only "master" levees need to be so upgraded which would serve to protect the polders or various sections of land within the Delta.

Tidal gate structures should also be evaluated to help repel bay salinity in the event of such a massive failure.

The forgoing measures to protect against an apocalyptic levee failure could also serve the additional benefit of protecting the Delta from reasonably anticipated sea level rise.

In addition, with regard to the apocalyptic earthquake, the EIS/EIR's analysis should thoroughly examine the likelihood of such a magnitude earthquake near all of the Project's major export facilities, not the least of which is the export pumping facilities themselves as well as the California Aqueduct and Delta-Mendota canals which essentially track major fault lines. Alternatives to protect against damage and disruption of export supplies resulting from such earthquakes should be thoroughly evaluated.

With regard to protecting fishery resources within the Delta, actual, state of the art, fish screens on all Project export facilities should be evaluated to enable water that is truly surplus from the needs of the Delta, assuming there is any such water, to be exported with minimal impacts to fish. If an actual, state of the art fish screen is included for an isolated facility in any alternative which includes such an isolated facility, then such a screen must naturally also be included in all the alternatives that do not involve an isolated facility and should be installed on

all exiting Project export facilities.

An alternative should be considered that includes substantially increased Delta outflows. Such an alternative could draw sensitive fishery species away from the existing export facilities, thereby increasing the “reliability” of such exports, and also enable the restoration of the Suisun Marsh which could provide tremendous benefits to numerous fishery species.

The EIS/EIR should include an extensive discussion of desalinization options in order to promote regional self-sufficiency. Such a discussion would be in furtherance of Water Code section 12946 which provides:

It is hereby declared that the people of the state have a primary interest in the development of economical saline water conversion processes which could eliminate the necessity for additional facilities to transport water over long distances, or supplement the services to be provided by such facilities, and provide a direct and easily managed water supply to assist in meeting the future water requirements of the state.

Opportunities for environmentally friendly desalinization of ocean waters as well as brackish ground waters (as well as the saltier Delta waters which presumably will result from a massive levee failure) should be thoroughly examined.

To the extent the objectives of the BDCP are ultimately to “provid[e] for the conservation of covered species and their habitats, address[] the requirements of the federal and State endangered species laws, and improv[e] water supply reliability” (NOP, p. 4), it is easy to see that weaning the export contractors off the Delta watershed such that exports from the Delta could be ultimately substantially reduced would seemingly satisfy those objectives better than any other alternative. Accordingly, as stated above, multiple alternative scenarios which seek to accomplish such weaning should be thoroughly considered.

5. Impacts Which Should be Analyzed.

The NOP at page 9 states:

“The EIR/EIS will analyze the reasonably foreseeable direct, indirect and cumulative effects (e.g. climate change, including sea level rise) of the BDCP (including habitat conservation measures and water conveyance facilities) and a reasonable range of alternatives on a wide range of resources, including but not limited to:

BDCP covered species
Other Federal and State Listed Species

Aquatic Biological Resources
 Wetlands and Terrestrial Habitat
 Surface Hydrology including Water Rights
 Groundwater Hydrology
 Geology and Soils
 Water Quality
 Seismic Stability
 Aesthetics
 Air Quality, including Greenhouse Gas Emissions
 Land Use (e.g. Urban, Agricultural and Industrial Uses)
 Historic and Cultural Resources
 Environmental Health and Safety
 Public Services and Utilities
 Energy and Natural Resources
 Recreation
 Population/Housing
 Transportation/Traffic”

In addition to what was stated above with respect to alternatives, the following effects/topics should also be thoroughly analyzed:

- Impacts on *all* aquatic and terrestrial species must be examined, not just the BDCP covered species or other “listed” species.
- Navigation impacts.
- Impacts on the integrity of existing levees within the Delta from the construction and operation of any isolated facility or other facilities.
- Seepage impacts on lands within the Delta from the construction and operation of any isolated facility or other facilities.
- Evaporative water losses from any proposed creation of wetlands.
- If any increase in exports are contemplated or reasonable foreseeable, then a thorough identification of the source of such exports and examination of the full range of potential environmental impacts from the export of such water must be conducted.
- Growth-inducing impacts.
- Economic impacts which have the potential to result in adverse changes to the environment, e.g., the economic impacts from a loss of farmland due to an isolated facility and/or construction of wetlands and the decreased agricultural production within the Delta resulting from any decrease in water quality resulting from the operation of an isolated canal or otherwise. The potential for such economic impacts to result in physical changes to the environment via the abandonment of farming operations or local ability to fund levee maintenance, etc. should be fully examined.

Lastly (for the time being), but certainly not least, the EIS/EIR should thoroughly embrace the ramifications to the environment from the construction and operation of any isolated facility which would eliminate or diminish the Projects and, their water contractors', currently existing direct beneficial interests in preserving the water quality in the Delta. The Delta Protection Act of 1959's mandate that exports from the Delta be taken from the "common pool" within the Delta, and not from the uppermost northern tip of the Delta, has ensured that the state and federal government, as well as the millions of people who receive Delta export water and hundreds of thousands of acres of farmland that utilize such water, have a direct stake in ensuring that the Delta water quality remains fresh. What is good for the goose is good for the gander. The potential environmental impacts from the elimination or diminishment of that direct stake should not be underestimated by any of the participants to the BDCP and the upcoming EIS/EIR should thoroughly discuss, incorporate and acknowledge that potential throughout the entire EIS/EIR and especially in the discussion and evaluation of alternatives to the proposed project (whatever that may ultimately be).

6. **Conclusion.**

Thank you for your time and consideration of these comments and concerns.

Very truly yours,



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DJR/djr
Enclosures



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Re: NOI - Bay-Delta Conservation Plan

Dear Ladies and Gentlemen:

Thank you for the opportunity to comment.

INADEQUATE REGULATORY PROCESS

The Central Delta Water Agency (CDWA) continues to be concerned with the lack of arms-length relations between the regulatory agencies and the United States Bureau of Reclamation and California Department of Water Resources who are the water export project operators.

It has for years clearly been recognized that SWP and CVP impacts including export pumping from the Delta cause substantial damage to the fisheries yet the projects until recent court intervention have been allowed to steadily increase exports. Even the physical limits on federal exports have been avoided through coordinated operations, joint points of diversion, wheeling of transferred water and other mechanisms. Although failing to provide protection, the State Water Resources Control Board in 1978 recognized the harm when in D-1485 it found: "To provide full mitigation of project impacts on all fishery species now would require the virtual shutting down of the project export pumps."

The BDCP process is yet another example where regulatory integrity has been compromised. The need for focus on the broad protection of the Bay-Delta Estuary and the fish and wildlife therein is being blurred by the emphasis on “covered species” and by the goal to protect water supply on an equal footing with restoring and protecting the environment.

The cornerstone for both the CVP and SWP was the promise that the needs including environmental needs within the Delta and other areas of origin would come first and that only surplus water would be exported.

The base level of protection must include:

- 1) full mitigation of project impacts including without limitation destruction of spawning habitat upstream and within the Delta, alteration of instream flows, alteration of water temperatures upstream and in the Delta, alteration of scour and sedimentation, creation of reverse flows, diversion and/or destruction of fish, eggs and larvae at the export pumps, reduction in water levels, reduced Delta spring and summer outflows, project-induced upstream diversions and resulting discharges including degradation of water quality particularly in the San Joaquin River where San Luis Unit water was not to be provided without an adequate valley drain;
- 2) salinity control to both mitigate for project impacts and enhance Delta water quality;
- 3) preservation of fish and wildlife at project contractor cost as per Water Code section 11900 et seq. (Stats. 1961 c.867) and
- 4) compliance with the Coordinated Operations Project Operation Policy (Public Law 99-546).

The plan must also adhere to other constraints for planning and operations such as the CVPIA (Public Law 102-575) which includes doubling the natural production of “anadromous fish” including stocks of salmon, steelhead, striped bass, sturgeon and American shad and the Water Supply, Reliability and Environmental Improvement Act (Public Law 108-361).

The BDCP process goals do not embrace the breadth of issues necessary for water project planning which will protect the general public interest and public trust.

FAILURE TO RECOGNIZE THAT IT MAY BE IMPOSSIBLE TO PROTECT THE ENVIRONMENT (OR EVEN JUST THE COVERED SPECIES) WITH CONTINUED SWP AND CVP EXPORTS FROM THE SACRAMENTO AND SAN JOAQUIN RIVERS WATERSHED REGARDLESS OF THE METHOD OF CONVEYANCE.

The BDCP planning goal number 3 provides “Allow for projects that restore and protect water supply, water quality, ecosystem and ecosystem health to proceed within a stable regulatory framework;”.

The planning goal to restore and protect water supply is an inappropriate goal for regulatory agencies which have a duty to protect threatened and endangered species from CVP and SWP impacts. It may also be totally unrealistic.

The planning for the SWP contemplated the addition of 5 million acre feet of supplemental water to the Sacramento and San Joaquin Rivers Watershed from north coast rivers by the year 2000. Development of water from such north coast rivers of course did not take place. Factors such as cost, wild and scenic river legislation and greater environmental awareness likely played a part. It is quite clear that increasing demand for water within the watershed was anticipated and the 5 million acre feet of supplemental water was intended to meet the approximately 4.25 million acre feet of SWP contract entitlement and provide about .75 million acre feet to meet the growing needs within the watershed. (See attached excerpts from DWR Bulletin 76, Preliminary Edition, December 1960.) It was never intended that exports from the Delta would be sustained with water from the Sacramento and San Joaquin Rivers Watershed past the year 2000. The absence of the 5 million acre feet of supplemental water greatly reduces the ability of the watershed to assimilate natural and man-induced contaminants and likely precludes meeting both the needs within the watershed and the desires of the exporters. Any fair environmental evaluation must evaluate the range of tolerable exports from the watershed if any at all. It would appear that water could be available for some export in wetter years but unlikely that exports could be restored or protected in other years. The environmental evaluation must look at alternatives which develop supply from outside the Sacramento and San Joaquin Rivers watershed including desalting brackish groundwater, municipal wastewater and in some cases seawater. The breadth of the evaluation should also include a determination of the range of impacts resulting from continued development of arid lands and arid lands in differing regions. The goal should be to establish the present and future needs to provide full protection within the watershed and establish the bounds of what is truly surplus water which can be exported. Curtailment of export pumping at times when fish, water quality or water levels are adversely impacted may provide more than sufficient export pumping opportunities to divert the water which is truly surplus. Attached hereto are charts showing the Estimated Seasonal Natural Runoff 1917-18 to 1946-47 for both the North Coast Area and the Central Valley. It is important to note that for the period 1928-29 to 1933-34 (the 6 year drought) the average total runoff of the Central Valley was only 17,631,000 acre feet. This can be compared to local requirements of about 25,690,000 acre feet and a safe yield of about 22,500,000 acre feet. In a reoccurrence of such a drought, the Central Valley will be severely short of water and no surplus would be available for export. Alternatives which develop self-sufficiency in areas dependent upon imported water and reduce dependence upon exports from the Delta must be considered.

The hundreds of miles of canals and pipelines together with the appurtenant pumping and power facilities leaves the present water system highly vulnerable to earthquakes, terrorism and

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March 24, 2008

other threats including those outside the Delta. Real consideration of the reduced Delta export alternatives is critical.

These comments are intended to be preliminary and we further join in those submitted by the South Delta Water Agency.

Yours very truly,

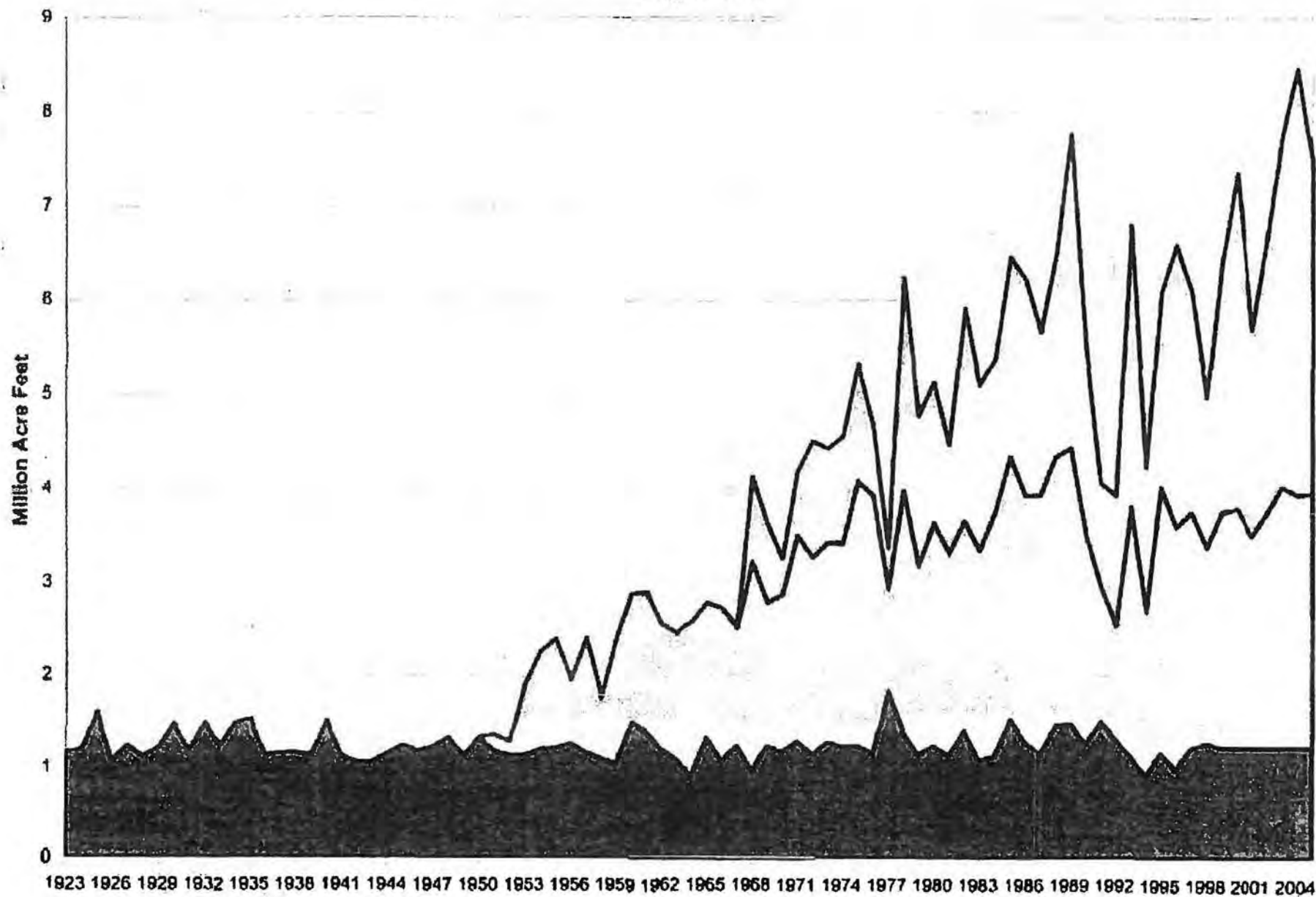


DANTE JOHN NOMELLINI
Manager and Co-Counsel

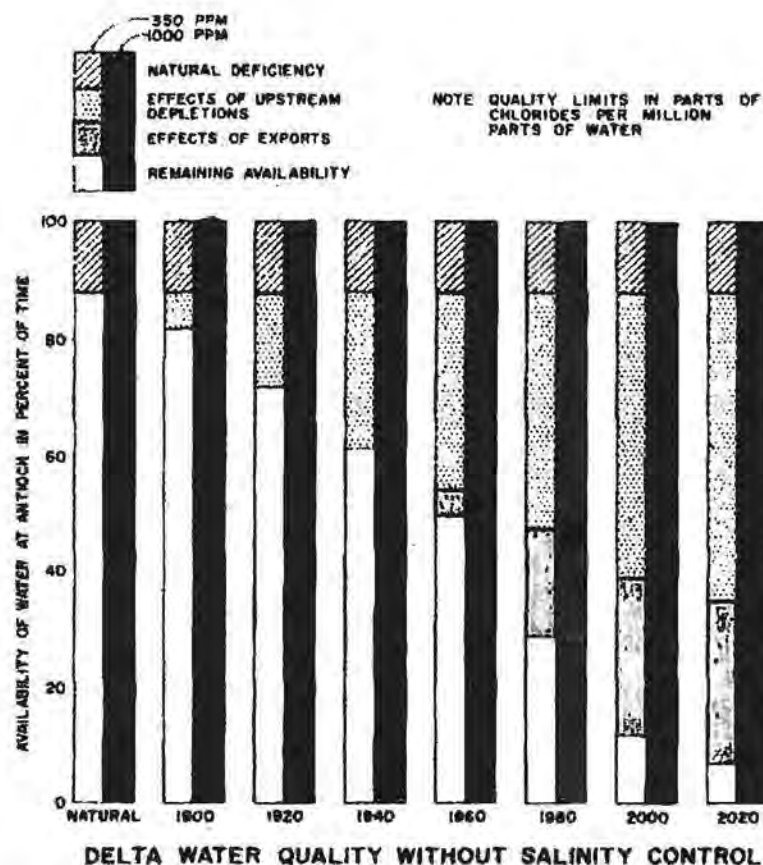
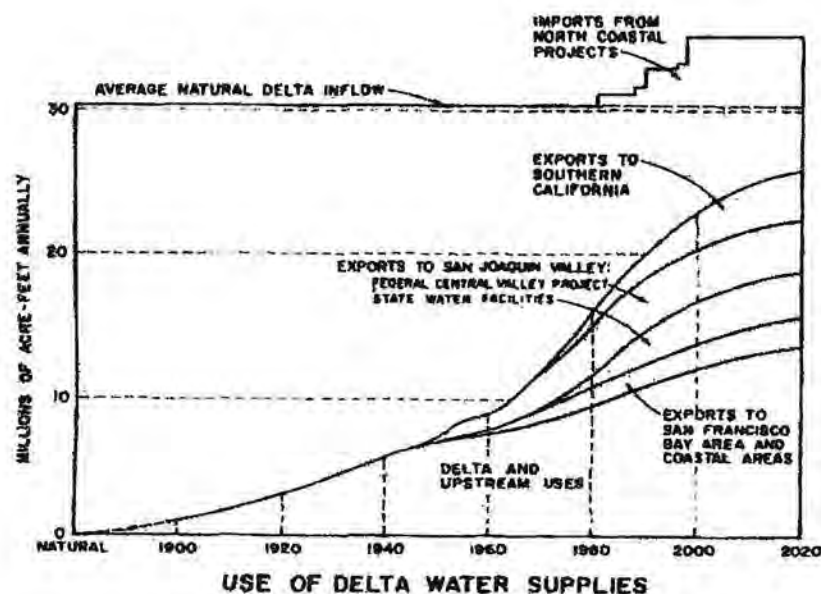
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■ In-Delta Diversions ■ Tracy Exports ■ Banks Exports

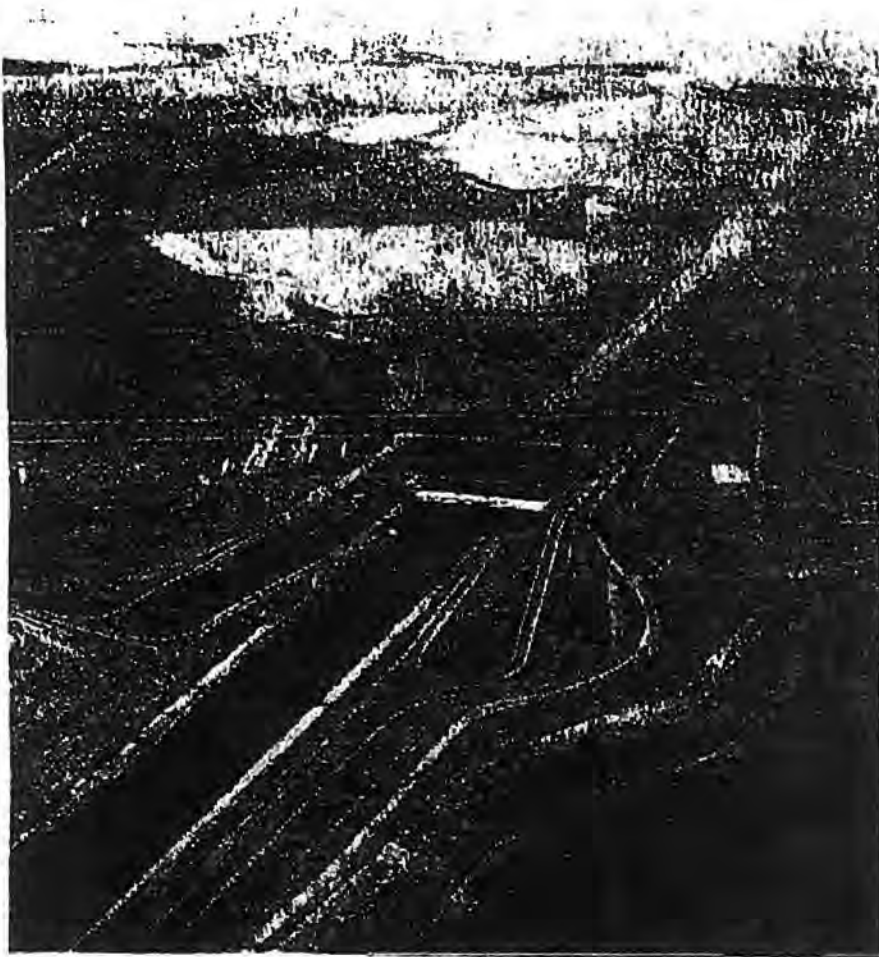
Figure 6



The natural availability of good quality water in the Delta is directly related to the amount of surplus water which flows to the ocean. The graph to the right indicates the historic and projected availability of water in the San Joaquin River at Antioch containing less than 350 and 1,000 parts chlorides per million parts water, under long-term average runoff and *without* specific releases for salinity control. It may be noted that even under natural conditions, before any significant upstream water developments, there was a deficiency of water supplies within the specified quality limits. It is anticipated that, without salinity control releases, upstream depletions by the year 2020 will have reduced the availability of water containing less than 1,000 ppm chlorides by about 60 percent, and that exports will have caused an additional 30 percent reduction.



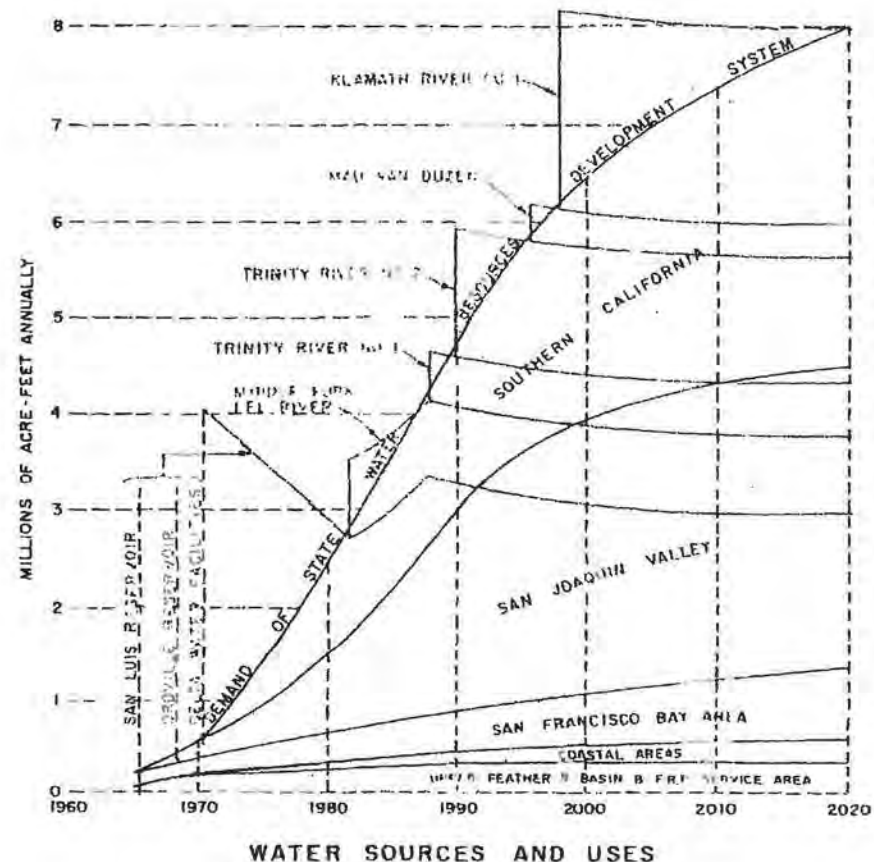
The magnitude of the past and anticipated future uses of water in areas tributary to the Delta, except the Tulare Lake Basin, is indicated in the diagram to the left. It may be noted that, while the present upstream use accounts for reduction of natural inflow to the Delta by almost 25 percent, upstream development during the next 60 years will deplete the inflow by an additional 20 percent. By that date about 22 percent of the natural water supply reaching the Delta will be exported to areas of deficiency by local, state, and federal projects. In addition, economical development of water supplies will necessitate importation of about 5,000,000 acre-feet of water seasonally to the Delta from north coastal streams for transfer to areas of deficiency.



Tracy Pumping Plant

Full demands on the State Water Resources Development system can be met until about 1981 from surplus water in and tributary to the Delta with regulation by the proposed Oroville and San Luis Reservoirs. However, upstream depletions will reduce the available surplus supplies and water will have to be imported from north coastal sources after that year. It is anticipated that coordinated operation of the State Water Resources Development System and the Federal Central Valley Project will afford a limited increase in usable surplus Delta supplies beginning in 1981. As indicated in the chart, upstream depletions will continue to decrease the available surplus supplies.

The coordinated use of surplus water in and tributary to the Delta and of regulated or imported supplements to this supply, as required, is referred to as the Delta Pooling Concept. Under this concept of operation the State will ensure a continued supply of water adequate in quantity and quality to meet the needs of export water users. Advantage will be taken of surplus water available in the Delta, and as the demand for water increases and the available surplus supply is reduced by further upstream uses, the State will assume the responsibility of guaranteeing a firm supply of water, which will be accomplished by construction of additional storage facilities and import works. At the same time, the water needs of the Delta will be fully met.



ESTIMATED SEASONAL NATURAL RUNOFF NORTH COAST AREA Klamath, Eel, Van Duzen, Mad, and Russian Rivers - 1917-18 to 1946-47

53 year average used by the DEPARTMENT of WATER RESOURCES.

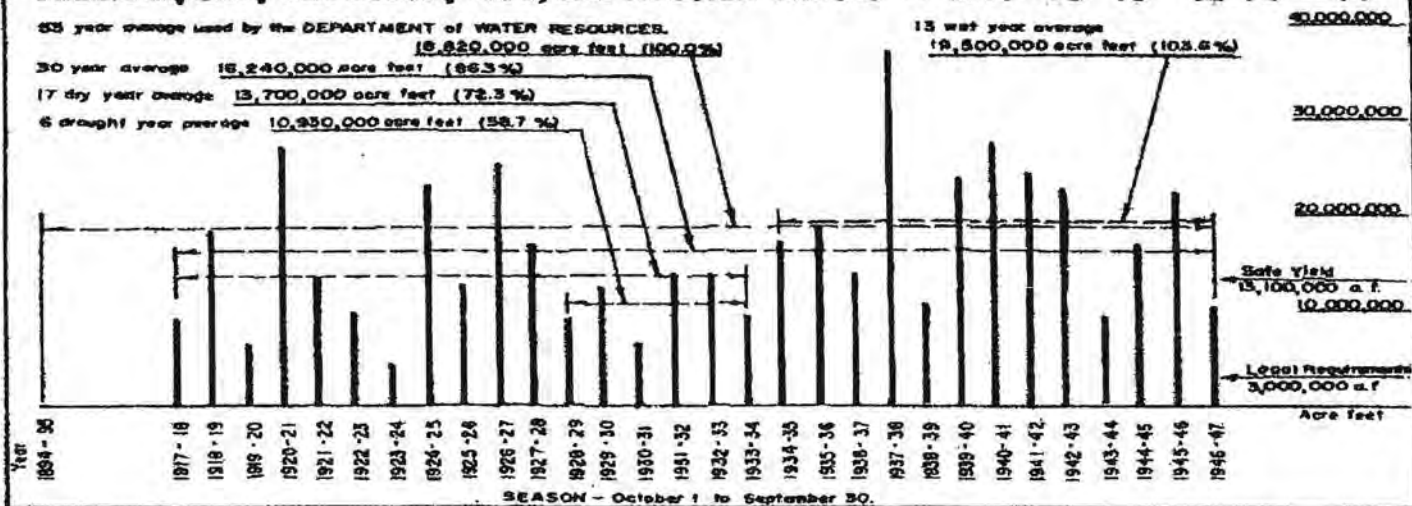
16,820,000 acre feet (100.0%)

30 year average 16,240,000 acre feet (96.5%)

17 dry year average 13,700,000 acre feet (72.3%)

6 drought year average 10,950,000 acre feet (58.7%)

13 wet year average
19,500,000 acre feet (103.6%)



ESTIMATED SEASONAL NATURAL RUNOFF

CENTRAL VALLEY 1917-18 to 1946-47

53 year average used by the DEPARTMENT of WATER RESOURCES.

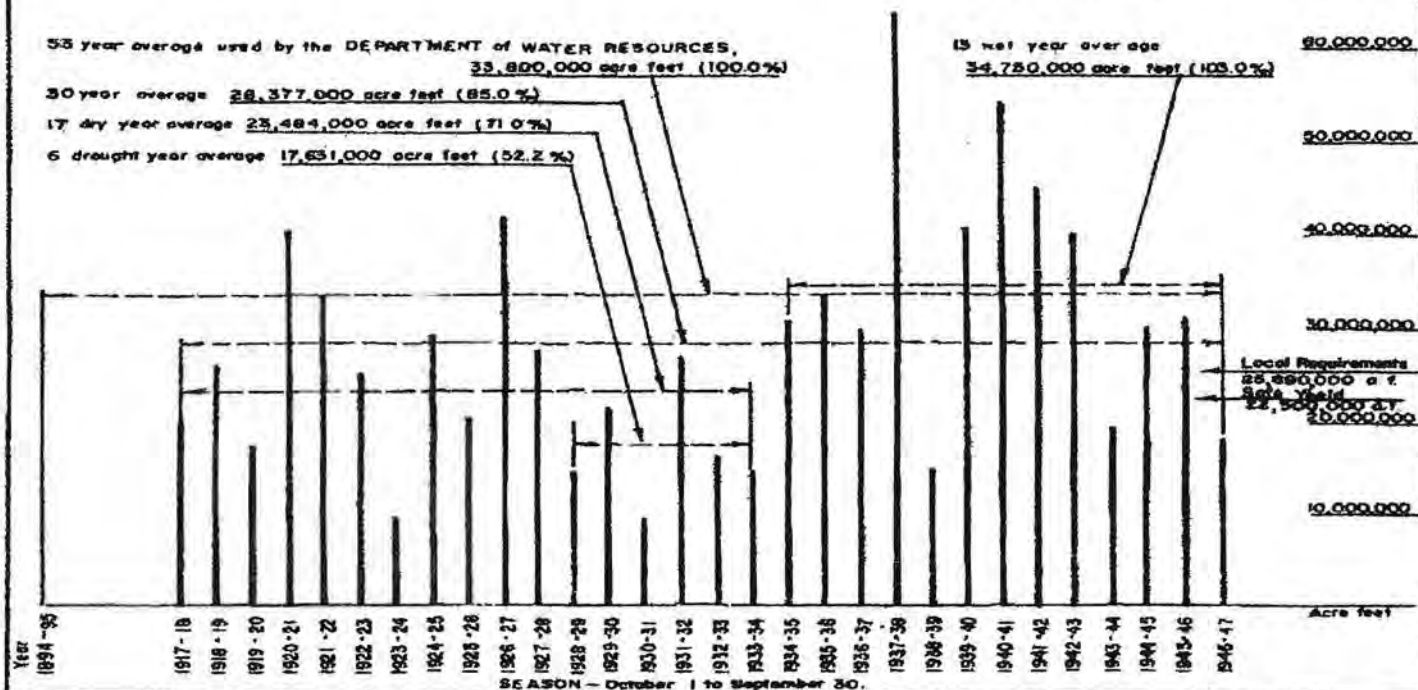
33,800,000 acre feet (100.0%)

30 year average 28,377,000 acre feet (85.0%)

17 dry year average 23,484,000 acre feet (71.0%)

6 drought year average 17,631,000 acre feet (52.2%)

13 wet year average
34,750,000 acre feet (103.0%)



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March 24, 2008

Via E-Mail

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**Re: Notice of Intent to Conduct Public Scoping and Prepare an
EIR/EIS Regarding the Bay Delta Conservation Plan (BDGP)
for the Sacramento-San Joaquin Delta**

Gentlemen:

The South Delta Water Agency submits the following comments regarding the NOI to prepare environmental documents reviewing the Bay Delta Conservation Plan ("BDGP").

1. The BDGP proposes to provide for the conservation of endangered species and their habitats in the Delta in a way "that also will provide sufficient and reliable water supplies" for parties reliant on exports from the Delta. Thus, the underlying premise limits the various options available to DFG, FWS and NMFS for recovery and enhancement of not only endangered (and threatened species) but for most Delta species in general.

One of the options available to the fishery agencies is to limit exports and require increased outflow to the point where the impacted fisheries are improved. By assuming ahead of time that some certain level of exports will be allowed (or amounts of outflow will be limited), the agencies are precluded from examining possible scenarios which might be better for the fisheries than the alternatives proposed by the BDGP. This approach also ignores various underlying legal requirements that DWR and USBR fully mitigate the impacts of the SWP and CVP.

2. The environmental review must fully analyze the alternative's impacts to water quality, especially in the South Delta. Currently, Sacramento River water is drawn across the Delta to the export pumps. This "fresher" water is mixed with the "poorer" San Joaquin River water and provides water quality benefits to both the Central and Southern Delta channels. An isolated facility decreases the amount of Sacramento water moving across the Delta, and thus result in a worsening of water quality in the Central and South Delta.

Studies so far have improperly examined this effect. DWR's modeling suggests that the operation of an isolated facility would have no significant effect on water quality. However, that modeling was an averaging of all year types, which resulted in a masking of the effects of the project. The environmental review must look at the various year types separately, showing how differing levels of flows through an isolated facility would result in differing flows across the Delta and less dilution of salts in the Central and South Delta.

For example, this past month, exports have been curtailed due to a court ruling. With the diminished through-Delta flow, the water quality objective was violated as measured at the Old River Tracy Blvd. compliance location. With an isolated facility, there might be less or no cross Delta flow, resulting in even worse quality and a more extreme violation of that and other standards/objectives.

As part of the analysis, the environmental documents must examine how the various options will affect compliance with the Southern Delta salinity standards as those standards are terms of the DWR and USBR permits. [Note, the standards are required to be met throughout the channels, not just at the compliance locations per the 2006 Bay-Delta Water Quality Control Plan.] The project purpose must include compliance with all permit terms and conditions, as well as other legal limitations and requirements on the projects. SDWA's analysis indicates that moving Sacramento River water through an isolated facility will in most years and in most months result in violations of the salinity standards, and thus any option with such a facility could not be adopted or implemented.

3. Operation of an isolated facility would decrease the inflow to the Delta, and thus affect outflow. Either outflow will decrease, or additional inflow will be necessary to meet outflow requirements. The environmental documents must fully examine the various operational scenarios and the consequent effects on fisheries and other beneficial uses. Less inflow will mean that the flow of water through the Delta will be slower. There are resulting impacts to fisheries as well as water quality from this change. Previous studies indicate that decreased rates of flow result in increased predation on various species, especially endangered ones. It would also result in warmer water, decreased DO, and increased hyacinth and other plants clogging the channels. As stated above, an alternative not presented by BDCP is an increased outflow scenario which should improve fisheries. Such an option must be considered in the review.

4. An isolated facility, by changing the water quality in Delta channels could result in changes in the location of various fish species who use water quality as cues for migration, spawning and other life stages. Hence, the intake to an isolated facility might become a place of greater risk for some species. Further, decreasing Delta cross flow might decrease the areas of good habitat for species seeking better water quality, thus increasing the stressors to the species.

5. The environmental documents must examine how an isolated facility would be operated to insure no adverse impacts to other and superior water right holders. During low flow

times, the "natural" flow may be necessary for in-Delta users and thus cannot be removed from the system through an isolated facility. Similarly, upstream return flows may be necessary for numerous water right holders and not available for the junior export permits. Further, stored flow may be necessary to comply with existing permit terms and conditions to meet outflow and water quality parameters and again not be available for transport through an isolated facility.

It is important to note that all (legal) Delta channels are subject to the tides, and in combination with their channel bottom elevations, result in water always being in those channels. This raises important issues that must be covered in the environmental documents. Water is always available for in-Delta users. If some or all tributary flow ceased, water would still be in Delta channels. Case law, statutes, and permit terms and conditions require the projects to keep the Delta water at certain qualities for those in-Delta uses. Hence, the operation of any isolated facility must include the protection of the water quality on which those uses depend. Any honest analysis will indicate those obligations cannot be met when an isolated facility is moving water around the Delta instead of through it.

6. As a follow on to the above point, the Delta Protection Act (Water Code Sections 12200 et. seq.) places certain burdens on the export projects. Those statutes require that the Delta be kept as a "common" pool for in-Delta and export supplies. The statutes go on to require that an "adequate supply" be provided to in-Delta water users (no supply amount is guaranteed to export users), that no water needed for this supply or for salinity control may be exported, and that exports cannot include water to which in-Delta users are entitled. Finally, the statutes require that releases from storage in the Sacramento-San Joaquin system shall be integrated as much as possible to meet the requirements of the Act.

Taken together, these statutes place severe operational limitations of not only the export pumps, but also any isolated facility. Hence, the environmental documents must include a review of the BDCP alternatives with these statutory/operational limitations. The result will indicate that the opportunities for its operation will be nil.

7. The review must include other alternatives, not currently in the BDCP proposal. SDWA and CDWA proposed to the Delta Vision process a comprehensive program which included the "Delta Corridors" plan. This plan seeks to reconnect the San Joaquin River with the Bay, a situation that no longer exists during most years. This is because the export projects typically take more water than is entering the Delta from the San Joaquin, and thus no San Joaquin water reaches the Bay. In addition, upstream use has decrease in-Delta flow to the point where in many months in most years, the inflow of the San Joaquin is less than the local, in-Delta diversions. Again, this results in none of the river's flow reaching the Bay. The Delta Corridors plan seeks to correct this and thus should show increased benefits to fisheries over proposals which will decrease water quality in the Delta (isolated facility).

March 24, 2008

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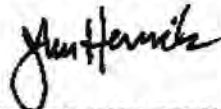
8. The review should include an improved through Delta conveyance as well as one that curtails exports in order to meet superior water right and environmental needs. As currently constructed, the BDCP proposals for through Delta are constrained by inaccurate assumptions regarding improved Delta channels and the need to maintain some "acceptable level" of exports.

9. It is unrealistic to assume that a Conservation Plan can be developed at this point. Ongoing investigations, speculation and analysis in the POD process indicates that the solution or solutions to the radical decline in certain fisheries are not yet known. Until such time as the specifics of why the decline is occurring at this time it is impractical and improper to adopt a Plan which gives exports a multi-year approval or guarantee of operations. We do not know yet if any particular level of exports is consistent with the protection of endangered species. Until we do, no plan should be contemplated or adopted which protects exports which are the likely cause the fishery problems.

SDWA can provide information and documentation to support the points set forth above and looks forward to participating in the environmental review of the BDCP proposals.

Please call me if you have any questions or comments.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Herrick", written in a cursive style.

JOHN HERRICK

JH/dd



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May 14, 2009

Via Email at BDCPcomments@water.ca.gov

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Via Email at lori_rinek@fws.gov

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Re: Comments on the Department of Interior's Notice of Intent to Prepare (Dated February 13, 2009), and the CA Department of Water Resources' Notice of Preparation of (Dated February 13, 2009), an EIS/EIR for the Bay Delta Conservation Plan.

Dear Ms. Brown and Rinek:

The Central Delta Water Agency (CDWA) and South Delta Water Agency (SDWA) previously submitted comments on the federal "Notice of Intent" to prepare an EIS/EIR for the BDCP on March 24, 2008. The CDWA further submitted comments on the DWR's "Notice of Preparation" of an EIS/EIR for the BDCP on May 30, 2008. Since all of such comments are applicable to the topics at issue herein, those comments are hereby incorporated by reference and enclosed herewith. We hereby take the opportunity to supplement those comments with the following.

1. The NOI and NOP are Still Unlawfully Premature.

While the prematurity of the May 2008 NOI and NOP, are discussed at length in the attached documents, it bears re-emphasizing that such prematurity continues to be an overarching and fatal flaw. The NOP, e.g., contains statements such as the following which plainly confirm

such prematurity (with emphasis added):

- “[Conservation] measures *will be* identified through the planning process.” (NOP, p. 1)
- “The BDCP covered activities *may* include, but are not limited to: . . .” (NOP, p. 4)
- “[T]he list [of species to be evaluated for inclusion in the BDCP] *may change* as the planning process progresses.” (NOP, p. 5)
- “The BDCP *will likely* consist of three major elements: . . .” (NOP, p. 6)
- “Potential habitat restoration measures . . . *may* involve . . .” (NOP, p. 6)

The issuance of the instant NOI and NOP in light of such lack of specificity is unfair and unlawful under NEPA and CEQA. The NOI and NOP must be reissued when, at a minimum, a complete draft of the BDCP is available for public review which fully describes and discloses the specifics of that plan.

2. **Project Objectives.**

The project’s objectives must not be so narrowly draw so as to require the “construction and operation of facilities for movement of water entering the Delta from the Sacramento Valley watershed to the [Projects’] pumping plants located in the southern Delta” as a project objective. (NOP, p. 3.) While the construction of such facilities may be one way to meet various objectives, such construction should not itself be any part of the project’s basic objectives.

The same is true of the objective to improve the ecosystem by “reducing the adverse effects to certain listed species of diverting water by relocating the intakes of the SWP and CVP.” (NOP, p. 3.) That objective is likewise far too narrow and the objective, if anything should be something along the lines of “to improve the ecosystem by modifying the operation or nature of the SWP and CVP.” Relocating intakes is merely one method to meet the objective.

There is a major difference between what the project proponent prefers to do to meet the project’s basic objective and the project’s basic objective’s themselves. The NOI and NOP currently fail to recognize that difference and have improperly included preferred methods to meet the objectives as part of the objectives themselves.

Moreover, “relocating the intakes” is ambiguous since it’s unclear whether it means the relocation of *all* SWP and CVP intakes, or just the Tracy pump intakes? And, if it means all, does it mean only intakes within the legal Delta, or intakes anywhere that may affect the Delta? And, furthermore, for the intakes that it is intended to cover, does it mean the intakes will be relocated such that the existing intakes will no longer be used? For example, does that mean a so-called “dual conveyance” alternative would be contrary to the objective?

In the end, it would constitute a fundamental deficiency, not to mention be fundamentally

unfair in multiple respects, if the objectives are defined in a manner that attempts to avoid the consideration of alternatives that include reduced, or, even, the elimination of, exports from the Delta.

Lastly, the following so-called objective takes the cake and is entirely too narrow, entirely too vague, entirely unfair and entirely unlawful:

“Restore and protect the ability of the SWP and CVP to deliver up to full contract amounts, when hydrologic conditions result in the availability of sufficient water, consistent with the requirements of State and federal law and the terms and conditions of water delivery contracts and other existing applicable agreements.” (NOP, p. 3.)

For starters, this process cannot call the project a “Bay Delta Conservation Plan” if the foregoing is any part of the plan’s objectives. Restoring and protecting exports from the Delta has nothing to do with “conservation” of the Bay Delta. For example, what parts of the Bay Delta are being “conserved” by such restoration and protection?

Secondly, the objective assumes there have been times when the Projects have been able to deliver their full contract amounts, i.e., “restore” such ability. Where is the evidence to support that? It further assumes that there will indeed be times when the hydrology and laws, etc. will allow for such delivery? Again, where is the evidence to support that?

Thirdly, this objective was obviously created to limit the range of potential alternatives in the EIS/EIR. In light of this objective, the project proponents would undoubtedly argue that any alternative that does not restore the ability to deliver up to the full contract amounts would be dead on arrival. Presumably, so would any alternative that attempts to conserve the Delta environment by reducing exports and developing non-export water to replace such reduced exports, and any alternative that seeks to satisfy the Project’s contractor’s needs with water developed by non-Project facilities.

It is, again, startling that such an objective can, with a straight face, be included as part of a plan entitled “Bay Delta Conservation Plan.” This objective should be deleted in its entirety. It cannot be legally or fairly included as part of any so-called “Natural Community Conservation Plan” or “Habitat Conservation Plan” which the Bay Delta Conservation Plan is intended to serve as. Such an objective simply has nothing to do with conserving the “natural community” or “habitat” (or the Bay Delta).

3. Emergency Proclamations.

The EIS/EIR should fully discuss and explain how the proposed project and all of the alternatives will ensure that the various state, federal and local laws protecting matters such as Delta water quality, fish and wildlife, etc. will be upheld and enforced during all state, federal or

local emergency, disaster or other proclamations. The EIS/EIR should in particular explain what protection beneficial users, including fish and wildlife, downstream of the intakes of any isolated facilities will have all such laws fully upheld and enforced during such proclamations.

4. State of the Art Fish Screens on Current Export Facilities.

The EIS/EIR should fully discuss and explain why such screens are not currently in place, and were not installed and operational by 2006, as required by the 2000 CALFED Record of Decision, and how having such screens in place would have impacted the Wanger decisions and other export pumping restrictions on account of fishery concerns. Such screens should be a part of *all* projects and alternatives discussed in the EIS/EIR that intend on using such export pumps to pump any amount of water “through the Delta.”

5. The First Seven Years Following the 2000 CALFED Record of Decision.

Similar to the above, the EIS/EIR should fully explain what was supposed to happen as far a measures to make the “through Delta” conveyance successful, such as the installation of the above-described fish screens and extensive levee improvements, etc., and what actually happened. Any differences should be fully explained. The history of failing to carry out matters that were intended to be carried out is relevant to the validity of claims that matters, including mitigation measures, etc., intended to be carried out pursuant to the instant project will actually be carried out.

6. Alternatives.

In addition to the others discussed in the attached documents, the following should be included in the EIS/EIR range of reasonable alternatives:

- The Delta Corridor’s proposal being developed by Russ Brown.
- A comprehensive regional self-sufficiency alternative as set forth in “A Water Plan For the 21st Century: Regional Self-Sufficiency Scenario,” dated 7/23/07 (a copy of which is enclosed herewith)
- A no export alternative (i.e., no exports from the Delta watershed through the Tracy pumping plants). This alternative should be combined with everything possible that could be done to supply water to areas currently receiving exports from such pumping plants, including an unprecedented devotion of resources to developing self-sufficiency measures in importing areas such as 1) water conservation; 2) water reclamation, including desalting brackish and if necessary sea water; 3) storm water capture and reclamation; 4) higher levels of treatment of sewage effluent to allow for safe use of effluent for irrigation of golf courses and landscaping, industrial use, and in suitable cases human consumption; 5)

installation of dual water systems particularly in new developments; 6) installation of brine lines; and 7) improvements to water treatment facilities so that water from less desirable sources can be beneficially used. The devotion of resources should be at least as much as the *total* economic and environmental costs incurred in the planning, construction, mitigation, operation, etc. of any isolated facility.

- There should also be a reduced export alternative which gradually reduces exports over time by a unprecedented devotion of resources to developing self-sufficiency measures as discussed above.
- An alternative that gradually ends all deliveries of Delta watershed water to areas south of the Tehachapi Mountains and includes the above-described unprecedented devotion of resources to developing self-sufficiency in such areas should also be included.

Also, there should be alternatives to the project “as a whole,” rather than alternatives focused solely on one or more components of the project, such as the conveyance component. The NOP at page 6, seems to indicate that the process is already heading down the wrong and unlawful path of only considering alternatives to the conveyance component.

In the end, the EIS/EIR’s range of alternatives should include *numerous* alternative courses of action that meet “most” of the project’s basic objectives and reduce one or more of the proposed project’s potentially significant impacts. In light of the breadth of the objectives, it should be simple to craft and include within that range *many* potentially feasible alternative courses of action. And in light of the magnitude of what is at stake, informed decision making requires nothing less.

7. Additional Impacts Which Should be Analyzed.

In addition to other noted impacts, the following impacts should be fully analyzed and discussed:

- The flood control impacts from any facilities, such as isolated facilities, including, e.g., water elevation impacts resulting from any non-underground crossings through rivers and streams.
- Salt water intrusion into groundwater basins as a result of the various alternatives.
- All economic and socio-economic impacts associated with the proposed project and all alternatives.
- Evaporation losses from increased surface areas associated with isolated facilities, as well as increased surface areas from any intended abandonment, and, hence,

permanent flooding, of Delta islands.

8. The Delta Pool as a Fresh Water Reservoir.

The EIS/EIR should fully analyze and discuss the extent to which the Delta pool serves as a fresh water reservoir by, in essence, storing and holding upstream fresh water flows. The extent to which isolated facilities or other actions which increase the salinity of the Delta will adversely impact such a reservoir should be fully analyzed and discussed.

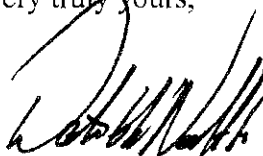
9. Unlawful Segmentation and/or Piecemealing of the Project.

DWR has unlawfully inverted the CEQA process by starting out with very site-specific, physically intrusive activities contained in the ongoing Delta-wide "Field Study," rather, than starting out with a broad or "programmatic" level of analysis of the Bay Delta Conservation Plan, and, then, "tier off" that programmatic analysis and focus in on more detailed, site-specific analysis/activities. Starting out with the broader level of analysis is essential, among other reasons, since, CEQA prohibits agencies from "segmenting" or "piecemealing" a project into smaller individual sub-projects or into separate phases in order to avoid the responsibility of considering the environmental impact of the project *as a whole*. CEQA provides numerous types of Environmental Impact Reports (EIRs) that can be used to avoid such segmenting and piecemealing such as "Staged EIRs," "Program EIRs," and "Master EIRs." (See Guidelines, §§ 15167, 15168 & 15175, respectively.) By initiating and carrying out the site-specific Field Study activities in advance of, rather than subsequent to, the required broader environmental analysis of the Bay Delta Conservation Plan project as whole, the current CEQA process is contrary to law.

10. Conclusion.

Thank you for your time and consideration of these comments and concerns.

Very truly yours,



Dante John Nomellini, Jr.
Attorney for the CDWA

DJR/djr
Enclosures

**A
WATER PLAN
FOR THE 21st CENTURY:**

**REGIONAL
SELF-SUFFICIENCY
SCENARIO**

A WATER PLAN FOR THE 21ST CENTURY: REGIONAL SELF-SUFFICIENCY SCENARIO

INTRODUCTION

As the population of California continues to grow, the imbalance intensifies between the demands for water supplies in the primarily arid regions growing the fastest and the regions where water supplies originate, whose needs for their local supplies also grow. Sooner or later California must unshackle itself from dependence upon transfers of water from North to South, especially during periods of least supply (dry years) when water presently exported is often not surplus to the needs in the north, and develop regional self sufficiency. The Sacramento-San Joaquin Delta is at the bottom of all the river systems of the Central Valley of California and is currently experiencing a meltdown of its ecosystem, largely as a result of the over commitment of the water resources, especially during drier years, which would naturally, and normally, flow through it on their way through Suisun, San Pablo, and San Francisco Bays. Failure to reverse this trend will soon lead to extirpation of important aquatic species, some of which are already listed under the Endangered Species Act; further reductions will surely lead to wholesale destruction of one of the most important agricultural and environmental areas in the world and eventually to loss of infrastructure which supports the economy of the Western United States.

Proposals to build Peripheral Canals do not address the need to find better ways to balance the supply-demand equation, they merely redistribute the deficiency in the current system to the areas in which the waters originate, and to the environment. The solution cannot be found without looking beyond the Delta. We can, and must, do better, especially as we face significant changes in the earth's climate which threaten to greatly aggravate these problems.

HISTORY

To begin to visualize a solution to this dilemma it helps, as always, to look to see how we got into the problem.

Before the Gold Rush and the ensuing settlement of the Central Valley there were no major dams or flood control levees in and around the Central Valley. Snow fell and accumulated in the Sierras in the winter and rain and snow melt filled the rivers into the Central Valley in the winter and spring, overflowing the river banks as flows peaked, filling the rivers' flood plains to the extent of three to five million acres depending upon the severity of the weather. These flood plains, characterized by forests, riparian vegetation and marshes, supported large populations of antlered animals, bears, smaller mammals and vast populations of migratory and resident birds. As the rivers drained in the drier weather, the flood plains drained into the rivers, providing a steady supply of fresh water to the Delta and Bays throughout the spring and summer months, except in the very driest years, supporting native aquatic and terrestrial resources.

Mining in the mountains and urbanization and farming to house and feed the growing population of Northern California began to change the picture. Dams were built to supply the hydraulic mining operations, to prolong the agricultural water supply and to provide some flood protection to the growing urban communities. Flood control levees were built to protect against flood plain inundation, to move hydraulic mining debris through the system, and to allow reclamation of overflow lands. This had the consequence of pushing more and more of the flood waters and mining debris farther downstream, exacerbating flood problems in the Delta which, by about 1910, had virtually all been reclaimed from the flood plain by a system of levees in accordance with a state-incentives program to create more farm land. As agriculture expanded, farmers distant from the rivers sank wells and began mining ground water to grow their crops, especially in the more arid San Joaquin Valley and the Tulare Lake Basin. Eventually the Central Valley Project was built by the U.S. Bureau of Reclamation to divert the San Joaquin River to supplement over-drafted ground water supplies on the east side of the valley, while supplying the downstream users with water

from the Sacramento River dammed at Shasta and diverted from the Delta near Tracy into the Delta Mendota Canal. Only waters surplus to the needs of areas where the waters originated were intended to be transferred. The promises made to the north are clear and well supported in historical references and law.

"On February 17, 1945, Acting Regional Director R.S. Calland of the Bureau of Reclamation stated in a letter to the Joint Committee on Rivers and Flood Control of the California State Legislature that it was the view of the Bureau that the intent of [California Water Code Section] 11460 is 'that no water shall be diverted from any watershed which is or will be needed for beneficial uses within that watershed.' The letter continued: 'The Bureau of Reclamation, in its studies for water resources development in the Central Valley, consistently has given full recognition to the policy expressed in this statute by the Legislature and the people. The Bureau has attempted to estimate in these studies, and will continue to do so in future studies, what the present and future needs of each watershed will be. The Bureau will not divert from any watershed any water which is needed to satisfy the existing or potential needs within that watershed....'" (See SWRCB [formerly State Water Rights Board] Decision D-990, Pages 70 and 71.)

An October 12, 1948 statement by Secretary of the Interior Krug included the following:

"There is no intent on the part of the Bureau of Reclamation ever to divert from the Sacramento Valley a single acre-foot of water which might be used in the valley now or later." (See Decision D-990, Pages 70 and 71, for this and other Bureau Policy Statements.)

A King Salmon population estimated at 100,000-200,000 fish was eliminated as the San Joaquin River bed was dewatered below Friant Dam, and the water quality of the San Joaquin River deteriorated as it became dominated by agricultural and urban drainage.

Next, the State Water Project was conceived and authorized in a hotly contested state-wide bond election in 1959, accompanied by solemn legislative commitments to take only water surplus to the needs of the areas in which the water originated, including the Delta, for export to the water deficient areas of the State south of the Delta. Water supply contracts were executed which

expressly recognized that the Project might not be able to develop a water supply sufficient to meet the contracted amounts, leading to deficient deliveries to the contractors.¹

As presented to the voters in the 1959 election, the State Water Project was to build dams not only at Oroville on the Feather River but also on several north coast rivers to augment its supply of water as demand in the areas of origin trumped the exporters' rights and demand in the export areas increased. We reproduce here an excerpt from Bulletin 76 (Preliminary Edition, 12/1960) reflecting the thinking of the Department of Water Resources at the time of the election:

"The natural availability of good quality water in the Delta is directly related to the amount of surplus water which flows to the ocean. The graph to the right indicates the historic and projected availability of water in the San Joaquin River at Antioch containing less than 350 and 1,000 parts chlorides per million parts water, under long-term average runoff and *without* specific releases for salinity control. It may be noted that even under natural conditions, before any significant upstream water developments, there was a deficiency of water supplies within the specified quality limits. It is anticipated that, without salinity control releases, upstream depletions by the year 2020 will have reduced the availability of water containing less than 1,000 ppm chlorides by about 60 percent, and that exports will have caused an additional 30 percent reduction.

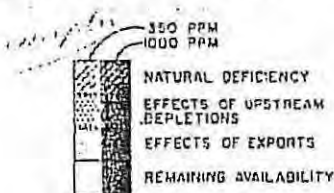
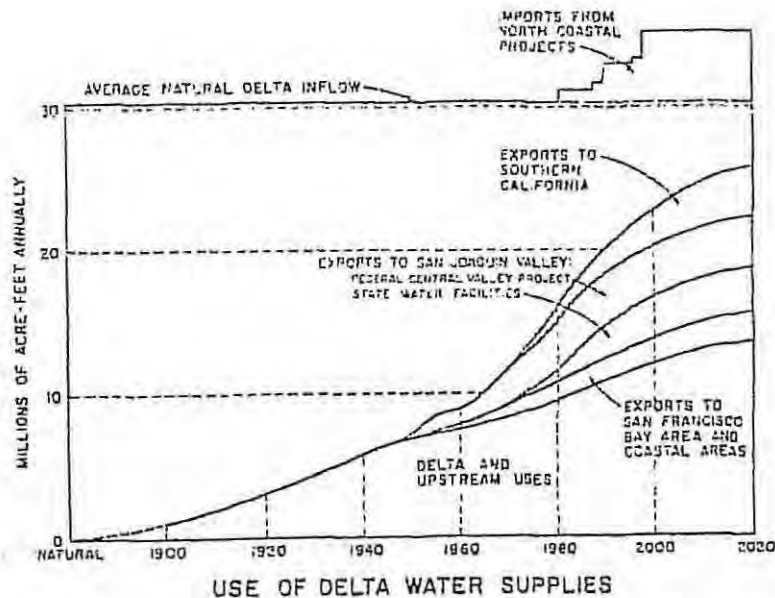
¹ The protections for the "north" are now primarily reflected in (1) the "County of Origin Statute" Water Code Sections 11461, Water Code Section 11128, Water Code Section 12931, Water Code Section 12200, et. seq., and can be summarized as follows:

(1) Only water surplus to the present and future needs of the "areas of origin" can be exported by the SWP and CVP. (See 12200, et. seq., and 11460, et. seq.)

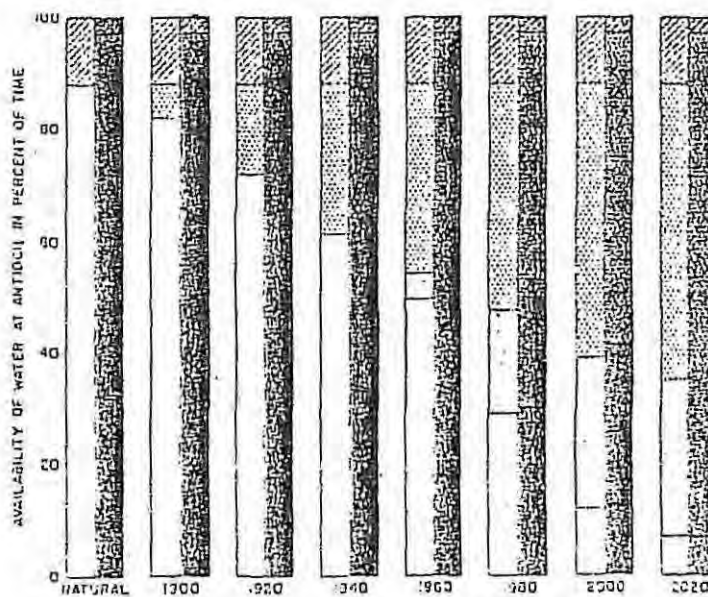
(2) Water utilized by the projects can be recaptured by the areas of origin" whenever needed. (See 11460, et. seq.)

(3) A common pool of water will be maintained in the Delta to serve both Delta users and the export projects. (See Water Code Section 12202 and Water Code Section 11207.)

(5) Releases from storage into the Delta for use outside the area will be integrated to the maximum extent possible to provide salinity control and an adequate water supply sufficient to maintain and expand agriculture, industry, urban and recreational development in the Delta. (See Water Code Section 11461 and Water Code Section 12202.)



NOTE: QUALITY LIMITS IN PARTS OF CHLORIDES PER MILLION PARTS OF WATER



The magnitude of the past and anticipated future uses of water in areas tributary to the Delta, except Tulare Lake Basin, is indicated in the diagram [above]. It may be noted that, while the present upstream use accounts for reduction of natural inflow to the Delta by almost 25 percent, upstream development during the next 60 years will deplete the inflow by an additional 20 percent. By that date about 22 percent of the natural water supply reaching the

Delta will be exported to areas of deficiency by local, state and federal projects. In addition, economical development of water supplies will necessitate importation of about 5,000,000 acre-feet of water seasonally to the Delta from north coastal streams for transfer to areas of deficiency."

The State Water Project contracted to supply 4.3 million acre feet per year of water to its contractors, on a 'best efforts' basis, with preference for serving its urban customers based on the large premium they paid for the project's costs.

We now know that only Oroville Dam; with a nominal dry period yield of one million acre feet, was constructed. Elimination of the North Coast facilities began when Governor Reagan decided not to proceed with damming the Eel River in the late 1960's, and was solidified by passage of the Wild and Scenic River legislation. We also now know that the river flows through the Delta required to support fisheries were badly underestimated and much larger flows were, and still are, recognized (If not fully imposed) by the federal environmental and fish agencies and by the State Water Resources Control Board which had reserved jurisdiction to set appropriate water standards to meet fishery needs once they were understood.

In August 1978, the SWRCB in D-1485 in failing to provide complete protection of the public trust acknowledged:

"While the standards in this decision approach without project levels of protection for striped bass, there are many other species, such as white catfish, shad and salmon, which would not be protected to this level. To provide full mitigation of project impacts on all fishery species now would require the virtual shutting down of the project export pumps...."

"Full protection of Suisun Marsh now could be accomplished only by requiring up to 2 million acre-feet of fresh water outflow in dry and critical years in addition to that required to meet other standards. This requirement would result in a one-third reduction in combined firm exportable yield of state and federal projects...."
(SWRCB D-1485, p.14.)

THE PROBLEM

So how can the San Joaquin Valley, the Tulare Lake Basin, and now Southern California and some of the Bay Area, rely for their water needs on water

projects that never developed their base supplies, badly underestimated environmental needs and expected to have supply diminish as demands grew in the areas where the water originated? And add to these problems future population growth, ground water depletion, global warming effects on snow pack and sea levels and you have a system, already in triage, headed for major disaster.

THE SOLUTION: REGIONAL SELF SUFFICIENCY

What is the way out of this dilemma? Certainly not tinkering with various forms of Delta conveyance, which do nothing to cure the supply-demand problem, but merely shift the burdens of the dry period imbalance.

SOUTHERN CALIFORNIA

After the passage of the 1982 Referendum decisively rejecting the Peripheral Canal, member agencies of the Metropolitan Water District of Southern California ("MWD") began to push for regional solutions to "drought proof" Southern California by reducing reliance, during dry periods, upon regional imports of water. Offstream storage, especially the project now named Diamond Valley Reservoir, was built to store wet year supplies from the Colorado River and the State Water Project. Storm water retention dams and basins were constructed to back flood waters into infiltration basins. Extraction and treatment facilities were constructed at the lower end of depleted, but polluted, ground water basins to reactivate those basins for carry-over storage. Wetlands were created to help recycle the extracted and treated polluted ground water, creating wildlife benefits. Demand reduction programs, including aggressive conservation, were implemented. Desalination plants for brackish and sea water were designed and constructed, often in conjunction with coastal-sited energy facilities, taking advantage of pre-heated cooling waters and existing ocean discharge facilities.

With the new stratagems and facilities, MWD says it will be able to meet the

needs of a growing Southern California population without future increases in dry period exports from the Delta, and presumably without the increases which occurred as Diamond Valley was being filled over the last several years.

In dry years, MWD's share of total Delta exports by the CVP and SWP is about 25%. The balance goes mostly to agricultural contractors of the two projects, especially in the drier years. In the wetter years, when the most water would be available without adverse impact upon the areas of origin and the Bay-Delta ecosystem, agricultural demand decreases because precipitation meets more of the crop needs and because of lack of facilities to store water for future use in drier years.

THE CENTRAL VALLEY REGIONAL SUPPLY

The lack of ability to utilize and store water in the Central Valley during the wetter years also aggravates flooding problems in the Valley and, especially, in the Delta. With literally millions of acres of the Valley floor converted from secondary flood plain to farm land and urban areas over the last 150 years, flood peaks at the lower end of the Valley and the Delta have increased dramatically and will increase even further if global warming produces more rain run-off in place of snow melt from the Sierras as is expected. In addition, traditional Sierra and foothill reservoirs will be less effective at flood control as flood reservations approach and exceed reservoir capacity and less control is available for larger rainfall events.

How then can the Central Valley, and especially Central Valley agriculture, prepare itself for a future of more concentrated rainfall events and less dry-year import availability from the Delta via the CVP and SWP and become regionally self-sufficient?

The California Water Atlas reports that there is over one-half billion acre feet of ground water storage space in the San Joaquin Valley alone, much of which has been vacated by the massive ground water mining which has sustained the growth of agriculture and urban areas from Red Bluff to Bakersfield and which hasn't been rectified by the billions of dollars invested in the CVP and

SWP which were constructed for that purpose. Deficiencies in imported water supplies have been noted and bemoaned, but not addressed. Ground water overdrafting continues largely unabated, with wells periodically deepened and power consumption escalating.

A simplified view of this situation helps to illustrate the problem. Agriculture in the Central Valley is constantly searching for markets for its production. The scarcity of robust markets impacts the economics of farming to such a degree that a "one year at a time" mentality prevails. Over supplied markets cause agricultural land, often in flood-prone areas, to be converted to urban development without proper attention to flood threats and flood control.

What can be done to get us out of this mess?

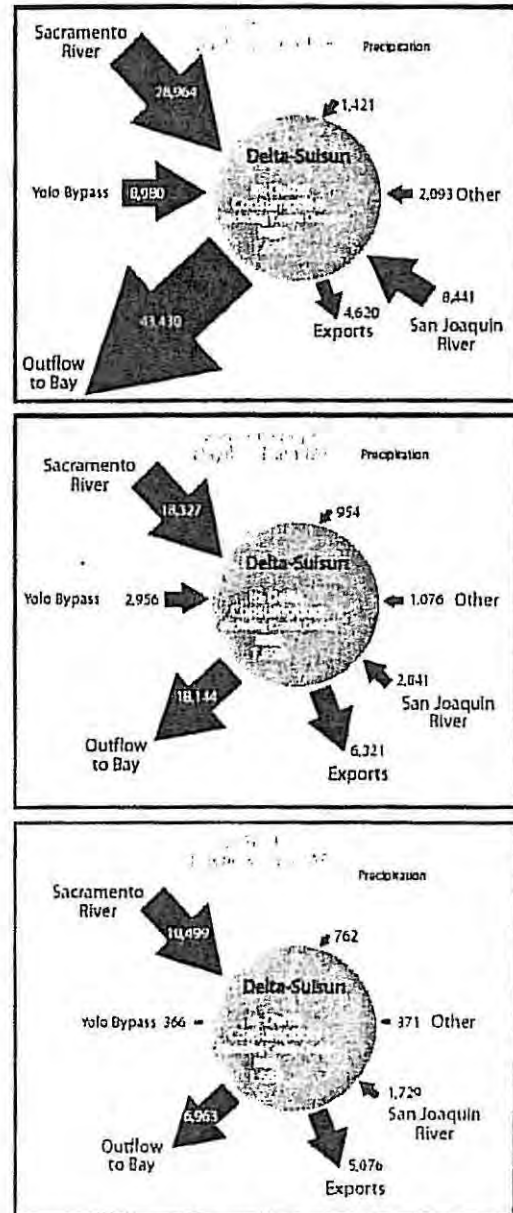
IT ALL STARTS WITH FLOOD CONTROL

First, we need a real flood management plan for the Central Valley which addresses the current situation and plans for the future of global warming. Until the "design flood" is determined, we can't design a system to contain it and we won't know where to expand our cities. This problem has been recognized and discussed recently in sessions organized and conducted by the University of the Pacific's Natural Resources Institute, and the development of a flood management plan for the Central Valley is now called for in SB 5 (Machado) currently before the legislature.

It is important that such a plan anticipate future climate change possibilities so that "room for the rivers" and appropriate flood works expansions can be reserved in flood management plans.

Second, we must recognize that meeting water needs in the Central Valley will be dependent upon controlling and conserving portions of these flood flows for future use. The recently completed DWR publication "Status and Trends of Delta-Suisun Services," May 2007, contains an important illustration of this problem. At page 18 (reproduced here) the authors present a chart entitled "Delta Water Balance" depicting Delta inflows, outflows and exports for three recent water years, 1998 (wet), 2000 (average) and 2001 (dry). Of particular note is the finding that exports from the Delta by the CVP and SWP were less in the wet year which experienced almost 50 million acre-feet of inflow than in the dry year in which less than 14 million acre feet entered the Delta from precipitation and its tributaries. What kind of a surplus water export system is this? And how much of the 5,076,000 million acre-feet of exports in the dry year were produced by carry-over storage from project reservoirs as opposed to current year unimpaired flows to which senior water rights and public trust entitlements would generally attach?

Delta Water Balance



Flows vary significantly from year to year

Status and Trends of Delta-Suisun Services
May 2007

HOW TO PREPARE FOR DROUGHT

A simple exercise is illustrative of this point. Average annual exports by the CVP and SWP from the Delta total about 5 million acre-feet, whereas average annual inflows are about 30 million acre-feet. Thus if less than 20% of the annual inflow to the Delta was exported in each year, total exports would increase, while exports during the driest years would be limited to 1 to 2 million acre-feet in each such year allowing sufficient Delta outflow to maintain good water quality in the estuary and support a healthy ecosystem.

It is interesting to note that Dr. Michael Rozengurt, a prominent Russian hydrologist testified in the SWRCB Bay-Delta Estuary Hearing (on July 14, 1987) leading up to D-1379 that every estuary in the world which had significantly reduced its cyclical natural river in-flows has experienced serious ecosystem harm. There is a growing scientific consensus that greater outflow, especially in the drier years, will be necessary to support a healthy ecosystem in the estuary, and of the need to determine what the "safe export yield" of the Delta will be after reserving sufficient outflow. Recently, the Pelagic Organism Decline recovery team of scientists has recommended immediate export reductions in the range of 1.5 million acre-feet per year as a measure to avoid elimination of pelagic species.

Should we not be redesigning our massive export projects (and perhaps some others) to increase exports during wetter years while decreasing exports in drier years, all in line with such "safe yield" limits?

The Southern California SWP contractors have already taken steps to accommodate themselves to such an approach with off stream storage and ground water recharge capabilities, as well as with demand management initiatives. But the Central Valley customers have done little. Neither Friant Dam (Millerton Reservoir) nor the Federal share of the San Luis facilities provide much carry-over storage relative to the annual demands of the CVP contractors. Both are largely operated on an annual fill and empty strategy. More wet year storage is needed, but where is it to be found?

Some of it might be provided by new or expanded reservoirs in the mountains, but this is unlikely given the current economics (especially without

urban subsidies of agricultural supplies), environmental problems, and the impacts of global warming on yield of traditional storage reservoirs.

More than likely it would best be provided by flood plain management on the valley floor, more like it was 150 years ago.

It should be noted that quite a bit of this is already happening. Flood management for the Sacramento Valley is largely provided not by foothill reservoirs, but by a system of bypasses and floodways on the valley floor. Although not much emphasis is placed on flood flow retention and ground water recharge in these by-passes and floodways today, it could be in the future.

The Tulare Lake Basin presents a model for the areas south of the Delta. Much of the larger flows of the Kings River are planned to flow into the basin where they are confined to leveed areas and used for carried-over irrigation supplies. These operations could be expanded to include flood waters that are now pushed to the San Joaquin River.

Similarly, the Kern County Water Bank is operated to store excess waters in wet years in a previously over-drafted ground water basin for subsequent use.

Investigation will reveal many other opportunities to retain storm waters on the valley floor in historical flood plains for carry-over use and ground water recharge. Some of these may utilize temporary retention in the by-passes and basins of the Sacramento Valley for subsequent transfer to storage and recharge on the floor of the San Joaquin Valley and Tulare Lake, finally utilizing wetter year export capacity of the CVP and SWP when fewer environmental consequences can be anticipated. Other opportunities will be found around Los Banos in the depleted basins under the San Joaquin River accessed from areas like Madera Ranch, the San Luis Refuge, the Grasslands and from the restoration of flows in the San Joaquin River itself. An intriguing opportunity will be presented as the Department of the Interior pays to retire vast acreages (200,000 or more) of the Westlands Irrigation District impaired by perched ground water without drainage but overlying an over-drafted ground water basin beneath the Corcoran Clay.

Reoperation of existing reservoirs will be more feasible with operable flood control basins.

Other opportunities will be presented by the need to create a system of

weirs and gates to supply flood by-passes and retention basins as the weather changes south of the Delta from snow to rain. These may extend all the way into the Delta, with flood easements acquired on currently farmed acreages for temporary flooding or wetlands creation on lands that don't include critical infrastructure, i.e., controlled flooding and timely pump-out to avoid levee failure and impacts to adjacent lands, to provide better flood protection to urban areas and critical infrastructure.

Easement programs should be developed, perhaps through the creation of a Conservancy, to target critical habitat areas, both aquatic and terrestrial, not already in public ownership, and to help compensate for loss of farming and development opportunities.

It is important to point out that the additional dry-year water that can be supplied by this type of redesign of the CVP and SWP does not need to be exported from the Delta in dry years since it is already at or near the sites where it is needed, recharging depleted ground water basins, recreating historical wetlands and providing carry-over water supplies.

Another important feature is that those projects are primarily designed for flood control, traditionally a non-reimbursable feature of water project development. The resulting water supply may therefore be one that agricultural users could actually afford.

WHAT NEEDS TO BE DONE IN THE DELTA ITSELF?

The Delta is much more than a cross-roads for water development or a vast and fertile farming area. Probably because its land is relatively flat, relatively unpopulated and relatively inexpensive, much important infrastructure has been sited in and across the Delta, all of which is vulnerable to catastrophic levee failures. Increasingly urban development is encroaching into the Delta as well. It is also home to one of the great and most varied ecosystems in the world, both aquatic and terrestrial, as well as a multi-faceted recreational paradise easily accessible to a large and growing population. All of these assets -- farming, infrastructure, urban areas, environment, recreation -- are as vulnerable to catastrophic levee failure as are the water export facilities, although the exports

facilities draw the most political attention.

In simple terms, agriculture built and maintains the levees, now with modest support from the State through the Levees Subvention Program. The levees protect the homes, highways, aqueducts, pipelines, gas fields, deep water channels, recreation facilities and ecosystem found in the Delta. Water development squeezes as much water as it can out of the Delta during the drier years putting enormous and destructive pressure on the ecosystem and the local uses. In the wetter years, upstream development dumps as much flood water as it can into the tributaries putting enormous pressure on the Delta levees. Is it any wonder that commentators now consider the Delta, if current trends continue ("business as usual"), to be "unsustainable" in the face of future changes?

The "drivers of future change" identified in the Delta Risk Management Study are:

- Subsidence
- Global climate change - sea level rise
- Regional climate change - more winter floods
- Seismic activity
- Introduced species
- Population growth and urbanization

How do we deal with these "drivers"?

SUBSIDENCE

Subsidence has occurred both with levees and the lands protected by the levees. As river flood stages have increased due to upstream activities causing constrictions on the flood plain and due to global warming, levees have been increased in width and height. Where constructed on compressible soil foundations (peats and clays), the additional weight has compressed these foundations, causing settlement and necessitating further construction, more weight, and more settlement. Each time new levee height or width is required, the process repeats itself until the foundation soils are fully compressed and

stabilized. Stabilization has largely occurred in many parts of the Delta, especially toward the edges.

The second form of subsidence has occurred mainly through oxidation of organic soils which were dried out (and sometimes burnt for weed control) for farming, and to some degree, by compression of the dewatered soils from the weight of farm equipment, not unlike the first form of subsidence discussed above for the levees. This form of subsidence slows down, and eventually stops, as the organic soils are depleted which has also occurred in most of the Delta. It is estimated by local interests well familiar with current soil conditions, that less than 100,000 of the 600,000 acres in the Delta still contain enough organic material to further subside. Most of these conditions existing in the west-central portions of the Delta, and these soils usually occupy just portions of islands, not the entire island.

Subsidence of the farmed lands has no impact upon levee stability per se. The levee structures support themselves and the "design levee" is only dependent upon a swath of land 200-400 feet wide, which is the foundation upon which the levee is built.

Although farmed land subsidence can increase the volume of water which the leveed island will contain if flooded, it doesn't contribute significantly to the stability of the levee itself.

Generally speaking, normal levee maintenance has kept up with the problems created by subsidence. The bigger challenges are presented by the next subjects.

GLOBAL CLIMATE CHANGE - SEA LEVEL RISE

Modest sea level rise has been documented at the Golden Gate since the original reclamation of the Delta, about 6 inches since reliable measurements began. Most observers feel this phenomenon is increasing and will produce further rises in a broad range of one to eight feet over the next 50-200 years. At the upper end of this range the world will be dealing with more difficult issues than the Delta, and many coastal areas and bays don't currently have levee protection.

Because the Delta is already protected by levees (which have few encroachments), it is possible to build higher, wider, stronger levees. It also becomes more expensive as levee building material gets scarcer and more remote. It is critical to protect and expand local sources of scarce material, such as dredged materials from deep water channel maintenance activities and the rock revetment material from nearby quarried deposits, which are under constant regulatory pressure.

At some point "Dutch" solutions should be considered, especially if the rate of sea level rise trends toward the higher estimates. Such solutions include joining groups of islands together behind common levees ("polders") to reduce the miles of levees which need major improvement. In many cases locks would be appropriate to retain waterway access for recreational and commercial uses.

Consideration should likewise be given to the possibility of constructing closable surge barriers west of the Delta if it looks like sea level rise will trend toward the highest estimates, mimicking the Rotterdam Storm Surge barrier types which Dutch engineers are now studying for the Lower and Upper Mississippi River. It would be helpful to have the assistance of the Dutch engineers to help plan an effective future flood control plan.

REGIONAL CLIMATE CHANGE - MORE WINTER FLOODS

Our responses to this "driver of future change" have been described earlier. Suffice it to repeat here that we need a Central Valley Flood Management Plan that will identify opportunities to attenuate flood peaks and incorporate methodologies for future use of the attenuated flows through flood plain retention and ground water recharge.

SEISMIC ACTIVITY

This is the real "wild card" of the drivers of future change. Although the Delta has never experienced levee failure from an earthquake, it could tomorrow. Hence, we should be preparing today.

The seismic vulnerability of the Delta is focused overwhelmingly in the

westernmost Delta because of closest proximity to known active faults, poorest levee foundations vulnerable to seismic events, and exposure of the CVP, SWP, and CCWD to potential sea water intrusion at their intake facilities induced by a western Delta island failure. As much as 60-70% of the risk of seismic failure is concentrated on Sherman Island alone, according to the risk studies, and much of the remaining risk is to Jersey, Twitchell and Bradford Islands.

In spite of the fact that most of the lands on these westernmost Delta Islands are already in public ownership, little is being done to reduce seismic vulnerability beyond "hand-wringing." Subsidence is presumably continuing under the farming practices of the tenant farmers and major seismic reinforcement of the most vulnerable portions of the levees is not being accomplished. We believe the public ownership needs to react quickly to the perceived seismic threat. Since these westernmost islands are also the closest and most accessible to the Bay Area population, there is a significant opportunity to meet recreational and educational needs if portions of these lands need to be converted from agriculture to attain seismic protection.

Our engineers tell us that a good defense against seismic failure is to widen the levee so that slumping caused by foundation liquefaction does not take the whole levee section resulting in a breach. In the process, a lot of material has been "stockpiled" at the site which can be used to respond to slumping damage as it occurs.

It should be noted that as you move eastward into the Delta, the seismic risk decreases, as does the risk of induced salinity intrusion which affects intake facilities of the in-Delta diversions. If the westernmost islands don't fail, the exposure of the export facilities is greatly reduced. By way of example, the recent June failure of the Jones Tracts' levees did not significantly impact export water quality. In the Eastern Delta, storm flood is a more significant risk, although as protection for urbanized areas is designed, seismic protection should be incorporated at appropriate levels.

INTRODUCED SPECIES

Introduced species have been identified as a big concern only in the last twenty-five years or so. In fact, some of the species we are now concerned about saving (Striped Bass, Threadfin Shad) are themselves introduced.

The Asian-variety clams and crabs that have become problems weren't "invented" in the last 25 years, and ocean-going commerce (and bilge water dumping) has existed since at least the 1930's. Why are they pervasive now, competing for food with the "desired" organisms?

The answer most likely lies in the changes to the aquatic environment which have taken place as a result of upstream diversion and Delta exports of fresh water which would otherwise run through the Delta to Suisun, San Pablo and San Francisco Bays.

The effect has been dampening of seasonal flow and quality fluctuation and, contrary to the mistaken assertions upon which the PPIC Report authors based their conclusions, a saltier Suisun Bay and Delta. The "null" or "mixing" zone where the forces of the Delta fresh water outflows and the ocean tides achieve balance in the spring and summer used to be found in Suisun Bay, which is very wide, typically shallow, and (before the construction of the Montezuma Slough gate), used to have many dendritic excursions into sloughs extending into the Suisun Marsh. Because the null zone is the most nutritionally productive area of the estuary, the combination of primary food production and channel configuration provided a productive nursery area for the aquatic creatures of the system.

Now the mixing zone has been relocated by reduction of Delta outflow an average of seven miles further upstream into the deep, dark, steeply banked channels of the western Delta, conditions in which the "preferred" species do not thrive. The more salt-loving Asiatic clams have taken hold in Suisun Bay and "filter" the zooplankton and other primary food supplies out of the system.

The best, and perhaps only, solution to this problem is to return the null or mixing zone to Suisun Bay by reducing exports from the system during the drier years, which is proposed earlier in this paper. If the water supply offshore from

Suisun Marsh was re-established at quality necessary to grow preferred plants in the Marsh, the dendric sloughs could be re-opened into the Suisun Bay which would undoubtedly help support the "nursery function" of Suisun Bay.

POPULATION GROWTH AND URBANIZATION

The population is probably going to continue to grow and that may not be avoidable, or necessarily bad. The key is to keep it from growing into flood-threatened areas.

We have a big problem. Locally governed land use authority allows urban development to occur in areas that turn out to lack adequate flood protection for existing or newly urbanized areas. The federal government doesn't adequately respond to flood threats, and to floods. As a group, the local, state and federal authorities don't have a flood management plan.

This problem transcends the entire Central Valley, although it is most evident in the Delta. We need to develop a plan whereby we have a common flood management plan that the local, state and federal authorities can work together to implement and stop pushing the blame (and liability) back and forth amongst each other.

Earlier in this paper we called for the development of a Flood Management Plan for the Central Valley which will assess current and future conditions. With such a plan we can determine how to operate flood control features of water storage projects, where to build our levees, and which portions of the historical flood plain we need to reactivate or recreate "to provide room for the rivers." Then we will know where, and where not, to build our cities. And there will be a sound basis for dividing governance responsibility between local, regional and state agencies on the basis of designated uses.

CONVEYANCE

Once all these "drivers" have been addressed as discussed above, we can "tinker" with Delta conveyance strategies to optimize the system without mere reallocation of shortage.

From a Delta perspective, we are fearful that mechanisms that make it possible to short the Delta of its water supply will be used, ultimately, to short the Delta of its water supply. We also believe that little has been done to consider the implications of isolated transfer since the 1982 Referendum and dispute the recent statement attributed to the Governor that isolated Delta conveyance "has been studied to death." We have the following concerns about isolated transfer facilities:

- The fresh water inflow to the Delta has already been greatly reduced by bypassing the Delta exports south from Friant, west from the Tuolumne, and west from the Mokelumne. The inflow is also reduced by the consumptive use of upstream water to grow food and support urban growth. If a Peripheral Canal were used to also keep Sacramento water out of the Delta, there would inevitably be further substantial increase in the salinity of water in Delta channels. Exports from Delta channels would then be deemed too salty. The canal would, therefore, have to convey all the water that is now exported south and west from Delta channels.

- The Peripheral Canal would be a barrier to flood waters from south and east of the Peripheral Canal alignment. During major floods that exceed the capacity of the San Joaquin and Mokelumne channels, the flood stage would increase against levees that protect tens of thousands of homes. The canal itself becomes a potential threat to flood adjacent areas if it breaches (and we are advised that current design and cost estimates do not include seismic protection).

- The Peripheral Canal would require vast expenditures to construct massive new levees on both sides of a 42 mile alignment through the very areas where we now have problems maintaining levees.

- If billions of dollars are spent on a Peripheral Canal, those funds won't be available to improve existing Delta levees, and to implement measures that could impede the flow of Bay water into the Delta in the event of multiple levee break if it occurs at a time when outflow to the Bay is not maintained by flood flows.

- If the basic configuration of Delta channels and land uses is not maintained, there will be an increase in the tidal actions which brings Bay water

into the Delta exacerbating water surface elevation during flood flows and loss of water to meet net Delta outflow requirements. Numerous Peripheral Canal proponents propose that levees be breached and/or allowed to fail for lack of maintenance or repair. As each island flooded it would increase Bay water encroachment. "Water use" by evaporation from the surface of flooded lands exceeds agricultural use of water from farmed lands by about two acre-feet per acre. It would also increase wave erosion on other levees. If the basic configuration is not maintained, the Delta will become a salty inland bay.

- As the Delta became an inland bay, the levees that protect roads, housing, utilities, railroads, recreation facilities, etc., would experience substantial wave and seepage problems. Their ability to protect the public's interests would be seriously diminished. It may be far cheaper to fortify the existing levees that protect the infrastructure than to relocate or fortify the infrastructure itself.

- Delta agriculture now produces food on about half a million acres of Delta lands. The production would be largely destroyed by increased salinity and by the uncertainty of levee protection caused by a Peripheral Canal. Agricultural Code 411 states that California must not become dependent on a net import of food due to failure to provide an adequate agricultural water supply. Using a Peripheral Canal to increase salinity and destroy half a million acres of food production in the Delta is incompatible with that mandate.

- The salinity increase caused by a Peripheral Canal would cause a violation of most, if not all, of the SWRCB's salinity standards and contracts with Delta water agencies.

- The reallocation of an inadequate water supply and other consequences of a Peripheral Canal would violate the Delta Protection Statutes, water rights law, and the Environmental Protection Act.

- The initial effect of the Peripheral Canal on Delta fishery is controversial. The entire Sacramento River anadromous fishery (Salmon, Steelhead, Shad, Sturgeon, Striped Bass, etc.) would need to pass by its intake and no fish screen of this magnitude has ever been proven effective. Delta Smelt will follow the fresh water in the Delta to the pump intakes (whether they are at Tracy or Hood) when water quality deteriorates below the point of export.

- It is not clear that there is a routing available for a Peripheral Canal with all of the urbanization that has occurred since 1982, without relocating it westward into the very areas that are thought to be vulnerable to flooding because of subsidence, poor foundation material and seepage problems.

- Who would be willing to pay for it? The 1982 Referendum illustrated the reluctance of the voters and a recent court decision reconfirms the obligation of the State to submit bond proposals to the voters.

The proposals to improve the efficiency of passage of water through the interior of the Delta bear more promise from both a political perspective and a "reversibility" perspective, including the recent suggestions of ways to separate the streams carrying fish from the flows being exported in the South Delta while still maintaining sufficient flow through the Delta to maintain a common pool of fresh water for use within and without the Delta.

Recent proposals incorporating such separations include "Straw Proposal 2" the so-called "Eco-Crescent" presented to the Delta Vision Stakeholder Coordination Group at its recent workshop in Courtland on June 13 and 14, and Dr. Russ T. Brown's "Proposal to Reconnect the San Joaquin River to the Estuary" dated March 23, 2007. Many features of these concepts included within the "Flexible Delta" Scenario being developed by the Delta Visions Stakeholder Coordination Group may fit within this concept, although others would not. In fact, a group composed of representatives of the North, Central and South Delta Water Agencies and some environmental groups submitted a tributary corridors concept to CALFED several years ago which included a physical barrier to separate San Joaquin River Salmon at the head of Old River to keep the fish in the main stem of the San Joaquin River away from the influence of the export pumping from Old River while enhancing other environmental features of Old and Middle Rivers.

All of these proposals appear to provide protection to important Delta fisheries without negatively impacting Delta water quality, such as is the case with isolated (peripheral) transfer facilities, and are worthy of study and consideration in conjunction with the other suggestions made here.

BLUE RIBBON TASK FORCE ISSUE ASSESSMENT

Before concluding, we wish to point out how the approach recommended in this paper responds directly or by implication to the issues which the Governor has addressed to the Blue Ribbon Task Force in his Executive Order 5-17-06 initiating the Delta Vision Process:

- The environment, including aquatic and terrestrial functions and biodiversity.

Our approach is to restore enough of the historical Delta outflow pattern necessary to return the mixing zone to the Suisun Bay to reclaim the ecological vitality of the Bay-Delta Ecosystem, while replacing displaced exports with flood plain recapture, ground water replenishment, and demand management initiatives. This approach will benefit aquatic and terrestrial populations in the entire Central Valley through enhanced drier year stream flow, water quality and wetland restoration, while providing protection to the largest fresh water estuary in the Americas and the 700+ native species of fish, animals and plants that depend upon it.

- Land use and land use patterns, including agriculture, urbanization, and housing.

Developing and implementing a Flood Management Plan for the Central Valley will help resolve existing governance problems by designating, from a regional perspective, where urbanization can safely occur and where agriculture and other open-space uses must remain, and by providing financing to implement the plan. Such a Flood Management Plan would also help determine whether it is more cost effective to protect legacy communities, roads, and other Delta infrastructure by strengthening existing levees or by constructing ring levees or consolidating and armoring utility corridors.

- Transportation, including streets, roads, highways, waterways, and ship channels.

This paper favors maintaining the existing land patterns in the Delta to appropriate risk levels given the protected use. Seismic concerns would be stressed in the westernmost Delta and for levees that protect urban areas. Flood

risks would be addressed through a combination of flood attenuation in upstream flood plains and rehabilitation and maintenance of Delta levees, in accordance with sound engineering practices. Greater risk would be assigned to levees which don't protect important infrastructure, recognizing the need for both a flood easement program and robust emergency response.

Delta Engineers assure us that there are techniques to protect Delta levees to address seismic risk and future conditions relating to global warming. If global warming begins to reflect higher estimates, "Dutch solutions," such as polders and tidal surge barriers, should be considered for timely implementation.

- Utilities, including aqueducts, pipelines and gas/electric transmission corridors.

As noted above, levee systems that protect at-risk infrastructures should be maintained to less at-risk standards. The utilities themselves are currently involved in this type of planning and construction, including multiple routing and consolidation.

- Water supply and quality, municipal/industrial discharges and urban and agricultural runoff.

The current system of regulation is adequate to meet existing and emerging public health and safety objectives, and to incorporate new technologies as they appear. Public funding needs to be available to address unusual issues, emergencies and environmental justice concerns.

- Recreation and tourism, including boating, fishing and hunting.

This paper's approach would enhance aquatic and terrestrial resources throughout the Central Valley and specifically preserve and support recreation and tourism through appropriate land-use designations established by a Central Valley Flood Management Plan, and by the restoration of a robust fresh water environment in the Delta consistent with its history.

- Flood risk management, including levee maintenance.

This paper calls for establishment and maintenance of levees throughout the Delta appropriate for the protection of the assets they protect and the stresses they will face, and a robust Emergency Response Plan for when, and if, they fail. Ultimately, it is either extremely expensive or impossible, to only protect

some of the levees in the Delta.

- Emergency response.

No matter how well designed and constructed, any levee can fail, if not from earthquake, floods or beavers, then maybe from acts of terrorism. We must have a robust Emergency Response Plan, including quick financial response capability. Delta interests have promoted and participated in emergency response planning, including a set-aside of Propositions I-E and P4 funding to jump start emergency response.

- Local and state economies.

Too often discussion about Delta Vision focuses on water export interruption and ignores the devastating impact a major flooding in the Delta would have on the ecosystem, transportation, utilities and urbanized populations. Any viable Delta Vision cannot envision long-term loss of any significant portion of the Delta land mass or the levees that provide its protection. This paper also describes a methodology for providing the water supply to the Delta exporters which they were supposed to get from the expansion of the water project in a way that addresses flood issues meaningfully with the prospect of global warming and is sensitive to environmental issues.

CONCLUSION

We have become dependent, perhaps unwittingly, upon the Delta to support a wide variety of functions, from ecosystem, to agriculture, to transportation of people, water, energy, and commodities, to urban communities and their recreation needs. We need to develop a plan that deals with all of these functions, not just inter-regional water transfer. We need to look beyond the Delta for solutions.

This plan needs to look forward and anticipate changes that appear certain to occur in the twenty-first century and beyond, and not be tied to concepts developed to deal with the past.

We hope that you have found this paper to be useful in that regard.

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Re: BDCP – Comments on NOF for EIR/EIS

Dear Ms. Brown

Thank you for allowing the City of Antioch the opportunity to comment on the Notice of Preparation (“NOP”) for the joint Environmental Impact Report/Environmental Impact Statement (“EIR”) for the Sacramento-San Joaquin Bay Delta Conservation Plan (“BDCP”). In addition to the comments set forth in this letter, the City incorporates its previous comments on the BDCP’s prior NOP set forth in the City’s letter dated May 30, 2008. The City’s prior letter is part of the record and is posted on the BDCP website.

I. ANTIOCH’S BENEFICIAL USE OF WATER IN THE DELTA

The City is concerned about potential impacts to its water supply (e.g. in-Delta water flows and water quality) that could result from the implementation of the BDCP.

As previously stated, Antioch holds pre-1914 water rights to the San Joaquin River. The City’s rights are among the highest priority rights in the Delta and have been validated as a matter of law by the California Supreme Court (Town of Antioch v. Williams Irrigation District (1922) 188 Cal. 451). Significantly, the City’s Delta water rights include as a matter of law the right to Sacramento River flow into the Delta. Id.¹

The City’s water supply is protected pursuant to the City’s water rights priority, the Delta Protection Act (Water Code sections 12200 et seq.), Watershed of Origin protections (Water Code

1. In the Town of Antioch v. Williams Irrigation District (1922) 188 Cal. 451, the California Supreme Court found:

“It is important here to state some additional facts to explain how this pollution comes about and why diversions from the Sacramento River may or do affect the volume and quality of the water flowing down the San Joaquin River by the city of Antioch into Suisun Bay . . . For many miles above the entrance of the two rivers into said bay the land between them is flat and threaded with sloughs in which water either stands or flows. From the Sacramento River at two points, one about eight and the other about twenty-three miles above its mouth, sloughs diverge, into which parts of its water escape and flow through said sloughs and into the San Joaquin River at points several miles above the diversion by the City of Antioch.”

sections 11460 et seq.), by the doctrines of reasonable use and the public trust as well as by the enabling legislation for the Central Valley Project and Shasta Dam (See Water Code section 11207)

II. NOP COMMENTS

A. Project Description

The proposed BDCP project ("project") is still not adequately described in the NOP. Under the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq., (and 40 CFR section 1508.22 for the EIS component of the EIR), the NOP must adequately describe the proposed project in order to enable meaningful comments and to adequately inform the public of the potential impacts to the environment.

The BDCP NOP is vague as to the project description. It is generally understood that the BDCP is likely to include a project component involving some form of an out-of-Delta conveyance facility. However, the NOP omits any details about such a facility including the preferred location and size of such a facility. Additionally, the NOP fails to state whether the proposed conveyance element of the BDCP will be a through-Delta only conveyance, or an out-of-Delta only conveyance, or a dual conveyance alternative including both through-Delta and out-of-Delta facilities.²

During the scoping meetings, several alternatives regarding the location of the out-of-delta conveyance facility were shown on certain maps. However, no alternative was indicated as a preferred alternative and the locations of the intakes and alternatives (e.g. western, eastern, and in-Delta alignments) were indicated to be tentative and for discussion purposes only. There was some discussion at the scoping meetings that the eastern alignment for the out-of-Delta conveyance facility was being considered as a potentially preferred location for the purposes of the habitat conservation plan but not for the CEQA process. Further, other in-Delta projects have been discussed as part of the BDCP such as the Frank's Tract Project; however, the exact configuration of these projects and how they would operate within the framework of the BDCP is not set forth in the NOP.

Without an adequate project description, it is not possible to know the potential impacts of the BDCP.

B. Document Type

It remains unclear whether the EIR will be a "project" level document or whether further environmental review will be conducted in future phases. An adequate project description must include a clear description of the environmental document to be prepared. It is also unclear how the

² Recently, however, the BDCP has publically recommended a dual facility and has selected the eastern alignment as the preferred alignment for the out-of-Delta conveyance facility. As these decisions were made during the NOP comment period, and were not part of the project description in the NOP, the public has been deprived of an opportunity to comment on these decisions.

Environmental Impact Report and the Environmental Impact Statement will be jointly addressed and developed.

C. Discretionary Decisions

The EIR continues to fail to list clearly all the discretionary decisions expected to rely on this document. Many local, state and federal approvals will be necessary to implement the proposed project.

D. Impacts on In-Delta Resources, Water Quality and Beneficial Uses

The BDCP has the potential to impact in-Delta resources and beneficial uses by diverting water north of the Delta and reducing Sacramento River flow to the southern, central and western Delta. To date, there has been little discussion or analysis regarding these impacts other than some preliminary modeling. There was almost no discussion of such potential impacts during the scoping meetings conducted this spring.

Potential impacts from the BDCP include changes in the operation of upstream projects including Shasta, Oroville, and Folsom dams. Changes in inflow to, and outflow from, the Delta are also being proposed. These potential operational changes to existing facilities as part of the BDCP are not adequately described in the NOP (See for example page 8 of the NOP). As a result it is not possible to comment meaningfully on potential impacts to in-Delta water supplies and resources (including potential impacts from increased salinity in the western Delta) or on potential conflicts between the BDCP and in-Delta protections such as the Delta Protection Act. There may also be a conflict between operational changes (and the construction of new facilities) and stated potential covered activities such as the Cache Slough Restoration area resulting in improvement of "Delta salinity conditions."

In addition, the BDCP has the potential to impact in-Delta resources and water quality due to potential changes in the location of diversion points resulting in less water diverted from the southern Delta and more water diverted from the Sacramento River near Hood. Diverting large amounts of Sacramento River flows upstream of the Delta is likely to have critical impacts on the in-Delta resources and other beneficial uses. Without a specific project description of the location and configuration of the proposed new intakes, it is not possible to adequately comment on the potential impacts from the change in these points of diversion. It is unclear whether in-Delta water supplies could be impacted by these new diversion points and corresponding facilities.

Although preliminary model results have been provided to us at our request, we are unable to assess the impacts of the proposed project upon water quality at the City of Antioch's intake location. First, we understand that certain project components (e.g., size of habitat in the Cache Slough area) may change in subsequent project evaluations. Second, it is unclear that the tool being used to assess impacts (DSM2) is adequate. We understand that a "recalibration" process is currently underway that may alter the way in which flows into and out of the habitat restoration area

are simulated, with subsequent impacts to tidal flow dynamics and downstream water quality. We are also concerned about the ability of the DSM2 model to adequately describe future conditions, including both project-induced conditions and those that will result whether the project proceeds or not. In the former category, the DSM2 model being used to simulate salinity is frequently unable to reproduce salinity under conditions of low Net Delta Outflow (NDO), and it appears that the frequency of low NDO may increase under the proposed project. In the latter category, the salinity return component of the model at the Bay boundary has not, to our knowledge, been adjusted to accurately simulate the expected effects of sea level rise. We understand that a recalibration process may be underway to address this concern as well. Finally, and as noted above, changes in the operations criteria of upstream projects (e.g., Shasta, Oroville, and Folsom Dams) have not been included in the current model evaluations and may significantly affect the quality and timing of fresh water flows to the Delta.

The EIR must examine these potential impacts from the BDCP. The EIR must review how the BDCP will be implemented within the framework of the California water rights system (e.g. protecting water rights holders with superior priorities) and how the BDCP will meet the requirements of the Delta Protection Act (e.g. protecting against salinity intrusion and maintaining in-delta water quality). The EIR must also review how new export facilities and operational changes to existing facilities will impact in-Delta species. While one of the stated goals of the BDCP is to protect and restore aquatic and natural communities, the facilities constructed as part of the BDCP could in fact cause new significant impacts on aquatic and natural communities.

E. Mitigation/Alternatives

Potential mitigation measures and alternatives such as increased water conservation or reduced Delta exports are not described in the NOP and should be incorporated into the EIR. Water conservation has been a primary objective of other in-Delta processes such as the Delta Vision. Water conservation measures are likely to have less impact on in-Delta resources and water supply than out-of-Delta conveyances and are also likely to be far less costly than such facilities.

In addition, a reduced export/increased storage alternative should be considered and incorporated into the EIR. With increased storage facilities (both upstream and downstream of the Delta), it is possible that present pumping operations - even as currently constricted by the Biological Opinion for Delta Smelt - could meet the needs of the exporters. A recent study by Contra Costa Water District showed that the proposed conveyance scenarios for the BDCP may not result in significant increased supply of water for exports particularly during dry climatic periods.

F. Baseline Data

Historical conditions prior to the construction and operation of the State Water Project (and in the context of the requirements of the Delta Protection Act) should be used to establish the baseline for the BDCP. Historically, water in the Delta, especially the western Delta, was much

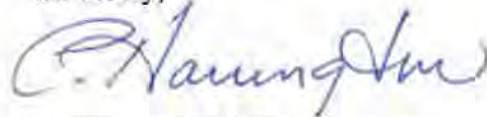
fresher than it is today (See for example Town of Antioch v. Williams Irrigation District (1922) 188 Cal. 451).

The NOP correctly notes that for the purposes of CEQA, the baseline for determining impacts from a proposed project is generally the same as existing conditions. However, existing conditions are leading to the decline of many species. Therefore, at the very least, the EIR must examine historical conditions and data to describe the conditions that native species are adapted to and how they might respond to project-induced changes that may differ significantly from those historic conditions. It is difficult to imagine that the BDCP could achieve its goals of protecting and restoring aquatic and natural communities by examining only present conditions.

G. Reasonably Foreseeable Impacts

It is reasonably foreseeable that the out-of-Delta component of a dual conveyance system as part of the BDCP could be used to convey water exclusively at times - either due to operational considerations or as the result of physical conditions such as levee failure due to earthquakes or floods. The EIR must comprehensively analyze the impacts (especially in-Delta impacts) of operating an out-of-Delta conveyance facility exclusively as part of the BDCP. For the purposes of the NOP's project description, the NOP does not provide a potential range of future operating criteria for the out-of-Delta conveyance facility component of the BDCP, making it impossible for the public to fully understand the potential impacts of the BDCP or to provide for meaningful input and comment.

Sincerely,

A handwritten signature in blue ink, appearing to read "P. Harrington".

Phillip L. Harrington

Director of Capital Improvements/Water Rights

c: James Jakel, City Manager
Lynn Tracy Nerland, City Attorney
Matthew Emrick

In January 2007, we began the 18 month research phase of a long term community plan entitled Clear Vision 20/20. It is designed to be the vision that business and other community leaders believe should be the reality in Antioch by the year 2020. The Chamber Board of Directors decided to invest in this project to address a wide range of critical issues facing everyone in Antioch and East County. We felt that bringing together a wide range of community groups as well as public and private organizations would allow the creation of a central document which would outline mutual goals for greater regional success.

The committee held informational meetings with experts and officials who specialized in transportation, education, essential services, community amenities, natural resources and economic development. The goal was to determine the key issues in these areas; bring the various groups together to create a shared focus; and set a program for community outreach, education, advocacy and benchmark reviews.

The Clear Vision 20/20 can be a community catalyst that will allow us to focus our efforts and create alliances to bring this vision into reality. To achieve this challenging goal, we will launch Clear Vision 20/20 with educational outreach through the dissemination of the total project and then hold community meetings to address the issues one by one. These outreach efforts will have an education/informational component as well as a solution/brainstorming/support component. The goal is to make the community aware of the issues and find ways to engage businesses, governmental entities and the greater community to be part of the solution. Because the key agencies were involved in the process, we have their buy in to make this the vision piece that all of Antioch can look to throughout the next 10+ years.

We wish to thank all those involved in the first phase of the project. Special thanks goes to the chamber's Major Supporters who allow us to do these types of programs: Mirant, Sutter Delta Medical Center, PG&E, Walmart, Dow Chemical, and Bank of West. We also thank those that helped fund the project: PG&E, Perry Murphy Advertising, and Common Sense CA.

We hope you will join us in making these local and regional goals a reality for our future.

Thank you.



Ralph Garrow, Jr.

Ralph Garrow Real Estate
2007/2008 Vice Chair Economic Development/Governmental Affairs
2008 Chair Elect

Core Committee Members

Jim Kyle, Orchard Supply Hardware

Terry Ramus, Associate

Sean Wright, The Wright Start Chiropractic

Antioch City Representative: Councilman Arne Simonsen

Congresswoman Tauscher's Representatives: Jennifer Barton and Remi Goldsmith



Devi Lanphere
President/CEO

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CLEAR VISION
20/20

Community Amenities

THEATRE, MUSIC, ARTS & ENTERTAINMENT

ISSUE: Job creation and higher end housing require high quality leisure activities

GOALS/PLAN: Have a variety of cultural experiences year-round in Antioch and the region

ACTIONS:

- Support and promote existing programs and facilities and groups that provide live entertainment, art shows, and educational opportunities
- Encourage the recruitment of additional groups that will enhance the regional selection



Photo courtesy of Hapgood Theatre

COMMUNITY ACTIVITIES FOR SPECIFIC DEMOGRAPHICS

ISSUE: A successful and dynamic community needs programs that provide opportunities for the diverse community

GOALS/PLAN: To be the leader in the region in our breadth of public and private programs for the various groups in Antioch

ACTIONS:

- Support and promote the active senior programs and opportunities
- Support and promote youth after-school programs as well as sports and civic groups that encourage positive role modeling and skills for the youth of Antioch
- Support and promote family-oriented efforts in activity programming
- Support and promote events and programs that offer cultural diversity and encourage the understanding of others



POLICE SERVICES

ISSUE: High youth crime and many at-risk youth feel disconnected from the community

GOALS/PLAN: Reduce youth crime rate for Part 1 crimes (violent and property crimes) by 5% by 2010

ACTIONS:

- Support and promote the key programs that engage youth including but not limited to:
 - Youth Intervention Network (YIN)
 - REACH
 - Police Activities League (PAL)
- Review police efforts and crime rate statistics
- Encourage the increase, review, extension and/or modification as needed to existing and future after school programs for viability, interest and potential
- Partner in grants that give funds to programs that address this issue

ISSUE: Create the perception that Antioch is a safe and desirable community

GOALS/PLAN: Reduce the Part 1 (violent and property) crimes by 5% by 2010

ACTIONS:

- Monitor the Antioch Police Department's efforts to decrease and successfully manage the crime in Antioch
- Educate the public on successes in crime reduction
- Support the introduction, continuation and/or expansion of innovative policing programs both within the department and the greater community, including but not limited to:
 - Beat Health Program
 - Beat Alert (community email alerts)
 - CAT Team
 - Neighborhood Watch
 - SALT (Seniors & Law Enforcement Together)
 - Crime View (resource allocation review)
 - Safe Holiday Shopper Programs
 - Business Watch

ISSUE: The appearance of our community has an impact on economic development, community growth and community pride

GOALS/PLAN: Improve and/or maintain a beautiful, clean and attractive community

ACTIONS:

- Support, monitor and educate the community on code enforcement for residents and businesses in an appropriate manner
- Support efforts in creating a clean and safe community including but not limited to:
 - Park Health
 - School Resource Officers (both on and off campus)
 - CAT Team (Homeless Outreach, Vacant Properties and Graffiti Abatement)

EMERGENCY PREPAREDNESS

ISSUE: The region has questionable emergency preparedness for events that would have strong negative impact on the community and the city's economic health

GOALS/PLAN: Improve preparedness and area emergency response

ACTIONS:

- Advocate for placement of HAZMAT resources in East County
- Educate and aid other community education groups in preparing the community and business sector through the CERT program. The goal is 20% of the community trained as CERT participants by 2020
- Partner in grants that have funds for equipment, training programs and community responses
- Seek greater input in emergency personnel training scenarios



HOSPITALS/REGIONAL HEALTH CARE

ISSUE: Preservation of current hospitals assets while looking ahead to future regional needs

GOALS/PLAN: Fair distribution of county funds for uninsured/underinsured patients and return or growth of county or private regional clinics

ACTIONS:

- Encourage and monitor responsible county budgeting to prevent closures of clinics or increased burden for the uninsured/underinsured in Antioch hospitals
- Educate leaders on the issues and impacts of this issue
- Advocate for funds for local hospitals and clinics

DELTA ENVIRONMENT & WATER SUPPLY

ISSUE: Protect Antioch's water supply and water rights as well as the recreational opportunities on the Delta while recognizing the fragility of the Delta system

GOALS/PLAN: Keep Pittsburg/Antioch/Oakley Delta region at a minimum salinity, allow Antioch to continue drawing water for businesses and residents as allowed by our water rights and maintain the opportunity for sports and leisure on the Delta

ACTIONS:

- Monitor the Delta Blue Ribbon Task Force report and recommendation
- Encourage the Bass and Sport Fishing tournaments which create jobs and tax revenue for the region
- Review and appropriately support projects that enhance leisure opportunities while being sensitive to the Delta ecosystem
- Fight with our city and county for protection and honoring of our water rights

ISSUE: Protect and enhance essential resources

GOALS/PLAN: Promote environmental protection, adequate fresh water flows in the delta to preserve Antioch's Water Rights and encourage use of sustainable and renewable resources to meet needs of industry and the community in a cost-effective manner

ACTIONS:

- Continue to support the exploration of cost-effective sources of water and power, including competitive opportunities in our area
- Ensure the Governor's Delta Vision Blue Ribbon Task Force provides for adequate fresh water flows in the Delta to prevent saltwater intrusion at Antioch's river intake
- Support and educate the community in the cost-effective hazardous recycling option in our local area to encourage responsible disposal including but not limited to programs with the City of Antioch and Delta Diablo Sanitation District





CLEAR VISION
20/20

Education

QUALITY – INFRASTRUCTURE/ACADEMIC

ISSUE: Improvement of overall achievement through focus on student achievement, accelerating achievement and closing achievement gap

GOALS/PLAN: Assure that funds are used well and arrive in a timely manner

ACTIONS:

- Produce annual report card using benchmarks
- Help set benchmarks in cooperation with the educational community
 - Have every school at 800 API
 - Monitor test scores for improvement
 - Monitor attendance for improvement
 - Increase taking AP and honors courses
 - Graduation rates to 95%
 - Increase transfer to UCs*
 - Increase percentage of students that take the PSAT and SAT to 75%

* *While the goal is higher education of all types, only transfers to UCs can be tracked*

ISSUE: Need for both guidance and academic counselors at middle and high school levels to guide students on career paths, aid in reaching academic goals and advanced placement

GOALS/PLAN: Finding fund and prioritize the issue to create a ratio of at least 1 counselor per 500 students

ACTIONS:

- Partner with school board and staff for seeking funding sources
- Advocate on issues

ISSUE: Infrastructure improvements

GOALS/PLAN: Improve existing school facilities and improve technology throughout the system creating a state-of-the-art program that can be a model in the region

ACTIONS:

- Advocate on the issue
- Assist and partner on any grant funding opportunities



DOZIER LIBBEY MEDICAL HIGH SCHOOL
Opening September 2008





SCHOOL CLIMATE AND SAFETY

ISSUE: Student support services need improvement

GOALS/PLAN: All students feel safe on campus and have a successful learning environment through prevention and early intervention

ACTIONS:

- Partner to create business mentors, internships and community awareness
- Advocate, support and review best practices student leadership programs such as Rotary, onsite leadership programs, and peer counseling programs

ISSUE: After-school issues for students and the community

GOALS/PLAN: Address safety concerns for students leaving school as well as community concerns of disruptive actions after school

ACTIONS:

- Create a coalition to improve the communication between key stakeholders
- Evaluate programs for after-school safety programs and best practices in other communities such as Safe Passage Home
- Aid in building better systems to support family engagement and involvement
- Aid in creating a team to seek systems and connections for relevant quality programs and establishing successful evaluation criteria for after-school programs both within the district and the community
- Encourage and support Antioch PAL

CREATION OF NEW EDUCATION MODELS

ISSUE: Not all students fit the same mold and specialized academies keep students interested

GOALS/PLAN: Encourage more magnet and academy opportunities such as the current focus on medical, performing arts and law academies

ACTIONS:

- Advocate for new opportunities based on our regional employment needs
- Partner in grant opportunities
- Partner to create business mentors, internships and community awareness

ISSUE: Limited community engagement and a lack of focus when volunteers are available

GOALS/PLAN: Create better relationships between business and education communities

ACTIONS:

- Research successful models in other communities and build a program here
- Aid in creation of a strategic plan to engage business and higher education in the business of education
- Evaluate joint events (State of Schools or other such event)



JOB CREATION

ISSUE: Undeveloped land must be utilized effectively and that which is pre-zoned for commercial use needs to be protected and approved for optimal benefit

GOALS/PLAN: Create opportunities and support projects that bring jobs and needed services to Antioch

ACTIONS:

- Follow projects in the pipeline and make sure they meet the needs of Antioch and are moved effectively through the approval process
- Assist in meetings that bring businesses to our developable parcels including the following locations: FUA1, FUA2, the Kerley Property, Somersville area and Wilbur industrial area
- Support the LAFCO Annexation project granting Antioch control of the entire Delta shoreline from our border on the West to the Highway 160 bridge

EXECUTIVE HOUSING/ HIGH END DEVELOPMENTS

ISSUE: Housing stock does not meet the needs of some doctors and CEOs who will bring jobs to the region

GOALS/PLAN: Create appropriate housing stock and amenities for shopping and entertainment

ACTIONS:

- Review and support projects that create our still undeveloped executive housing stock such as Roddy Ranch development and Higgins Ranch

REVITALIZATION

ISSUE: The Rivertown region is underutilized and many small businesses fight to survive

GOALS/PLAN: Find and recruit the businesses needed to bring people to Rivertown as well as create excitement in the area

ACTIONS:

- Actively work with the city on opportunities to find appropriate tenants and businesses
- Assist restaurants in moving to Rivertown
- Encourage fast tracking of city permits on Rivertown projects
- Help create a sign program for Rivertown
- Work with the city on the Fourth of July and other marquee events to add excitement in Rivertown as well as smaller events or other venues that enhance Rivertown

MOVEMENT OF GOODS

ISSUE: Air freight is limited in the region

GOALS/PLAN: Work with regional partners and transportation agencies for creative solutions

ACTIONS:

- Review and support the expansion for the Byron Airport
- Support the study of a foreign trade Zone around the airport
- Support the Byron Airport efforts to receive any federal grants for appropriate expansion

ISSUE: Rail freight will be increasing in the area and have significant impacts on traffic and economic development plans

GOALS/PLAN: Find ways to minimize negative impacts and create opportunities for jobs and freight movement

ACTIONS:

- Support and lead a program of education with the railroads on grade crossing safety
- Support efforts to find federal and state dollars to make grade separations at Auto Center Dr., A St. and Hillcrest Ave.
- Work with the Economic Development Director and City on rezoning areas near the rail lines to industrial so that the rail lines can assist in finding companies to relocate to Antioch



MOVEMENT OF GOODS

(continued)

ISSUE: Other cities are working with ports and others to bring industrial and manufacturing businesses to the region

GOALS/PLAN: Be aware of the neighboring projects and make sure we make the best of these opportunities

ACTIONS:

- Meet regularly with surrounding cities' economic development directors and regional chambers
- Research opportunities with the ports of Oakland and Stockton



Photo courtesy of UP Railroad

BUSINESS REGULATION

ISSUE: The city's sign ordinance is difficult to comply with and makes the breaking of the rules easier and cheaper than complying

GOALS/PLAN: Create more appropriate signage ordinances

ACTIONS:

- Push for the review and rewriting of the sign ordinances
- Educate for appropriate enforcement and changes

ISSUE: County Environmental Health delays most projects through difficult and inconsistent enforcement

GOALS/PLAN: Have a functioning and receptive Environmental Health Agency for businesses and community events

ACTIONS:

- Work with the Board of Supervisors to review current processes and issues
- Push for revised and consistent regulation



HIGHWAY 4 WIDENED TO HIGHWAY 160 BY 2015

ISSUE: Funding and timing of the funds

GOALS/PLAN: Assure that funds are used well and arrive in a timely manner

ACTIONS:

- Attend MTC meetings
- Work with local funding groups

ISSUE: Construction moving in a timely manner

GOALS/PLAN: Meet or beat the deadline

ACTIONS:

- Receive regular updates from CCTA/CalTRANS
- Advocate on issues that streamline the process

ISSUE: Effects on business and Antioch tax base during renovations

GOALS/PLAN: Minimize the economic effect on local businesses during the construction phases

ACTIONS:

- Work with the CCTA and Antioch Economic Development Department to create proactive plans for this time period
- Create public awareness campaign regarding the issues
- Aid in dissemination of the information on construction schedules, closures, alternate routes, etc.

ADDITIONAL ACCESS FOR EAST COUNTY (In Order of Priority)

ISSUE: Highway 4 Bypass

GOALS/PLAN: Completed by 2009

ACTIONS:

- Project on time – continue to receive updates.

ISSUE: Construction moving in a timely manner

GOALS/PLAN:

- Establish as a state highway
- Improve Route

ACTIONS:

- Partner with groups for regional advocacy and funding support

ISSUE: 239/J4 Connection to Tracy

GOALS/PLAN: Improve road safety and facilitate good movement while opening a backdoor for the region

ACTIONS:

- Create partnerships for the project
- Raise community and legislative awareness regarding the issue and community need.

IMPROVE INTERNAL CIRCULATION WITHIN ANTIOCH

ISSUE: Access to Kerley property

GOALS/PLAN: Create access to area that has great economic development potential

ACTIONS:

- Support city efforts with traffic study and CalTRANS
- Create community awareness on the issue and need

ISSUE: Use of return to source funds for road improvements

GOALS/PLAN: Be proactive in creating priorities and oversee funding allocations

ACTIONS:

- Request report on the funding and audit the sales tax splits for the area
- Create a list of priorities from a business/economic point of view

ISSUE: Ease internal flow

GOALS/PLAN: Improve goods movement and quality of life regarding circulation on city streets

ACTIONS:

- Review Lone Tree Way flow after bypass opens, with an eye toward widening if needed
- Partner with MTC and city to study the timing of lights for better flow
- Advocate for making James Donlon an arterial route through Pittsburg to Railroad Ave./Kirker Pass
- Review and advocate for the widening of L Street to the marina





ALTERNATIVE TRANSPORTATION Improve Options for residents and businesses by 2020

FERRY

ISSUE: Continue to source alternatives

GOALS/PLAN: Support ferry to Antioch by 2010

ACTIONS:

- Review/receive updates on the feasibility study for project
- Advocate for funds with state and federal agencies
- Advocate for parking additions within Rivertown as part of the plan
- Educate businesses and community on the project

BART

ISSUE: BART must operate in Antioch

GOALS/PLAN: First a station at Hillcrest with plans to reach further into East County

ACTIONS:

- Demand a firm plan in place by end of 2008
- Advocate that NO funds be siphoned from the Highway 4 project and/or create delays
- Have a running BART train by 2015
- Seek better area representation
- Seek internal audit of BART
- Publicize issues of waste and delay in current projects

PUBLIC/PRIVATE PROJECTS

ISSUE: Viability

GOALS/PLAN: Stay Open to opportunity in this area

ACTIONS:

- Follow proposals as they are available and evaluate their benefit to the region

TRI DELTA/BUSES

ISSUE: Improve goods movement by reducing congestion and improve image of the area for new businesses

GOALS/PLAN: Support alternatives for commute traffic

ACTIONS:

- Advocate with MTC for appropriate regional funding for Tri Delta
- Work with CCTA and support efforts to aid Tri Delta in getting better Highway 4 access to the express lane in the new plan
- Advocate for express service to Concord, Livermore and BART stations
- Improve infrastructure and service
- Improve security at Park n' Ride locations



Photo courtesy of WETA



Department of Utilities
Office of the Director

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May 14, 2009

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

Subject: Comments in response to Revised Notice of Preparation – Environmental Impact Report and Environmental Impact Statement for the Bay Delta Conservation Plan

Dear Ms. Brown:

The City of Sacramento (City) appreciates the opportunity to offer comments on the Environmental Impact Report/Environmental Impact Statement (EIR/EIS) that will be prepared to evaluate the environmental impacts of a proposed Bay Delta Conservation Plan (BDCP).

The City of Sacramento provides a domestic water supply, wastewater collection and treatment services, as well as stormwater collection and disposal to the residents of the City. The City designed, operates and maintains its wastewater and stormwater systems in accordance with its National Pollutant Discharge Elimination System (NPDES) permit issued by the State of California, providing protection of beneficial uses of the Sacramento River and Sacramento-San Joaquin Delta. The City is very concerned with the health of the Delta and the tributary watersheds, including the recent population-level decline of multiple fish species, and supports the goal of the BDCP to improve the long-term ecological productivity and sustainability of the Delta.

The City of Sacramento has concerns in the following areas relative to the BDCP:

- Need for improved stakeholder involvement
- Application of sound science in the development and evaluation of conservation measures
- Relationship to other Delta planning efforts
- Need to fully mitigate all impacts of the project
- Project impacts on the local community and the upstream tributaries



CITY OF SACRAMENTO
DEPARTMENT
OF UTILITIES

Making a Difference in Your Neighborhood

Need for Expanded Stakeholder Involvement

A major concern of the City's is that the BDCP process is lacking in representation by Central Valley stakeholders, particularly Delta stakeholders. The City is supportive of the Sacramento Regional County Sanitation District's concern that the BDCP evaluation and ongoing process should address Central Valley stakeholders and other stakeholders not represented on the BDCP steering committee or in other aspects of the ongoing collaboration between state and federal agencies and water agencies.

Expanded stakeholder involvement will help ensure that the Project and EIR/EIS rely on the best available scientific knowledge and also will help in identifying reasonable and feasible alternatives that should be considered in the BDCP Draft EIR/EIS.

Application of Sound Science in the Development and Evaluation of Conservation Measures

For the BDCP to gain public support, and for conclusions about the effects of conservation measures to withstand scrutiny, such measures must be based on sound science and substantial evidence. The City is concerned that discussion of the potential effects of "Other Stressors" repeatedly identifies the Sacramento Regional Wastewater Treatment Plant discharge as a contributor to the ecosystem decline without sound science to support this view.

The ability of the project to meet biological goals is highly dependent on hypothetical habitat restoration activities in zones outside the pathways of through-Delta conveyance, and the project area, such as Suisun Bay. Restoration activities in adjacent areas to the project location are unique to this project and should be evaluated as offsets under the Clean Water Act. In debating the relative merits of the proposed alternatives in the EIR/EIS, the greatest weight should be placed on the outcomes which are more certain: changes to baseline hydrology and water quality owing to the timing, location, and quantity of water export.

Relationship to Other Delta Planning Efforts

The relationship of the BDCP planning and decision making effort to other ongoing planning efforts, whether state, local, or regional, should be clearly addressed in the EIR/EIS. Delta legislative efforts could change the outcome of the BDCP and thus are relevant to the feasibility of the project and any alternatives or mitigation measures and should be considered in the EIR/EIS.

Need to Fully Mitigate All Impacts of the Project

The EIR/EIS should state that an objective of the selected project will be to avoid unintended impacts on third parties. The selected project should avoid or fully mitigate changes in water or wastewater treatment and other impacts for residents of the Central Valley or the Delta that would not otherwise occur in the absence of the project(s) considered in the BDCP. The impacts of any such changes must be considered in evaluating the environmental costs and benefits of the BDCP. If the BDCP results in a need to increased wastewater or stormwater treatment in specific communities, such treatment could result in significant environmental impacts, including

Ms. Delores Brown Letter
Comments in Response to Revised NOP – EIR/EIS for Bay Delta Conservation Plan
Page 3
May 14, 2009

increased energy use and greenhouse gas emissions, as well as other air quality impacts. These secondary impacts must be disclosed in the EIR/EIS, and the beneficiaries of water diversions from the Delta should be accountable for fully funding any necessary mitigation.

To that end, the BDCP and EIR/EIS should state that the funding for the selected BDCP project will be fair and equitable to stakeholders in the Central Valley and will be financed, in large part, by the beneficiaries of water diversions from the Delta or general bond obligations where the people of the state of California benefit.

Project Impacts

It appears that many or all of the alternatives will result in degraded water quality in the Delta due to the diversion of higher quality Sacramento River flows from the Northern portion of the Delta. A key element of the BDCP is the construction of new intake facilities on the Sacramento River between south Sacramento and Walnut Grove to allow the diversion of Sacramento River water directly into the SWP and CVP intake pumps located in the South Delta. Depending on the location, amount and timing of water withdrawn into the peripheral canal, the net water quality effect in the Delta in other Delta locations below the diversion point will be an increased influence of the San Joaquin River and San Francisco Bay.

In addition, the City is also concerned relative to the potential impacts of constructing a large diversion facility near City residences. Recent experience has shown that significant impacts are probable. These impacts must be identified and mitigated as the project progresses.

The City of Sacramento appreciates the opportunity to provide these comments at this stage in the development of the BDCP EIR/EIS and looks forward to increased involvement in development of a BDCP that will lead to the recovery of the Delta ecosystem and to the benefit of all Californians.

Sincerely,

A handwritten signature in black ink, appearing to read "Marty Hanneman", with a stylized flourish extending from the end of the signature.

Marty Hanneman
Assistant City Manager/
Director of Utilities

cc: Honorable Darrell Steinberg, Senator
Honorable Dave Jones, Assembly Member
Mayor Kevin Johnson
Sacramento City Councilmembers
Mary Snyder, Sacramento County Regional Sanitation District
Ray Kerridge, City Manager

BDCP

BAY DELTA CONSERVATION PLAN

ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT

Stockton

— Comment Card —

Please Print

Name: Robert Englent Organization: City of Stockton
Telephone: (209) 993-5549 e-mail: robert.englent@ci.stockton.ca.us
Address: 2500 Navy Dr.
City: Stockton State: CA Zip: 95206

☒ Yes, I would like to be added to your e-mail list.

Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 14, 2009.

The city of Stockton should be offered a
direct Tap and permit for up to 3 mgd.
At least some of the water will remain in
the delta region.

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:

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

You may also e-mail your comments to BDCPcomments@water.ca.gov. **Comments must be received by May 14, 2009.**

Clarksburg Fire Protection District

**Harold C. Shipley, Director
35919 Delta Breeze Court
P.O. Box 598
Clarksburg, CA 95612
(916) 744-1112**

**To: Commissioners/Directors:
Bay Delta Conservation Plan
EIR/EIS—Public Scoping Meeting
Clarksburg Middle School
Thursday, March 26, 2009**

Ladies and Gentlemen:

I have had an opportunity to speak to you before about the subject of this meeting and want to restate my concerns about the possible flooding of the Clarksburg Delta Area.

I am a director of the Clarksburg Fire Protection District and as such, owe the members of our district a duty to provide emergency medical and fire prevention services. Any limitations placed on the emergency access to any of the residents in our district would be detrimental to our goals of providing emergency services and would cause an immediate concern on our part to resist such limitations or restrictions.

We have 331 Farm units in our district with a population of approximately 1,300 residents and cover a geographic area of approximately 53 square miles. We average 52 medical aid calls a year or one each week. We cannot allow our citizens to go without our emergency medical support and request that you find a way to leave our community intact.

Thank you for your assistance in helping us serve our community.

Sincerely,

Harold C. (Hal) Shipley, Director

Water Agency

County Administration Building
651 Pine Street
4th Floor, North Wing
Martinez, California 94553-1229

Contra Costa County



John Gioia
District I
Gayle B. Uilkema
District II
Mary N. Piepho
District III
Susan A. Bonilla
District IV
Federal D. Glover
District V

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

May 14, 2009

Dear Ms. Brown:

Thank you for the opportunity to provide comments on the Revised Notice of Preparation of the Environmental Impact Report and Environmental Impact Statement (EIR/S) documents for the Bay Delta Conservation Plan (BDCP). On separate occasions, both the Contra Costa County Water Agency (3/24/08) and the County Public Works Department have provided specific comments on earlier scoping iterations for this project (see enclosures). We request that these comments be incorporated into the current scoping process. It does not appear that the Water Agency's comments were included in your February 2009 Preliminary Scoping Report. Our latest comments are as follows;

The Habitat Conservation Plan process makes it difficult to understand feasible conveyance alternatives appropriate for the EIR. We question using a Habitat Conservation Plan (HCP) context to frame the environmental review and analysis for a major new isolated conveyance facility project, as the impacts of such a facility encompass a far greater array of impact categories than the permitted 'take' of targeted species. Can you provide background and context for this approach? Will the level of analyses reflect a large number of alternatives to isolated conveyance and the range of potential sizes and capacities of such a facility? Will the EIR/S consider reduced exports or regional self-sufficiency to attain stated goals? Environmental documentation for HCP's usually have a relatively narrow focus on species and restoration, relying on program-level environmental documents to describe the broad range of other required components (such as land use, agriculture, transportation, utilities, other infrastructure & public service systems, cultural resources, etc.) related to the project itself. How will you structure this document to enable the full range of required environmental review for the project in the larger context?

The potential for social and economic impacts needs to be evaluated. The social and economic impacts of an isolated facility, coupled with the conversion of significant tracts of land from agriculture into habitat will indeed be significant. The EIR/S will need to capture the wide range of impacts and complexities inherent in such a scale of change to the Delta.

The EIR should include scientific justification of the geographic scope of its environmental analysis. The existing Delta ecosystem is a part of a much larger estuary that includes a massive watershed. The Delta today has been decimated in many different ways by a number of factors, including but not entirely limited to exports of water from the system. The scientific analysis of conveyance and ecosystem restoration will need to take into account the larger system (and the

factors affecting it), to enable accurate analysis of past and proposed project impacts to a portion of that system, as well as sound mitigation of those impacts. How will you tailor the environmental review to accomplish this?

Evaluation of a canal cannot be isolated from the rest of the water supply and flood control system. The existing antiquated water supply system of which a proposed canal would be part, is critically challenged by a number of factors, among them a lack of storage, increasing precipitation and flood flow among other things, which directly affect how the system operates. How can detailed planning of an isolated facility occur with any measure of future success in the absence of concurrent detailed planning on these other, critically important components of an improved system? How will the BDCP's water quality standards and other performance measures in the Delta be assured if other vulnerable parts of the water supply system fail? How will the EIR/S address this?

Evaluation of the project's effect on outflows and the impact on fish is critical. Outflow is a critical component of a healthy ecosystem, and has a strong scientific correlation to the health of fish species in the Delta and the Bay. Decreased outflow will have clear negative impacts to fish. How will this be addressed?

Initial work should focus on answering fundamental questions on the Delta ecosystem. The fundamental question "How much water in any given season of any given water year is needed to maintain a healthy ecosystem" needs to be determined prior to any meaningful compilation of environmental impacts of new conveyance projects, and restoration activities. How and when will this be accomplished? How can impacts of a new facility on such a decimated existing system realistically be measured? Will the effects of pumping on the existing Delta be identified and incorporated in some way in the EIR/S?

Potential impacts of the project on the Delta Community need to be evaluated.

- How will outflow quantity and quality change under the BDCP? How will changes in Sacramento River and San Joaquin River flow and resultant water quantity affect water supply to Contra Costa County, and water providers and users within the County?
- How will increased salinity (and perhaps changed flow patterns) in the western Delta affect groundwater in the communities that depend on it? How will the project ensure improved water quality for the Central and Western Delta?
- Decreases in outflow will lead to a decrease in sediment transport and increased sediment deposition in Delta channels and at the mouth of creeks, increasing risk of flooding and levee failure and increased dredging. This will have economic impacts to the shipping industry, hazards to boating and increasing Total Maximum Daily Loads (TMDL) requirements, among other things. How will this be assessed in the EIR/S?
- Decreased flow from the Sacramento River and resultant water quality degradation will result in decreased economic vitality in water-based industries (such as commercial/recreational fisheries), recreation, and heavy industry that needs fresh water. These impacts will need to be addressed.

- A decrease in water quality from an increase in San Joaquin flow will lead to increased National Pollution Discharge Elimination System (NPDES) permit regulations and stricter TMDL's. These impacts will need to be addressed in the EIR/S.
- Decreased circulation near Clifton Court Forebay due to proposed flow barriers would lead to potential negative water quality impacts (and resultant negative economic impacts) in the Discovery Bay area. How will this be addressed?

Details need to be disclosed on the dual conveyance alternative. Dual conveyance will require the rehabilitation of levees along Middle River, the proposed conveyance route. The EIR/S will need to provide detail on how this will be accomplished, where sediment will be obtained, a timeline for completion and other items. This, as well as rehabilitation of western levees critical to maintaining existing water quality should be considered as an earlier phase of the overall project to be accomplished, to help ensure continued water supply.

Details need to be disclosed on the canal alternative. A canal (as opposed to a pipeline or other improved structure) will carry with it many of the same problems that exist in the Delta today, such as seepage, seismic instability, problematic peat soils to name a few. How will the EIR/S address these problems? Will the EIR/S consider a more solid structure that avoids these problems, such as a pipeline?

BDCP goals and actions need to be coordinated with local conservation programs. There are a number of ecosystem improvements that may take place in the western Delta, in and around Contra Costa County that will have a broad range of impacts affecting water quality, land use, the economy, etc. How will these ecosystem issues be addressed and how will the state include the local agencies in the planning process? The County has an existing HCP/NCCP in this area of the County. Among many other policies, the County calls for mitigation of impacts in Contra Costa County to occur within the County as well. A clear analysis of the specific project, its impacts, mitigation of those impacts and costs of doing so should be presented in the environmental report.

Thank you for the opportunity to comment on the Revised Notice of Preparation for the EIR/S for the BDCP. If you have questions, please contact me at (925) 335-1226, or rgoul@cd.cccounty.us

Sincerely,



Roberta Goulart
Executive Officer
Contra Costa County Water Agency

Enclosures

Water Agency

County Administration Building
651 Pine Street
4th Floor, North Wing
Martinez, California 94553-1229

Contra Costa County



John Gioia
District I
Gayle B. Uilkema
District II
Mary N. Piepho
District III
Susan A. Bonilla
District IV
Federal D. Glover
District V

March 24, 2008

National Marine Fisheries Service
Attn: Rosalie del Rosario
650 Capitol Mall, Suite 8-30
Sacramento, CA 95819

Fish and Wildlife Service
Attn: Lori Rinek, Chief
Conservation Planning & Recovery Div.
2800 Cottage Way W 2605
Sacramento, CA 95825

SUBJECT: NOTICE OF INTENT TO CONDUCT PUBLIC SCOPING AND PREPARE
AN ENVIRONMENTAL IMPACT REPORT/ ENVIRONMENTAL IMPACT
STATEMENT (EIR/EIS) RE THE BAY DELTA CONSERVATION PLAN (BDCP) FOR
THE SACRAMENTO-SAN JOAQUIN DELTA

Dear Ms Del Rosario and Ms Rinek:

Thank you for the opportunity to comment on the proposed Notice of Intent for
environmental documentation for the BDCP.

Because the BDCP project will consider key areas of great concern to the State of
California and its inhabitants, it would seem appropriate for the environmental documents
to be as complete and as encompassing as possible in terms of full review of all potential
projects to accomplish intended goals.

The NOI does not elaborate upon goals of the process, other than to mention the need for
Incidental Take Permits. Project goals do not seem to be forthcoming at this time,
making it difficult to comment with any specificity. Despite the fact that environmental
review of a project is underway, a project per se has not been defined, and no preferred
project alternative has been outlined.

The NOI document mentions four conveyance options to be considered, and the intent of
the process to narrow the project focus to one or two of these options by fall 2007. We
are assuming the date contained in the document was meant to be fall 2008. If this is not
correct, it would be important to have detail as to which options will continue to be
considered.

In addition to the four conveyance options, the NOI indicates that a range of other
activities may also be covered activities. For example, the NOI lists facility
improvements to the CVP and SWP as a potential covered activity. This is an extremely

broad example. What kind of improvements are contemplated? New reservoirs? The vast and unclear scope of activities that may be covered make it very difficult to comment effectively on the necessary scope of the environmental review.

Furthermore, due to the huge scope of conveyance and ecosystem options currently under consideration by other agencies, the environmental documents for the BDCP should consider the full range of conveyance alternatives, including through delta conveyance along the eastern delta (as well as Old and Middle Rivers), and alternatives also including the San Joaquin River.

Though the NOI provides very little information on the covered activities related to water supply and delivery, it provides even less information on the conservation measures that will be performed under the BDCP. Is increasing freshwater flows for fish through the Delta one the conservation measures to be evaluated? It should be.

A range of water export volumes should also be examined, including an array of reduced export scenarios, (and appropriate isolated facility capacity downsizing) given the decimated status of the delta ecosystem and the recent Wanger export reductions.

Mitigation for conveyance activities covered as part of this project should be very clearly defined, as opposed to other restoration activities that will be ongoing within the delta. Current ESA law is clear that mitigation must be provided for takings. Furthermore, it is inappropriate for project mitigation to be paid by the taxpayers (through bonds or other means). As a result, project mitigation will need to be clearly defined and compensated accordingly.

Thank you for the opportunity to comment on the process as it has been defined. If you have questions, please do not hesitate to contact me at (925) 335-1226.

Sincerely,

A handwritten signature in black ink, appearing to read 'Roberta Goulart', written in a cursive style.

Roberta Goulart,
Executive Officer
County Water Agency



Contra Costa County
Public Works
D e p a r t m e n t

Julia R. Bueren, Director

Deputy Directors

R. Mitch Avalon • Brian M. Balbas

Stephen Kowalewski • Patricia McNamee

May 15, 2008

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

RE: Response to the Notice of Preparation
for EIR & EIS for the Bay Delta Conservation Plan

Dear Mrs. Brown

We are writing in response to the Notice of Preparation (NOP) for the Environmental Impact Report and Environmental Impact Statement (EIR & EIS) for the Bay Delta Conservation Plan (BDGP) dated March 17, 2008. Thank you for the opportunity to provide comments on this critical document.

The Contra Costa County Public Works Department (PWD) strongly supports the efforts to balance the needs for a reliable water supply and a sustainable Delta ecosystem. However, we are particularly concerned that any water conveyance system that bypasses the Delta may have significant adverse impacts on Contra Costa County (CCC), as well as the downstream portions of the Delta (and the Bays).

This letter will highlight our concerns with regards to the possible impacts to health and safety of the residents, property, and natural systems in CCC, as well as compliance with our National Pollution Discharge Elimination System (NPDES) Permit and the County's Floodplain Management Program. We request that these issues be addressed in the EIR & EIS.

Decreased Water Quality in Receiving Waters:

The proposed "re-plumbing" of the Delta will likely result in Sacramento River water being diverted, with less water reaching the western portion of the Delta, and a reduced amount of Sacramento River water passing through CCC (at least during non-storm events). This will increase the proportional contribution of the San Joaquin River's water to the western Delta (relative to Sacramento River water). Since the Sacramento River generally has a higher water quality (i.e. lower pollutant levels) than the San Joaquin River, the quality of water passing through the Delta and into San Pablo Bay (CCC's receiving waters) will be lower and will contain higher levels of pollutants.

"Accredited by the American Public Works Association"

255 Glacier Drive Martinez, CA 94553-4825

TEL: (925) 313-2000 • FAX: (925) 313-2333

www.cccpublicworks.org

A reduction in the quality of water entering the western Delta will most likely affect the County's NPDES permit and Total Maximum Daily Load (TMDL) requirements by resulting in increased water quality standards for water discharged from CCC's creeks and storm drain

systems to the receiving waters of the Delta and San Pablo Bay. The PWD requests that the EIS & EIR examine the relationships between flows into the western portion of the Delta and potential effects on water quality (and subsequent regulatory implications) when analyzing any alternatives involving bypassing/diverting flows from the Sacramento River to south Delta pumping facilities or otherwise modifying the Delta's flow regimes.

Decreased flows and water quality may also have adverse affects on the economy of the Delta's communities, which are highly dependent on the quality of water in the Delta. Agriculture, recreational boating, recreational and commercial fishing, and industrial water needs would all be negatively affected by a decrease in water quality in the Delta. In addition, the value of many private properties and residential communities located throughout the Delta will likely be adversely affected by a decrease in flow and water quality. Although CEQA and NEPA do not require specific economic analysis, CEQA does require an analysis of housing impacts. The EIR & EIS should analyze the potential effects of large-scale water diversions on agricultural, recreational, residential, industrial, and other business uses within the western portion of the Delta.

Decrease Flows and Resultant Increase in Sediment Deposits:

As mentioned above, one result of re-plumbing the Delta will be decreasing dry weather flows. This, in turn, will result in an increase in the deposition of sediment. This increased sediment deposition will have many significant negative impacts, including increased costs to maintain shipping channels, increased costs to maintain private and public marinas, and increased safety risk to boaters due to additional submerged deposits and exposed sand bars.

Although it is unlikely that flows associated with large storm events would be significantly affected by the re-plumbing of the Delta, the increased flows caused by these events will be impeded by accumulated sediment, and would require an increase in hydraulic head to flush through the Delta system and out to San Pablo Bay. This would increase the depth (height) of flood waters and will exacerbate pressure on flood control facilities and levee systems, resulting in increased probability of failure of levees and flood control systems, hereby increasing risks to both lives and properties. In addition, as a result any increase in flood water heights, Special Flood Hazard Areas (SFHAs), as mapped by the Federal Emergency Management Agency (FEMA), will likely expand. This will add additional properties to the SFHAs, which will increase costs to property owners for compliance with local floodplain regulations including the requirement for mandatory purchase of flood insurance. The PWD requests that the EIR & EIS carefully analyze the potential impacts that any proposed water conveyance

bypass system or conveyance modifications will have upon sediment accumulation in the western Delta, and the impacts that the additional sediment will have upon shipping routes, recreational uses, hydrologic characteristics, public services, flood hazards, and the potential for levee and other flood control structural failures.

Decrease in Flows and Resulting Increase in Salt Water Intrusion:

Due to the decrease in Sacramento River (and overall) flows, salt water from San Francisco Bay will likely encroach further up-stream into the Delta. More extensive salt water intrusion will severely impact residents, farmers, and other businesses dependent on local Delta sources for their water supply. Increased salinity will also have significant detrimental effects on the aquatic life currently supported by the Delta, and will most likely result in decreases in populations of already threatened aquatic species and may result in an increase in non-native invasive species. The likelihood of increased salt water intrusion into the Delta needs to be analyzed and mitigated.

In addition to these comments, please also refer to the March 24th, 2008 letter from the Contra Costa County Water Agency to the Federal agencies regarding the NOI for the BDCP. This letter provides additional comments relative to this project and the NOP.

Thank you again for the opportunity to comment on this NOP for the Bay and Delta Conservation Plan EIR & EIS. We strongly believe that the above discussed issues should be addressed in the EIR & EIS plan. If you have questions with regards to this letter feel free to contact Rich Lierly, our Floodplain and Watershed Manager at (925) 313-2348 or email at rlie@pw.cccounty.us.

Very Truly Yours,

Julia R. Bueren
Public Works Director
Contra Costa County

RL:jj:lz
G:\FldCtl\NPDES\BDCP\Nop comment letter 5-13-08 final.doc

c: Members of the Board of Supervisors
 J. Crapo, CAO
 M. Avalon, Deputy Director, Public Works
 G. Connaughton, Flood Control, Public Works
 T. Jensen, Flood Control, Public Works
 R. Lierly, County Watershed Program, Public Works
 R. Goulart, Community Development Department
 D. Freitas, Clean Water Program
 M. Wara, Administration



County of Contra Costa

September 17, 2009

Office of the Sheriff
Warren E. Rupp
Sheriff

Dolores Brown, Chief
Office of Environmental Compliance
Department of Boating and Water Resources
P.O. Box 942836
Sacramento, CA 94236

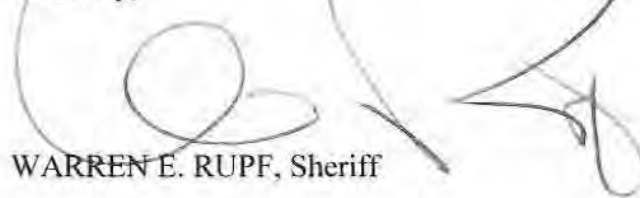
Dear Ms. Brown:

I write you with regard to what has been described to me as the Bay Delta Conservation Plan to construct new, permanent barriers and gates, in and through Delta waterways. As a Sheriff with responsibility for on water enforcement, and search and rescue responsibilities on Delta waterways, I have some obvious concerns.

We have not been consulted, advised, or otherwise involved in, what one piece of literature describes as, a project that "...could be completed and operating by early 2010." Any dam or gate in the area which is apparently being discussed would have a tremendous impact on vessel traffic in and through our County. A section of Old River apparently referred to in your discussions, is the main thoroughfare between our northern county line and the community of Discovery Bay. We must have 24/7 access to respond to emergencies on or near these waterways.

Our needs and concerns must be considered, and I leave it to you to determine the manner and means of those considerations.

Sincerely,



WARREN E. RUPF, Sheriff

WER:mw

Cc: Mike Chrisman, Secretary of Natural Resources Agency
Lester Snow, Director Department of Water Resources
Sheriff Clay Parker, President California State Sheriffs' Association
David Twa, County Administrator Contra Costa County
Lieutenant Will Duke, Marine Services

1 **APPENDIX H5: 2009 INTEREST GROUPS SCOPING COMMENTS**



BAY DELTA CONSERVATION PLAN

ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT

— Comment Card —

Please Print

Name: Annette Arceo Organization: Arceo Ranch
Telephone: 916-775-1801 e-mail: saddlesongs@hotmail.com
Address: PO Box 556
City: Courtland State: CA Zip: 95615

☐ Yes, I would like to be added to your e-mail list.

Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 14, 2009.

The concept of exporting Delta water down South could jeopardize the stability of existing ecosystems and productivity of valuable crops. There currently waterways in place that could be used to transport water if necessary. Creating new conveyances that would remove our water would impose a negative balance on the environment and agriculture.

An alternative would be to revisit the idea of building another reservoir to store excess water for use in Southern Ca. Our reservoir system is a viable, tested and proven solution to saving the Delta and alleviating Southern water shortages. Sincerely, Annette Arceo


Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:

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

You may also e-mail your comments to BDCPcomments@water.ca.gov. Comments must be received by May 14, 2009.



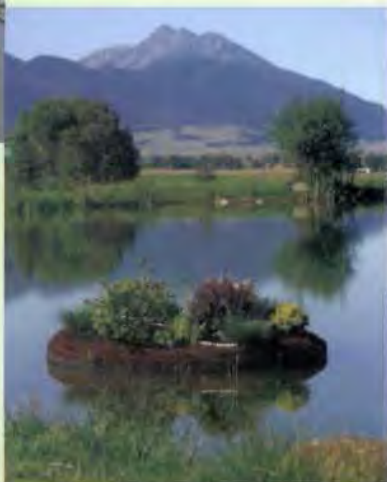
What is a BioHaven® floating island?



A BioHaven is a man-made ecosystem that mimics naturally-occurring floating wetlands. The result is a highly efficient, natural way to improve water quality by filtering pollutants and removing excess nutrients.

BioHaven floating islands are porous mats made from a matrix of fibers derived from 100% recycled plastic and bonded together with foam to provide buoyancy. The mats are planted with sod, garden plants or wetland vegetation appropriate to their environment.

Left to flourish, this ecosystem becomes home to a diverse mix of wildlife.



Over three thousand BioHavens® have been successfully deployed in many diverse waterways – public and private, domestic and international.

Wastewater and Water Remediation:

Wastewater treatment, Wiconisco, PA
Lower Seletar Reservoir in Singapore
Hamilton Lake, New Zealand
Zoo Montana, Billings, MT
Prickly Pear Creek, Helena, MT
Pixie Woods, Stockton, CA
Fairgrounds Lake, Helena, MT
Sam Livingston Fish Hatchery, Calgary, Canada
Sante Fe Irrigation, Rancho Sante Fe, CA

Habitat Restoration and Aesthetics:

Eagle Rock Golf Course, Billings, MT
Loon habitat, Big Sky, MT
Garden in the Woods, Framingham, MA
Lake Sinclair (Fish and Game), Milledgeville, GA
Citizens for Conservation wetland restoration, Barrington, IL
Turtle habitat, Toronto Zoo, Canada
Caspian Tern Nesting Island, Summer Lake, OR

For more information:

Floating Islands West, LLC
Toll Free 1-866-798-7086
Lockeford, CA 95237
www.floatingislandswest.com
www.floatingislandinternational.com
email: info@floatingislandswest.com



BioHaven® floating islands

using nature
to restore our natural world

cleansing

BioHaven® floating islands naturally cleanse water

A BioHaven floating island is an example of Biomimetics, the science of adapting designs from nature to solve modern problems. BioHavens use natural microbial processes to cleanse water. The matrix, and plant roots that grow through it, provide essential surface area for microbes to reproduce. Microbes (bacteria), occurring naturally in water, evolve quickly to remove contaminants of all kinds—

nutrients caused by fertilizer run off, organic waste, nitrates, phosphates, ammonia and heavy metals such as copper and zinc. The effectiveness of BioHavens comes from the fibrous matrix base, providing an expanded surface area for microbes to grow. For example, a 250 sq ft BioHaven provides one acre of “concentrated” wetland surface area. This generates extensive surface area allows microbes

to create a concentrated wetland effect that makes BioHaven many times more effective than nature.

nurturing

BioHaven® floating islands become home to a diverse mix of wild life

BioHavens are truly havens for all kinds of wildlife, starting with microbes. At the base of the food chain, these multiply profusely and support the diverse wildlife that come to inhabit the islands.

Damselflies and dragonflies hover round a new island. Ducks use them for brooding and roosting, loons nest on them, and plant roots that grow through the protective core of the island provide a food source for fish.

enhancing

BioHaven® floating islands: A natural and beautiful solution

Zoo Montana

BioHavens have made life more fun for two river otters while cleaning their water.

Citizens for Conservation

A new wetland has been created in the suburbs of Chicago using BioHavens.

Garden in the Woods

BioHavens in the shape of lily pads were a highlight of an art project.

Wiconisco Water Treatment

BioHavens flourish while cleansing the water of excess nutrients at a wastewater facility.

From: jimb@becnet.org [mailto:jimb@becnet.org]
Sent: Thursday, May 28, 2009 9:30 AM
To: Brown, Delores; pgosselin@buttecounty.net; Barris, Lynn; Barbara Vlamis
Subject:

May 28, 2009

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

Re: NOTICE OF PREPARATION of the ENVIRONMENTAL IMPACT REPORT AND
ENVIRONMENTAL IMPACT STATEMENT FOR THE BAY DELTA CONSERVATION PLAN
(BDCP).

Dear Ms. Brown:

Butte Environmental Council, a public benefit corporation representing
850 members, is submitting the following comments and questions for the
NOTICE OF PREPARATION of the ENVIRONMENTAL IMPACT REPORT AND
ENVIRONMENTAL IMPACT STATEMENT FOR THE BAY DELTA CONSERVATION PLAN
(BDCP).

Introduction: BEC objects to the NOTICE OF PREPARATION of the
ENVIRONMENTAL IMPACT REPORT AND ENVIRONMENTAL IMPACT STATEMENT FOR THE
BAY DELTA CONSERVATION PLAN (BDCP) because:

1. The description of the Project is not clear in the Notice;
2. The BDCP requires upstream water management projects to supply the water to operate pumps and therefore environmental analysis should be tiered under one or more of these projects (SVWMA, SVIWMP).
3. The project may result in significant adverse environmental impacts and poses significant unknown risks to the environment upstream and downstream from the Delta.
4. The project implies the intention of overriding the State and Federal Endangered Species Acts by promotion of "co-equal goals" of "ecological restoration" and "water supply".
5. The BDCP makes no effort to consider decreased demand for water exports. The BDCP assumes increased demand South of Delta (SOD) will result in sustained or increased export from the Delta.

1. The description of the Project is not clear in the Notice.

The need for the BDCP appears to be the implementation of significant environmental, infrastructure and operational changes to the artificial water supply systems of the Sacramento-San Joaquin Delta. While these changes appear to be focused on the Delta itself, the impacts associated with sustained/increased water extractions from the system will occur in both the upstream watersheds and the downstream ocean environment. The changes include the construction of a peripheral canal (renamed "isolated transfer facility"). Unfortunately the NOP fails to provide a sufficient draft BDCP plan that the public and affected agencies and jurisdictions can review to provide meaningful assessments and comments on the numerous and consequential environmental impacts of the BDCP on the Delta, the watersheds, and the associated Pacific Ocean environment.

2. The BDCP requires upstream water management plans/projects to supply the water to operate pumps and therefore environmental analysis should be tiered under one or more of these projects (SVWMA, SVIWMP).

While the Delta infrastructure is vulnerable to numerous disturbances that may alter the current conditions, the availability of water that flows through the Delta predicates the Delta-specific management decisions that must be made. The agencies recognize the importance of the Sacramento Valley Watershed in providing the water and have devised plans to operate the North of Delta (NOD) component of the system. But to date, there has been no comprehensive environmental review of the supply system. This is like designing and constructing a plumbing system in a building before securing a sustainable source of water to fill the pipes. The BDCP is being developed to set out near-term and long-term approaches to meet the objectives of providing for the conservation of covered species and their habitats, addressing the requirements of the federal and State endangered species laws, and improving water supply reliability. A comprehensive EIR/EIS of the Sacramento Valley Water Management Agreement (Phase 8, 2001, SVWMA) and/or the Sacramento Valley Integrated Regional Water management Plan (SVIRWMP 2005) should be complete prior to initiation of an EIR/EIS for the BDCP. The timing of the BDCP review before the SVWMA review is inappropriate.

Operation of Delta export pumps relies of water flowing from the Sacramento River into the San Joaquin River. There are at least three projects mentioned in the Sacramento Valley Integrated Regional Management Plan (SVIRWMP) being floated to "improve" water supply reliability from this watershed: integration of the lower Tuscan aquifer formation into the state water supply through conjunctive water management, constructing canals and pumps to create Sites reservoir, and enlarging Shasta reservoir. Additionally, these plans assume reoperation of both Shasta and Oroville reservoir.

Integration of the Tuscan aquifer system into the state water supply requires conversion of a balanced aquifer that provides baseflow to east-side streams and water supply to groundwater dependent municipalities and farms into a widely fluctuating underground reservoir. There is significant opposition to this proposal. Butte Environmental Council has raised legal challenges to studies and aquifer performance testing that would decrease streamflow, threaten native valley oak trees, and endanger the water supply for groundwater dependent farmers. Impacts to aquatic habitat, including habitat for listed anadromous fish, would inevitably result in declines in salmon and steelhead populations in the Sacramento Valley Watershed, the Delta and the Ocean. Declining water table levels would require independent farmers to deepen wells, increase pumping costs and, in some cases, abandon farming operations. Land subsidence associated with overdrafted aquifers would impact infrastructure and decrease water storage capacity.

Building Sites Reservoir infrastructure would require establishment of canal right-of- ways and would flood a coast-range valley that is currently valued for grazing and oak woodland habitat. There are indications that Sites Reservoir would chemically transform river water into reservoir water with elevated levels of metals and other pollutants, including methyl mercury, from the valley's soil. This proposed reservoir would increase the ability of agencies to eliminate natural flow regimes that the Sacramento River needs to maintain riparian habitat.

Raising Shasta Reservoir would wash away a long-treasured trout fishery and 26 sites along the McCloud River that are sacred to the Winnemem Wintu American Indian tribe. The cultural value of this land is of paramount importance. The recreational value of the fishery is also of great concern.

3. The Project may result in significant adverse environmental impacts and poses significant unknown risks to the environment upstream and downstream from the Delta.

Central Valley Chinook salmon, delta smelt, longfin smelt, green sturgeon and other species have crashed to record low population levels, due to massive water exports out of the California Delta and Central Valley dam operations. The destruction of the natural upper Feather River and Sacramento River anadromous spawning grounds that occurred as a result of dam building has not been mitigated by attempts to recreate successful regeneration through the operation of artificial hatcheries and the trucking of smelts bypassing natural migration routes. The single location of robust Central Valley Spring Run Chinook Salmon regeneration occurs in Butte Creek (located in Butte County). This stream is vulnerable to drawdown during the springtime up-migration of Chinook salmon when farmers are flooding rice fields and irrigating orchards. Any attempt to increase surface water transfers from the Sacramento Valley by using groundwater substitution will exacerbate existing threats to the delicate balance that allows this irreplaceable natural resource to thrive.

The impacts to recreational and commercial fishing associated with the decline of salmon populations have been severe. Increasing demands on the hydrology of the Sacramento Valley to meet the demands of the BDCP must be analyzed by the EIR/EIS to consider impacts to areas outside of the Delta. Coastal fishing economies have been severely impacted by the failure of the Central Valley plumbing (including areas upstream from the Delta) to provide adequate habitat for migration, regeneration and rearing. Acknowledgements of potential impacts on the Sacramento Valley economy that is dependent on a balanced groundwater supply must be considered. Municipalities and orchards located on the up-gradient portion of the Eastern Sacramento Valley aquifer system are totally dependent on groundwater.

4. The project implies the intention of overriding the State and Federal Endangered Species Acts by promotion of "co-equal goals" of "ecological restoration" and "water supply".

A basic tenant of the BDCP is the promotion of "co-equal goals" of "ecological restoration" and "water supply" violates the state's Natural Community Conservation Planning Act (NCCPA). The primary objective of the NCCP program, broader in its orientation than the California and Federal Endangered Species Acts, is "to conserve natural communities at the ecosystem scale while accommodating compatible land use," according to the DFG. BEC believes that these coequal goals violate the Acts. Protection of endangered species comes first - it is not a coequal goal.

5. The BDCP makes no effort to decrease demand for water exports. The BDCP assumes increased demand SOD will result in sustained or increased export from the Delta.

A primary focus of the BDCP is to provide South of Delta (SOD) irrigation water to an ever-hardening demand put forth by the shift to permanent crops and inevitably places the permanent habitat requirements of fish and wildlife North of Delta (NOD) in a secondary tier of importance. The assumption that surplus water exists NOD to meet existing and expanding demand is not valid. Increased demands on water supply in the region and for transfer out of basin to provide water to implement the BDCP, combined with unpredictable weather patterns, creates the probability that unreasonable effects upon fish, wildlife and other instream beneficial uses may occur upstream from the Delta. The BDCP fails to describe the trend of escalating amounts of water exported from the Sacramento Valley to SOD contractors. While the plan indicates water exports will be limited to "the availability of sufficient water, consistent with the requirements of State and federal

law..." the public has no assurance based on past performance that this will hold true. In fact, the assurance that water supply will be valued co-equally with ecological restoration insures that there will be institutional attempts to override environmental law during inevitable emergencies arising from the continued demand by contractors for water especially during dry periods.

Alternatives

Alternatives to the proposed Project should be presented to the public. An EIR/EIS must describe a reasonable range of alternatives to the project that could feasibly obtain the Project's objectives. The EIR must evaluate the merits of each alternative and must include a no-project alternative. "Compliance with CEQA is not optional."

(Stanislaus Audubon Society, supra, 33 Cal.App.4th at 159, fn. 7.) The EIR/EIS should consider different cropping options, retirement of drainage impaired land SOD, conservation/recycling improvements in municipal water use, and other methods to reduce water demand, which could significantly reduce the need to move water through the Delta.

Cumulative Impacts

In addition, an EIR/EIS would necessarily contain further analysis on biological, hydrologic, land use, cumulative, and growth-inducing impacts. The Agencies May Not Avoid Consideration of the Significant Environmental Impacts by Improperly Segmenting the Proposed Activities. The USBR and California DWR are involved in numerous current and reasonably foreseeable water programs and projects that are not disclosed in the Notice and have not been reviewed under CEQA or NEPA.

This includes, but is not limited to:

- * Sacramento Valley Water Management Agreement (Phase 8) 2001
- * Butte County Integrated Water Management Plan 2005
- * Sacramento Valley Integrated Regional Water Management Plan 2006

This must be rectified in an EIR/EIS, so that all the impacts associated with the rapidly evolving California Water Supply system may be fully disclosed to the public for review and comment.

Summary

DWR's paltry description of the Project fails to comply with the most essential review and disclosure requirements of CEQA, thereby depriving decision makers and the public of the ability to consider the relevant environmental issues in any meaningful way (details above). Rather, DWR swept critical evidence regarding the Project's impacts under the carpet, in violation of CEQA.

DWR's participation in water marketing serves to prop up a failing state policy and abrogates the responsibility of state and local governments to plan for the efficient use of land and water. The market does not provide for the health, safety, or welfare of the public or the environment. The market fosters avarice as witnessed by the continual growth of sprawling subdivisions and development in floodplains, desert farming, and plans to integrate the groundwater of the northstate into the state water supply with all activities subsidized by the public. At a minimum, BEC encourages the DWR to prepare an NOP for the project that more clearly describes activities, connections with other water supply plans, and risks to the economy and environment of the entire watershed.

BEC requests notification of any meeting that addresses this proposed BDCP or any other DWR project that requires any consideration of CEQA. Please send any additional documents that pertain to this project.

Jim Brobeck, Water Policy Analyst

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Chico, CA 95928
530.891.6424
F: 530.891.6426

- * Sacramento Valley Water Management Agreement (Phase 8) 2001
- * Sacramento Valley Integrated Regional Water Management Plan 2006

Comments made at the BDCP Scoping meeting on March 26, 2009

Good evening. My name is Peter Hunn and I am a third generation farmer from Clarksburg. I am here tonight to speak as an elected board member of the Woodland based company, Cal/West Seeds, the oldest seed co-op in California. I would like to make a short comment and end with two questions. For more than 70 years Cal/West has been producing and supplying seeds grown in the North Delta to customers across the country and in more than 30 foreign countries, most recently China. For the past 45 years, 100% of the world's supply of Dichondra Seed has been produced in the Clarksburg region. The unique soil and climate conditions in the Clarksburg area enable growers to produce high quality Dichondra Seed on a consistent basis. Safflower Seed is another important crop grown in the Clarksburg area. Most of today's commercially grown varieties of Safflower Seed were first developed and reproduced in the Clarksburg area because of the unique soil and high water table. Clarksburg area farmers are successful and prosperous today because they have learned how to adapt and stay on the cutting edge. Cal/West and its growers fear that plans being developed by the BDCP and Delta Vision committees will destroy this region of the Delta and its grower's way of life.

Question number one: Have you considered or studied changes to the Clarksburg region hydrology that would result from proposed conveyance or habitat restoration projects?

Question number two: What will be the effects on water quality in the North Delta on a year round basis from the proposed conveyance or habitat restoration projects? Will salt water intrusion ultimately make the North Delta a region where agriculture will no longer survive?

I would like to conclude by reading you two quotes. The first quote is "I can run wild for six months.....after that, I have no expectation of success". The second quote is "I fear all we have done is awakened a sleeping giant and filled him with terrible resolve". Both these quotes were made by Imperial Fleet Admiral Yamamoto. The first quote was made a year before the attack on Pearl Harbor and the second quote was made immediately following the attack.

Please address these issues directly in your final EIR/EIS.



Serving the Flood Control Community Since 1926

CALIFORNIA CENTRAL VALLEY FLOOD CONTROL ASSOCIATION

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May 13, 2009

Via e-mail

BDCPComments@water.ca.gov

Ms. Dolores Brown, Chief
Office of Environmental Compliance
Department of Water Resources
State of California
P.O. Box 942836
Sacramento, CA 95814

Subject: Scoping Comments of the California Central Valley Flood Control Association, Bay-Delta Conservation Plan Environmental Impact Report/Environmental Impact Statement

Dear Ms. Brown:

The California Central Valley Flood Control Association (Association) respectfully submits these scoping comments on the Bay-Delta Conservation Plan Environmental Impact Report/Environmental Impact Statement (EIR/EIS).

The Association was established in 1926 to promote the common interests of its membership in maintaining effective flood control systems in California's Central Valley for the protection of life, property, and the environment. Our members consist of more than 75 levee districts and other flood control entities along the Sacramento and San Joaquin Federal Project Levee system and non-Project levees within the Sacramento-San Joaquin Delta. Our members are significantly concerned with the impacts the BDCP projects and actions will have on the Central Valley flood control system; and therefore, our comments are directed at changes to the flood system anticipated under a BDCP EIR/EIS in regard to habitat improvements and conveyance of water through and around the Delta.

Sacramento River Flood Control Project

Flood protection in the Sacramento River watershed is primarily provided by the Sacramento River Flood Control Project (System). The System consists of approximately 980 miles of levees plus overflow weirs, pumping plants, and bypass channels that protect communities and agricultural lands in the Sacramento Valley and Sacramento-San Joaquin Delta. Historically, more than 40 percent of the State's runoff flowed to the Delta via the Sacramento, San Joaquin, and Mokelumne rivers. The Yolo Bypass, as the key component of the System, carries 80% of the water at the latitude of Sacramento during extreme floods. The System was originally authorized by Congress in the Flood Control Act of 1917 and implemented throughout the first half of the 20th century with a single objective -- flood control.

The 21st century has brought with it a broad array of competing demands for the resources of the Sacramento River watershed. In order for the System to survive this century, a comprehensive, holistic, and sustainable set of solutions must be developed and implemented to transition this single objective System into a multi-objective system designed to meet the competing demands of the 21st Century.

Our Association believes that the paramount duty of the State of California in developing and implementing the Central Valley Flood Protection Plan (CVFPP) is to provide for the protection of public safety and welfare. The Department of Water Resources' (DWR) own FloodSAFE program's first principle for a FloodSAFE California is: "Approach flood risk management on a system-wide basis, taking into account varied land uses and flood protection needs." The main concern of the Association is that the BDCP needs to comply with the CVFPP by making sure that flood protection and flood capacity of the System is a priority.

The concept of "flood neutral" based on current hydrology does not fully address the future potential impacts on flood control improvements and maintenance allowable under existing easements and works. This document must be consistent with the ongoing California Central Valley Flood Protection Plan. The Yolo Bypass is a critical component of the Sacramento Valley Flood Control Project. Any anticipated work within the Yolo Bypass, including the conveyance or restoration, must coordinate with and accommodate the recommendations of the CVFPP as well as future flood control improvements. It is our assertion that no BDCP projects should be allowed to preempt the paramount public safety function of the flood protection components of the System. There is no acceptable balancing or trade-offs to the flood control function in the Yolo Bypass, or anywhere else in the System, as currently operated or as required in the future. Additionally, adaptive management requirements should be included that require BDCP project modifications in the event of increases in flood risk to System facilities and public safety.

One of the main goals of the BDCP plan is to increase habitat critical to special status fish species, and also establish habitat outside of the central delta in areas currently farmed. If listed species successfully propagate in these new habitat areas, as planned, the existing levee maintaining agencies in the area will experience increased maintenance costs due to the

existence of listed species in the area. These impacts should be evaluated and mitigated in the EIR/EIS.

Central Valley Flood Protection Plan

The Federal government has reconstructed levee systems along the Sacramento and San Joaquin River systems. The individual levees within these systems act in coordination in order to provide flood benefits to all lands within the Central Valley of California. The current State plan of flood control and the Central Valley Flood Protection Plan are currently evaluating the adequacy of the existing flood control system. In addition, the plans will be looking at increasing protection to urban areas at the 200-year flood frequency level. The results of these plans may cause the Yolo Bypass and other parts of the System to be modified in order to increase their flood carrying capacity. It is imperative that the EIR/EIS evaluate impacts to flood protection when developing habitat or additional floodplains under its plan. The EIR/EIS must avoid reducing current flood capacity throughout the whole Central Valley flood control system.

Evaluation of flooding in the Sacramento and San Joaquin systems requires flood modeling from the Delta all the way up to the highest reaches of the levee systems. The State is currently developing models to perform this type of operation. The BDCP EIR/EIS must utilize these models in order to adequately evaluate the impacts that any habitat or other changes within the flood system under BDCP.

The BDCP draft documents indicate that levees may be removed in order to flood certain areas that are currently being farmed. The BDCP EIR/EIS must evaluate the process by which this could occur, and related impacts, especially for levee systems that are under the jurisdiction of the U.S. Army Corps of Engineers. Substantial public and private investments in water conveyance for irrigation and drainage are potentially at risk by seasonal flooding of levee protected areas. Construction of cross or cutoff levees could limit the extent of damage or stranded investment; however, that land base to support maintenance of such a facility will not exist. Local levee districts will not accept maintenance for such new levees. These possibilities and their physical and financial impacts must be addressed in the EIR/EIS. Breaching adjacent levees increases the potential for erosion, surface water elevation changes, and water quality changes, all to the detriment of local public and private operations and must be properly analyzed and mitigated in the EIR/EIS.

Yolo Bypass

The BDCP documents indicate that additional water will be diverted into the Yolo Bypass during periods of non-flood flow. This will be accomplished by notching, or gating, the Fremont Weir at a lower elevation than currently exists. During the scoping sessions, very little detail was given in regards to the notching or gating of the Fremont Weir in order to provide flows in the Yolo Bypass during non-flood years. It was indicated during the scoping sessions that flooding could extend 45 days, up to May 1. BDCP draft documents acknowledge that more frequent inundation of the bypass may accelerate the erosion of bypass and downstream levees without appropriate protections. The BDCP EIR/EIS should describe this project in more detail,

including how this will be accomplished and evaluate any impacts, such as seepage, erosion, and wave fetch damage to adjacent levees, that this will cause on neighboring levee systems due to increased flooding of the Bypass. The Bypass levees are designed for short term, infrequent flooding; and are typically not armored by riprap, nor are they designed to prevent seepage for a long period of time.

This change could also significantly change the vegetation regime in the Yolo Bypass; which could therefore, reduce the flood carrying capacity if a riparian forest is allowed to grow in the Bypass as has previously occurred in the Sutter and Tisdale Bypasses. Lack of vegetation maintenance for as little as one year could effectively create thick stands of habitat that would act to increase the coefficient of friction within the Yolo Bypass and change the flood carrying capacity. The BDCP EIR/EIS must describe in detail how this capacity will be maintained or improved.

Previous flood flows in the Bypass, particularly in 1986, demonstrated that flood flows at the design condition for the lower reaches of the Bypass is both higher than design stage and extended into areas not covered by flowage easement. The bypass is already incapable of passing the design flow at the design stage up stream of Liberty Island. New impacts due to additional capacity impairments will affect agricultural land and their attendant habitat values, increase erosion on existing levees, create additional road flooding, reduce local drainage capacity, and potentially allow flood flows to outflank the federal project levee at the northern end of the bypass. Rigorous modeling and monitoring criteria needs to be funded and implemented as a component of any project.

BDCP should firmly commit to flood control primacy in the Yolo Bypass and clearly and unequivocally condition any BDCP action in the floodway as being secondary to the flood control function, and further assert that flood control operations, maintenance and repairs are the foremost and primary activity on the structural section of levees and any permanent establishment of habitat must be consistent with those primary activities within the BDCP study area. An agreement should be reached with the Central Valley Flood Protection Board and the U. S. Army Corps of Engineers which specifically provides for such flood control primacy under present and future conditions. BDCP must assure flood control interests that flood control activities in and adjacent to BDCP projects, including improvements and maintenance, will not be subject to mitigation requirements as a result of the establishment of the BDCP projects or their operation. BDCP must also provide mitigation credits for the use of lands within the Yolo Bypass that would be allocated to the Sacramento River Flood Control Project, with specific reservations for those facilities in or adjacent to the Cache Slough/Yolo Bypass Restoration Opportunity Areas.

Non-Project Levees

The BDCP plan refers to a through-Delta portion of its dual conveyance facility; however, there are very few details regarding what this component will entail. The bulk of the levees that currently comprise the through-Delta corridor, and also protect water quality in the western Delta, are non-Project levees; that is, not part of the Federal flood control system. They

are currently maintained by the local reclamation districts. These levees essentially form the Delta and protect all the land-based habitat and improvements, which include thousands of acres of water fowl habitat, State highways and county roads, gas and electrical transmission lines, railroads, and small urban populations. In addition, these levees support channel margin habitat along their slopes, and within the shallow water areas waterward of the levee. They also protect existing channel islands, which are remnants of the original Delta habitat.

Several details should be addressed in the EIR regarding non-Project levees. First, non-Project levees that are going to be deemed part of the through-Delta corridor should be identified. In addition, the document should describe the kind of rehabilitation would be accomplished on these levees to ensure that the failure risk is reduced due to Project levels. In the San Joaquin side of the Delta, of particular concern is expansion of existing floodways in the Paradise Cut area. The modification to this area will cause flows that have historically continued in the San Joaquin River towards Stockton to be diverted west and north along the non-Project levees of the south and central Delta.

In addition, the EIR/EIS should address other levees in the Delta that provide benefit to the through-Delta portion of the dual conveyance facility; in particular, the levees that provide water quality benefits. The “domino effect” should be addressed in regard to levees that may, or may not, be maintained in the future. It is a documented fact that when levees fail and islands are not reclaimed, the neighboring islands experience extensive increases in maintenance due to seepage problems and increased wind/wave fetch forces.

The EIR/EIS should address the other effects of breached levees and non-reclaimed islands. Emergency response to islands critical to the BDCP will be compromised by flooding of islands through which emergency access is required. The EIR/EIS should evaluate the change in Delta hydraulics and fish migration under several scenarios of flooded islands. Flooded islands will cause increased water loss through evaporation. This loss of water would be greater than the current consumptive use of the agricultural islands. The EIR/EIS should address where water will be obtained to offset this loss in order to meet water quality objectives. It is possible that additional control structures may be required to meet water quality objectives if multiple flooded islands are not reclaimed. Levees form the channels which are a great benefit to recreation. The document should also evaluate the impacts to recreation due to unreclaimed flooded islands.

The eastern canal alignment will be within the 100-year floodplain for its entire 49 miles. Although the entire reach is protected by existing levees, these levees do not provide 100-year protection. The EIR/EIS should address the maintenance and rehabilitation of these levees to a level of 100-year protection.

These non-Project levees are maintained by local reclamation districts. The eastern alignment of the canal, in particular, will bifurcate a number of these reclamation districts. The BDCP document should address the future of reclamation districts once a canal is built through their boundaries. The canal will affect both the operation and maintenance of existing levees, possibly cause seepage problems that would hinder the structural stability of these levees, and would also create a separation of landowners that would change the ability to drain the lands.

All existing habitat in the Delta is protected by levees. The BDCP document should address how this existing habitat will fare in the future, especially if levees should fail and islands are not reclaimed. The scoping sessions did not present any information regarding existing habitat and the future of this habitat. In addition, the BDCP document should investigate the possibility of increasing habitat, such as channel margin habitat, in conjunction with rehabilitation of existing levees that are important to the through-Delta portion of the dual conveyance facility. These multi-objective projects could provide extreme benefit to the Delta lands and habitat.

U.S. Army Corps of Engineers' Levee Standards and Vegetation

The Corps of Engineers has recently restated its National Levee Inspection Standard and vegetation management guidelines, ETL 1110-2-571. These requirements reinforce its requirements that vegetation (habitat) be removed from certain levees. The California Department of Water Resources is a party to a recent agreement titled, *California Central Valley Flood System Improvement Framework* which specifically states, "New levees being added to the System (such as setback levees, backup levees, and ring levees) will also be designed, constructed, and maintained to ETL Standards." The BDCP EIR/EIS should address how this will affect its plans. Habitat creation in the floodway can impact flood carrying capacity and other flood control benefits that currently exist. Successful habitat development in areas adjacent to levees and other water control features bring increased regulatory compliance costs and restrictions. It is essential to evaluate and compensate for these impacts. The inability to maintain habitat development in the future could cause additional problems. Under the topic of adaptive management, the BDCP should require habitat removal should it prove to negatively affect flood control, or have impacts to human health and safety.

Adaptive Management

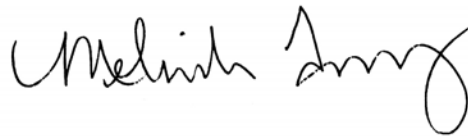
The adaptive management process proposed in BDCP draft documents fails to describe how monitoring will be designed to establish cause and effect relationships between implementation of specific conservation measures or operation of new conveyance facilities and the type and magnitude of human impacts from those measures such as economic and public safety. Draft documents gives examples of a tidal marsh restoration project being reduced or discontinued or water operation being modified if its providing little benefit to covered species, however it does not explain what will happen if a habitat project or water operation results in causing economic or physical harm to humans in the Delta. Due to the significant scientific uncertainties regarding the impacts from the construction and operation of new conveyance facilities and the implementation of habitat conservation measures in the Delta, the EIR/EIS must include an adaptive management process that includes modification of any conveyance or habitat project that results in human consequences, including reducing flood protection. For instance, if the Fremont Weir project mentioned earlier is implemented and funding for vegetation maintenance in the Yolo Bypass is not available and a riparian forest starts growing in the Bypass, the Plan needs to adaptively manage the habitat measure to assure flood capacity is returned. Just as there is an adaptive management process for responses by covered species to

the Plan's implementation, there also needs to be an adaptive management process to respond to negative human impacts caused by the Plan's implementation. Otherwise, this is not a complete adaptive management plan.

Summary

Finally, it is impossible to provide comprehensive or complete comments on the Bay Delta Conservation Plan Environmental Impact Report/Environmental Impact State or evaluate the cumulative impact of various projects to be in a final EIR/EIS due to the lack of a project description or specific performance targets such as, but not limited to, bypass flows and outflows, greenhouse gas impacts, or seismic stability. The purpose of an EIR is to provide State and local agencies and the general public with detailed information on the potentially significant environmental effects which a proposed project is likely to have and to list ways which the significant environmental effects may be minimized and indicate alternatives to the project. The lack of specificity or details on the proposed project prevents the Association and its local agency members from being able to identify the significant environmental effects of the project action or how to avoid any significant environmental effects, or how to mitigate those significant environmental effects, where feasible, pursuant to the basic purpose and goals of CEQA. We therefore expect to be provided the opportunity in the future to see and comment on a detailed project description, alternatives, and proposed mitigations before a final EIR/EIS is approved.

Thank you for the opportunity to submit these scoping comments.

A handwritten signature in black ink, appearing to read "Melinda Terry". The signature is fluid and cursive, with the first name "Melinda" written in a larger, more prominent script than the last name "Terry".

Melinda Terry,
Executive Director

bdcpccomments

From: Bill Wells [commodorewells@msn.com]
To: bdcpccomments
Cc: phunn@frontiernet.net
Subject: Comments on Bay Delta Conservation Plan (BDCP)
Attachments:

Sent: Wed 5/13/2009 12:33 PM

Dear Ms. Delores Brown - Thank you for taking the time to answer the following questions regarding the BDCP.

1. The peripheral canal diverting water around the Delta has the potential to cause an ecological disaster of monumental proportions, killing wildlife and allowing invasive species to prosper. Owens Valley, Mono Lake, San Joaquin River, Trinity River, and the Colorado Delta come to mind. Can you provide a few examples where a diversion of this type has actually helped the ecology of a waterway?
2. Does Resource Secretary Mike Chrisman's family business Chrisman Ranches in Visalia receive any water that is diverted from the Delta and or the San Joaquin River?
3. The proposed dam or barrier on Three Mile Slough possibly will cause a major silting problem on the San Joaquin River side of the slough. Has DWR researched and found a solution for this potential problem?

Best regards,

Bill

Bill Wells
Executive Director
California Delta Chambers & Visitor's Bureau
PO Box 1118
Rio Vista, CA 94571



CALIFORNIA FARM BUREAU FEDERATION

NATURAL RESOURCES AND ENVIRONMENTAL DIVISION

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May 14, 2009

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

Via First-Class Mail & Email
BDCPcomments@water.ca.gov

Re: Comments on the BDCP EIR / EIS; State Clearinghouse Number: 2008032062.

Dear Ms. Rinek and Ms. Brown:

The California Farm Bureau Federation ("California Farm Bureau") is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home and the rural community. California Farm Bureau is California's largest farm organization, comprised of 53 county California Farm Bureaus currently representing approximately 85,000 members in 56 counties. California Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

California Farm Bureau appreciates the opportunity to submit comments on the Notice of Intent/Notice of Preparation of a draft Environmental Impact Statement/Environmental Impact Report ("EIS/EIR") for the Bay Delta Conservation Project ("BDCP"), which encompasses requirements of the federal Endangered Species Act ("ESA"), the California Endangered Species Act ("CESA") and the State of California's Natural Communities Conservation Planning Act ("NCCPA"); as well as, DWR's (and potentially State and Federal water contractor's) intention to apply for ESA and CESA incidental take permits ("ITP") for water operations and management activities in the Sacramento-San Joaquin Delta.

California Farm Bureau supports the BDCP process and the collaboration among many different stakeholders. Nevertheless, California Farm Bureau has reservations about how impacts to agricultural resources will be addressed in the upcoming environmental review. California Farm Bureau is concerned that the Fish & Wildlife Service, Bureau of Reclamation, National Marine Fisheries Service, and the Department of Water Resources (hereinafter “Agencies”) may fail to recognize that agricultural land and water quality resources are a part of the physical environment, thus consideration of impacts to agricultural resources must be included as part of a proper National Environmental Policy Act (“NEPA”) and California Environmental Quality Act (“CEQA”) environmental review.

Agricultural Resources Must Be Considered During Environmental Review

Agricultural resources are an important feature of the existing environment of the State, and are protected under federal policies, such as the Farmland Protection Policy Act and NEPA, State policies, and CEQA. Agriculture is the number one industry in California, which is the leading agricultural state in the nation.¹ Operation of the Central Valley Project and the State Water Project helped to transform agriculture throughout the State. Agriculture is one of the foundations of this State's prosperity, providing employment for one in 10 Californians and a variety and quantity of food products that both feed the nation and provide a significant source of exports.² In 1889, the State's 14,000 farmers irrigated approximately one million acres of farmland between Stockton and Bakersfield. By 1981, the number of acres in agricultural production had risen to 9.7 million.³ More recently, the amount of agricultural land in the State has declined. From 1982 to 1992, more than a million acres of farmland were lost to other uses. Between 1994 and 1996, another 65,827 acres of irrigated farmland were lost, and this trend is expected to continue.

In order to preserve agriculture and ensure a healthy farming industry, the Legislature has declared that “a sound natural resource base of soils, water, and air” must be sustained, conserved, and maintained.⁴ Prior to converting agricultural lands to other uses, decision makers must consider the impacts to the agricultural industry, the state as a whole, and “the residents of this state, each of whom is directly and indirectly affected by California agriculture.”⁵

Both NEPA and CEQA require analysis of significant environmental impacts and irreversible changes resulting from proposed projects. These include unavoidable impacts; direct, indirect, and cumulative effects; irreversible and irretrievable commitment of resources; relationships between short-term uses and long-term productivity; and growth-inducing impacts to the environment. In both CEQA and NEPA, the physical environment includes agricultural lands and resources. Given

¹ Food & Agr. Code, § 802 subd. (a).

² CALFED Final Programmatic EIS/EIR, July 2000, pg. 7.1-1.

³ Littleworth & Garner, California Water II (Solano Press Books 2007) p. 8.

⁴ Food & Agr. Code, § 802 subd. (g).

⁵ Food & Agr. Code, § 803.

the national and statewide importance of agriculture and the legal requirements of environmental review, California Farm Bureau urges the Agencies to properly assess all direct and indirect effects on the agricultural environment resulting from the proposed BDCP project in the EIS/EIR.

Agricultural Resource Must be Considered In a Legally Defensible NEPA Review

1. Farmland Protection Policy Act

As a result of substantial decreases in the amount of open farmland, Congress enacted the Farmland Protection Policy Act (FPPA) in 1981 as part of the Agriculture and Food Act (final rules and regulations were published in the Federal Register on June 17, 1994).⁶ In its statement of purpose, the FPPA aims to minimize the extent to which federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses. Projects are subject to FPPA requirements if they may irreversibly convert farmland (directly or indirectly) to nonagricultural use and are completed by a Federal agency or with assistance from a Federal agency.⁷ Such projects shall also be administered in a manner compatible with local government and private programs and policies to protect farmland.⁸

To help assist federal agencies in minimizing the loss of farmland, guidelines were developed.⁹ Prior to progressing with the BDCP project, the Agencies should review these guidelines and incorporate the criteria into their NEPA analysis:¹⁰

As stated above and as provided in the Act, each Federal agency shall use the criteria provided in § 658.5 to identify and take into account the adverse effects of Federal programs on the protection of farmland. *The agencies are to consider alternative actions, as appropriate, that could lessen such adverse effects*, and assure that such Federal programs, to the extent practicable, are compatible with State, unit of local government and private programs and policies to protect farmland.¹¹
[....]

It is advisable that evaluations and analyses of prospective farmland conversion impacts be made early in the planning process before a site or design is selected, and that, where possible, agencies make the FPPA evaluations part of the National Environmental Policy Act (NEPA) process.¹²

⁶ 7 U.S.C. §§ 4201 et seq.

⁷ 7 U.S.C. § 4201.

⁸ 7 C.F.R. § 658.4.

⁹ See 7 C.F.R. §§ 658.1 et seq.

¹⁰ Agencies are to integrate the NEPA reviews with other agency planning and review processes, and coordinate with other federal agencies and with similar state processes when appropriate. (40 C.F.R. § 1500.2 subd. (c); 40 C.F.R. § 1506.2.)

¹¹ 7 C.F.R. § 658.4, emphasis added.

¹² 7 C.F.R. § 658.4 subd. (e).

2. NEPA

In addition to the FPPA, NEPA itself requires review of the agricultural environment. Title I of NEPA contains a Declaration of National Environmental Policy which requires the federal government to use all practicable means to create and maintain conditions under which man and the environment, including the agricultural environment, can exist in productive harmony.¹³ Section 102¹⁴ requires federal agencies to incorporate environmental considerations in their planning and decision-making through a systematic interdisciplinary approach.¹⁵ Specifically, all federal agencies are to prepare detailed statements assessing and evaluating the environmental impact of and alternatives to major federal actions significantly affecting the environment.¹⁶

Given the magnitude and scope of the BDCP project, significant environmental impacts, including direct, indirect, and cumulative effects, will occur. In determining “significance” under NEPA, the discussion in the BDCP EIS/EIR should focus on the “context” and the “intensity” of the impacts.¹⁷ Under NEPA, context “means that the significance of an action must be analyzed in several contexts such as society as whole (human, national), the affected regions, the affected interests, and the locality.”¹⁸ Intensity is measured, in part, by considering: (1) unique characteristics of a geographic area such as proximity to historic or cultural resources, parkland, prime *farmlands*, wetlands, wild and scenic rivers, or ecological critical areas; (2) the degree which the effects on the quality of the human environment are likely to be highly controversial; (3) the degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principal about a future consideration; (4) *whether the action is related to other actions with*

¹³ 42 U.S.C. §§ 4321 et seq.

¹⁴ Among other things, Section 102(2) of NEPA requires agencies to:

(C) Include in every recommendation or report on proposals for legislation and other major Federal Actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --

- (i) The environmental impact of the proposed action,
- (ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) Alternatives to the proposed action,
- (iv) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (v) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented; ...

(E) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. (42 U.S.C § 4332(2)(C), § 4322(2)(E).)

¹⁵ 42 U.S.C § 4332(2).

¹⁶ *Id.*

¹⁷ 40 C.F.R. § 1508.27.

¹⁸ *Id.*, *emphasis added*.

individually insignificant but cumulatively significant impacts; (5) whether the action threatens a violation of federal, state, or local law or requirements imposed for the protection of the environment.¹⁹

California Farm Bureau would like to caution the Agencies against overlooking their obligation to consider impacts to agricultural resources, as many federal agencies have made this mistake in the past. On August 30, 1976 the Council on Environmental Quality (“CEQ”) issued a memorandum to federal agencies informing them of the need to consider farmland loss as a potentially significant environmental impact. On August 20, 1980, the CEQ issued the following additional guidance to the heads of agencies regarding losses of agricultural lands because:

Approximately one million acres of prime and unique agricultural lands are being converted irreversibly to non-agricultural uses each year. Actions by federal agencies such as construction activities, development grants and loans, and **federal land management decisions** frequently contribute to the loss of prime and unique agricultural lands directly and indirectly. Often these losses are unintentional and are not necessarily related to accomplishing the agency’s mission.²⁰

For this reason, the CEQ advised:

If an agency determines that a proposal significantly affect[s] the quality of the human environment, it must initiate the scoping process [cite omitted] to identify those issues, **including effects on prime or unique agricultural lands, that will be analyzed and considered, along with the alternatives available to avoid or mitigate adverse effects...** The effects to be studied include ‘growth inducing effects and other effects related to inducing changes in the patterns of land use...cumulative effects...mitigation measures...to lessen the impact on...agricultural lands.’²¹

Clearly in light of this guidance, the Agencies must consider agricultural resources as part of the physical environment when undertaking its NEPA analysis of alternatives, direct and indirect impacts, cumulative impacts, and mitigation alternatives for the BDCP EIS/EIR.

Agricultural Resource Must be Considered In a Legally Defensible CEQA Review

One of the major principles of the State’s environmental and agricultural policy is to sustain the long-term productivity of the State’s agriculture by conserving and protecting the soil, water, and

¹⁹ *Id.*, *emphasis added*.

²⁰ 45 Fed. Reg. 59189, *emphasis added* (see copy of document attached marked Attachment A).

²¹ *Id.*, *emphasis added* (attached).

air that are agriculture's basis resources.²² As currently proposed, the BDCP project alternatives will convert agricultural lands to other uses, including land for habitat restoration, conveyance facilities, and levee improvements. This conversion would add to the existing statewide conversion of substantial amounts of agricultural lands to other uses, and may conflict with adopted plans of many local governments, including cities and counties, and existing HCPs.

Since the environmental review for the BDCP will result in a joint State and Federal environmental document, the Agencies must consider the fact that CEQA also recognizes agricultural land and water resources as a part of the physical environment. Any and all adverse environmental effects on agricultural resources resulting from the BDCP project, as well as cumulative impacts that will occur over time, must be fully assessed and disclosed under CEQA, as well as avoided or mitigated as required by CEQA.

In CEQA, "[s]ignificant effect on the environment" means, "a substantial, or potentially substantial, adverse change in the environment."²³ The CEQA Guidelines make it clear the "environment" in question encompasses, "any physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise and objects of historic or aesthetic significance."²⁴ For further guidance as to the exact meaning of "significance," the CEQA Guidelines provide a list of 29 general effects that will cause a project to "normally have a significant effect on the environment."²⁵

Of particular relevance is CEQA Guidelines Appendix G, section II, Agricultural Resources, which states the following:

In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agriculture Land Valuation and Site Assessment Model (1997) prepared by the California Department of Conservation as an optimal model to use in assessing impacts on agriculture and farmland. Would the project:

- (a) Convert prime farmland, unique farmland, or farmland of state-wide importance . . . to non-agricultural use?
- (b) Conflict with existing zoning for agricultural use or a Williamson Act contract?
- (c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of farmland to non-agricultural use?

²² Food & Agr. § 821 subd. (c).

²³ Pub. Resources Code, § 21068.

²⁴ Pub. Resources Code, § 21060.5.

²⁵ Cal. Code Regs., tit. 14, § 15000 et seq. ("CEQA Guidelines, Appendix G).

Specific Environmental Concerns That Must Be Analyzed in the Joint EIS/EIR

Having reviewed the Notice of Intent and the Notice of Preparation, California Farm Bureau has identified several specific concerns relating to agricultural resources that should be analyzed in the BDCP EIS/EIR, as follows:²⁶

- **Accurate and Complete Identification of Agricultural Resources:** The agricultural lands surrounding the BDCP Project must be accurately and completely depicted. The California Department of Conservation (“DoC”), through the farmland Mapping and Monitoring Program (“FMMP”), monitors changes in Prime farmland, Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance. The EIS/EIR must incorporate the FMMP Maps as a basis for its analysis. The acreage of farmland that will be converted and/or impacted from this project must be included in the EIR/EIS. Additionally, any other changes in the existing environment due to the project which, due to their location or nature, could result in conversion of agricultural to nonagricultural use must also be examined.

California Farm Bureau also recommends that any agricultural impact discussion for areas outside existing Important Farmland Map boundaries be based on the agricultural land definition in the Williamson Act.²⁷ This would also be in accordance with the definition of “agricultural land” in CEQA. Public Resources Code Section 21060.1 provides:

- (a) “Agricultural land” means prime farmland, farmland of statewide importance, or unique farmland, as defined by the United States Department of Agriculture land inventory and monitoring criteria, as modified for California.
 - (b) In these areas of the state where lands have not been surveyed for the classifications specified in subdivision (a), “agricultural land” means land that meets the requirements of “prime agricultural land” as defined in paragraph (1), (2), (3), or (4) of subdivision (c) of section 51201 of the Government Code.
- **Accurate and Complete Analysis of All of the Impacts:** The impact analysis in the EIS/EIR must not be limited to the amount of area that would be physically occupied by the BDCP Project. The analysis should consider the construction of ancillary facilities and supporting infrastructure, mitigation areas, as well as growth-inducing impacts and social and economic impacts. These potentially significant impacts must not be overlooked.

²⁶ Note: this list is not exhaustive.

²⁷ The California Land Conservation Act of 1965 (Government Code, §§ 51200 *et seq.*), commonly known as the “Williamson Act.”

Furthermore, the permanent and temporary disturbances caused directly by construction activities must be fully analyzed in the EIS/EIR.

- **A Full Range of Alternatives Must be Examined:** The Agencies shall identify and rigorously examine all reasonable alternatives for the BDCP project.²⁸ The range of alternatives must be feasible and must avoid or substantially lessen the project's significant environmental effects²⁹ *"even if these alternatives would impede to some degree the attainment of the project objectives or would be more costly."*³⁰ A feasible alternative is one that is "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors."³¹
- **All Impacts to Agricultural Resources Must be Fully Mitigated:** All feasible mitigation measures proposed in the EIS/EIR to address the impacts to agricultural resources must be fully described and must mitigate for the impacts. A project of this magnitude has the potential to convert significant amounts of agricultural land to nonagricultural use. To address this, sufficient funding should be allocated for mitigation of agricultural land loss on a per acre basis.³²
- **This Project Must Comply With the Williamson Act:** The Williamson Act provides a tax incentive for the voluntary enrollment of agricultural and open space lands in ten year contracts between local government and landowners. The contract enforceably restricts the land to agricultural and open space uses and defined compatible uses. A project such as this would not be compatible with the Williamson Act. Each local government that participates in the Williamson Act designates certain boundaries within their jurisdictions as

²⁸ 40 C.F.R. §§ 1500.2 subd. (e), 1501.2 subd. (c), 1502.1, 1502.14 subd. (a), 1502.15 subd. (d).

²⁹ Pub. Resources Code, §§ 21002, 21001.1(a), 21100(b)(4), 21150.

³⁰ Cal. Code Regs., tit. 14, § 15126.6, subd. (b), *emphasis added*.

³¹ See Pub. Resources Code, § 21061.1; Cal. Code Regs., tit. 14, § 15364.

³² The Agencies should consult with applicable county and local governments to assess local agricultural mitigation measures. For example, San Joaquin County and Yolo County have adopted ordinances to preserve agricultural land through the use of agricultural easements for agricultural land lost to development. San Joaquin County requires a 1:1 mitigation ratio for any "General Plan amendment that changes the designation of any land from an agricultural to a nonagricultural use" or any "Zoning Reclassification that changes the permitted use from agriculture to a nonagricultural use, regardless of the General Plan designation." (*San Joaquin County General Plan*, Section 9-1080.3(a) (c)) Yolo County requires a 1:1 mitigation ratio for any "conversion or change from agricultural use to a predominantly non-agricultural use..." (*Yolo County General Plan*, Section 8-2.2416(3)) In addition, various cities within the counties of the Delta have adopted their own agricultural mitigation measures. The cities of Brentwood, Davis, Gilroy, and Stockton have also adopted ordinances to preserve agricultural land through the use of agricultural easements for agricultural land lost to development. Brentwood requires a 1:1 mitigation ratio "by any applicant for a subdivision or any other discretionary land use entitlement which will permanently change agricultural land ... to any nonagricultural use." (*Brentwood Municipal Code*, Section 17.730.030(A)(B).) Davis requires that "[t]otal mitigation for a development project shall not be less than a ratio of two acres of protected agricultural land for each acre converted from agricultural land to nonagricultural land." (*Davis Municipal Code*, Section 40A.03.025(c).)

“agricultural preserve” and land within these boundaries can be enrolled in the Williamson Act. Once enrolled, local governments calculate the property tax assessment based on the actual use of the land instead of the potential land value assuming full development.

A Williamson Act contract lasts a minimum of ten years, and automatically renews each year, so that a minimum ten year contract is always in effect. A nonrenewal of the contract can be filed by either the landowner or the local government. Unless the contract is cancelled³³, the restrictions on the use of the property continue for the life of the contract.

Any discussions regarding mitigation for this project must include a discussion of the Williamson Act’s policies regarding public acquisition of and public improvements within, agricultural preserves and on lands under Williamson Act contract.³⁴ In addition to disfavoring locating public improvements in agricultural preserves, a public agency must consult with the Director of the Department of Conservation whenever it appears likely that a public improvement may be located in an agricultural preserve.

At a minimum, the EIS/EIR must include the following specific information on the agricultural preserves and Williamson Act contracts in the project area: (1) a map detailing the location of agricultural preserves and Williamson Act contracted land with each preserve. The document must also calculate the total amount of acreage under contract, according to land type (prime or non-prime), that could be either directly or indirectly impacted by this project; and (2) the impacts that public acquisition of areas under Williamson Act contracts would have on nearby properties also under contract. This analysis is similar to the “growth-inducing” impacts analysis under CEQA.

- **Public Acquisition of Property for this Project Must be Limited:** It is unclear at this time how much private property will have to be acquired for this project. The least environmentally damaging and practicable alternative must maximize the use of property already owned by the government before acquiring private land. For land under Williamson Act contract, Government Code Section 51291(c) spells out the requirements for government acquisition of land under contract (*see also* Gov. Code, § 51292 for the findings to be made before acquisition). These requirements must be strictly adhered to whenever any property under contract is acquired for this project.
- **Significant and Cumulative Impacts to Water Resources:** The EIS/EIR must also analyze the direct and indirect impacts of this project on water quality, including the indirect conversion of existing farmland for want of adequate and reliable water supply of sufficient quality, especially in areas within the Delta. Water quality impacts, both direct and indirect, resulting from the conversion of agricultural land to non-agricultural uses must be analyzed

³³ The Williamson Act contract cancellation process is outlined at Gov. Code, §§ 51280 *et seq.*, and requires a specific set of findings which often includes environmental review pursuant to CEQA.

³⁴ Gov. Code, §§ 51290 *et seq.* contains the state policy against locating public improvements in agricultural preserves and prescribes the requirements that any public agency must take before locating public improvements in agricultural preserves.

and mitigated. Such analysis should include water supply and water quality and should involve an examination of water supply impacts the project may have, and how that might impact the water supply otherwise available for production agriculture.

- **Social and Economic Impacts Must be Analyzed:**³⁵ The siting of the BDCP Project through agricultural lands will greatly impact the agricultural industry as a whole, as well as local rural communities. These impacts can be far-reaching and include a loss of jobs, a loss of sales tax revenue which leads to a loss of social services, and a loss of agriculturally-related businesses. Such socio-economic impacts are interrelated with the proposed effects on the physical environment and thus, must be evaluated in the EIS/EIR.³⁶

Mitigation Strategies Must Be Analyzed

Give the significant environmental impacts of the Project, including impacts to agricultural lands, both NEPA and CEQA require the Agencies to mitigate impacts. Under NEPA, the mitigation of impacts must be considered whether or not the impacts are significant. Agencies are required to identify and include in the EIS/EIR all relevant and reasonable mitigation measures that could improve the proposed action.³⁷ Under CEQA, an EIR must propose and describe mitigation measures to minimize the significant environmental effects identified in the EIR.³⁸ A mitigation measure must be designed to minimize, reduce, or avoid an identified environmental impact or

³⁵ NEPA and CEQA requirements for the analysis of social and economic impacts differ somewhat. NEPA requires that an EIS consider social and economic effects if they are related to effects on the natural or physical environment, and the NEPA definition of *effects* includes social and economic factors. (40 C.F.R. §§ 1508.8, 1508.14.) However, the intent of NEPA is that social and economic effects alone should not trigger preparation of an EIS. (40 C.F.R. § 1508.14.) CEQA requires analysis of a proposed project's potential impacts on population growth and housing supply, but social and economic changes are not considered environmental impacts in and of themselves under CEQA, although they may be used to determine whether a physical change is significant or not. CEQA also permits discussion of social and economic changes that would result from a change in the physical environment and could in turn lead to additional changes in the physical environment (CEQA Guidelines, § 15064 subd. (f).)

³⁶ See 40 C.F.R. § 1508.14, [When socioeconomic effects are interrelated with other effects on the physical environment, then all of these impacts should be addressed together in the EIS.].

³⁷ NEPA regulations define mitigation as:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments. (40 C.F.R. § 1508.21.)

³⁸ Pub. Resources Code, §§ 21002.1 subd. (a); 21100 subd. (b)(3); 14 Cal. Code Regs., § 15126.4.

rectify or compensate for that impact.³⁹ California Farm Bureau urges the Agencies to consider the following mitigation measures for full evaluation within the EIS/EIR:⁴⁰

- Siting and aligning Project features to avoid or minimize impacts on agriculture.
- Examining structural and nonstructural alternatives to achieving project goals in order to avoid impacts on agricultural lands.
- Implementing features that are consistent with local and regional land use plans.
- Supporting the California Farmland Conservancy Project in acquiring easements on agricultural lands in order to prevent its conversion and increase farm viability.
- Restoring existing degraded habitat as a priority before converting agricultural lands.
- Providing water quality reliability benefits to agricultural water users.
- Maintaining water quality standards for all beneficial uses, including agricultural use.
- Focusing habitat restoration efforts on developing new habitat on public lands before converting agricultural land.
- If public lands are not available for restoration efforts, focusing restoration efforts on acquiring lands that can meet ecosystem restoration goals from willing sellers.
- Using farmer-initiated and developed restoration and conservation projects as a means of reaching Program goals.

Due Consideration of Relevant Water Quality and Water Rights Requirements and Constraints Is Needed

The BDCP project proposes a number of large-scale alterations to the physical environmental of the Sacramento-San Joaquin Delta area, including a significant replumbing of the existing system by means of a new peripheral canal around the Delta, in addition to certain proposed improvements to existing through-Delta water conveyance pathways. Of particular concern to Delta interests—and to the California Farm Bureau, as well, as a statewide organization with many members in the Delta and areas upstream of the Delta, as well as elsewhere throughout the state—are the potential, adverse water quality and water supply and water rights impacts of the proposed project on agricultural water users and agricultural land, both within the Delta itself and in areas of upstream of the Delta. To proceed to successful implementation of the proposed project, a major, but inevitable challenge for the BDCP will be to navigate a complex web of legal and regulatory requirements, reaching far beyond mere compliance with CEQA and NEPA alone.

Under CEQA, a “feasible” project—including any “feasible” alternatives and/or mitigation—is a project that is “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, *legal*, social, and

³⁹ Cal. Code Regs., tit. 14, § 15370.

⁴⁰ Please note that this list is not exhaustive and additional mitigation measures addressing agricultural impacts should be analyzed.

technological factors.”⁴¹ By definition, then, a “feasible” project is a project that comports with any laws that might, otherwise, result in an impermissible violation of applicable law or, in some other manner, thwart the project and its successful implementation. It is therefore essential that, in the design, construction, and operation of any new Delta conveyance system or other facilities in the Delta, the BDCP must strictly adhere to established water rights and water quality requirements under applicable state and federal law.

For the BDCP’s consideration in scoping, project development, and eventual project implementation, a number of the more significant constraints and requirements in the area of water rights and water quality are listed below as follows:

1. California’s dual riparian and appropriative water rights system, establishing vested water riparian and appropriative rights (including both pre-1914 and post-1914 appropriative rights) as a species of property right, and also establishing a clear hierarchy of rights and priorities among the various class of water users in times of scarcity or insufficient supply.
2. The Water Code’s Area-, Watershed- and County-of-Origin statutes (Water Code, §§ 108, 10505, 10505.5, 11128, 11460-11463), including the provisions of 11460 and 11463, entitling inhabitants and property owners in the watershed or area of origin, as a matter of first-priority right, to substitute or exchange water supplies, or supplemental water supplies for “adequate compensation,” “reasonably required” to supply existing and/or future beneficial needs in the areas and watersheds of origin.
3. Water Quality, Water Supply, and Water Rights Protections in the Delta Protection Statutes (Water Code, §§ 12200-12233), including:
 - a. The provisions of sections 12202 declaring “the *provision of salinity control and an adequate supply for the users of water in the Sacramento-San Joaquin Delta*” to be one of the “functions to be provided by the [State Water Project], in coordination with the activities of the United States in providing salinity control for the Delta through operation of the Federal Central Valley Project”;⁴²
 - b. The provisions of section 12201 declaring a statewide interest in maintaining “*an adequate water supply in the Delta sufficient to maintain and expand agriculture, industry, urban, and recreational development in the Delta area*” and providing “a common source of fresh water for export to areas of water deficiency”;
 - c. The provisions of sections 12200, 12202, 12203, 12204 pertaining to surplus waters, “salinity control and an adequate supply of water for users of water in the Delta,” waters to which Delta users are legally “entitled,” and waters available for export;

⁴¹ Cal. Code of Regs., tit. 14, § 15364. See also, Pub. Resources Code, §§ 21002, 21002.1, 21061.1, 21081.

⁴² See, also, *United States v. State Water Resources Control Board* (1986) 182 Cal.App.3d 82 at 128-129, 135-136.

- d. The provisions of section 12202 pertaining to a potential substitute water supply for Delta water users in lieu of current, on-going salinity control operations of the CVP and SWP.⁴³
4. The so-called “No Injury Rule,” allowing a petitioned change in point of diversion, place, or purpose of use only upon approval of the State Water Resources Control Board, subject to protest by any interested person(s) and such conditions as the Board may impose, and upon a finding, following a public process, that the proposed change “will not operate to the injury of any legal user.”⁴⁴
5. The effect of state and federal antidegradation laws and policies on the proposed action, in terms of potential adverse water quality effects in the absence of feasible and effective measures or actions to avoid or mitigate such adverse effects, including:
 - a. The State of California’s existing antidegradation policy, reaffirming the State’s policy to “**achieve the highest water quality consistent with maximum benefit to the people of the State** [...] so as to promote the peace, health, safety and welfare of the people of the State,”⁴⁵ and providing that “existing high quality will be maintained until it has been demonstrated [] that any change will be consistent with maximum benefit to the people of the State, **will not unreasonably affect present and anticipated beneficial use of such water** and will not result in water quality less than that prescribed in the policies.”⁴⁶
 - b. Requirements of the existing federal antidegradation policy that “water quality necessary to protect [existing instream water uses] shall be maintained and protected [...] and that quality shall be maintained and protected unless the State finds [...], that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters area located [...] [and] [i]n allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully.”⁴⁷
6. Duly established water quality objectives in any existing or future water quality control plan applicable to waters and existing beneficial uses of the Sacramento-San Joaquin Bay-Delta.

⁴³ Note: Such a substitute water supply could consist of an adequate supply of “recirculated” freshwater supplies or of direct or indirect deliveries of water from a Delta conveyance facility, either to Delta channels or to Delta lands themselves. Moreover, such a substitute water supply could be provided either in combination with on-going salinity control operations of the CVP and SWP, year-round or seasonally, or else wholly in lieu of such operations. Pertaining to such potential substitute or exchange supplies, see, also, the related provisions of Water Code sections 11460 and 11463.

⁴⁴ See Water Code, § 1700, *et seq.*, including §§ 1701, 1701.1, 1701.2, 1703.1, 1703.2, 1701.6. 1704.

⁴⁵ See also, legislative declaration in Water Code, § 13000, *et seq.*

⁴⁶ “Statement of Policy with Respect to Maintaining High Quality of Water in California,” State Water Resources Control Board Resolution No. 68-16 (Oct. 28, 1968). (See document attached entitled Attachment B.)

⁴⁷ 40 C.F.R. § 131.12, see attached document entitled Attachment C.

7. Water quality control planning requirements of the California Porter-Cologne Act,⁴⁸ including:
- a. The statement of legislative intent found in Water Code section 13000, declaring the state's "**primary interest** in the conservation, control, and utilization of the water resources of the state, and that the quality of **all** water of the state [] **be protected for use and enjoyment the people of the state**";
 - b. The related legislative directive found in section 13000 that "activities and factors which may affect the quality of the water of the state [] be regulated to attain **the highest water quality which is reasonable**, considering **all demands** being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible";
 - c. Additional statements of legislative intent concerning water quality and likewise found in section 13000 of the Water Code, including the directive concerning protection of water quality and prevention of "degradation."⁴⁹
 - d. The responsibilities of the regional and state water quality control boards to "establish such water quality objectives in water quality control plans as in [their] judgment will **ensure the reasonable protection of beneficial uses and the prevention of nuisance**,"⁵⁰ and, in so doing, to consider various "**factors**" including, but not limited to:
 - i. "**Past, present, and probable future beneficial uses of water.**"
 - ii. "Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto."
 - iii. "**Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.**"
 - iv. "Economic considerations."⁵¹
8. The State and Regional Water Quality Control Boards' further responsibilities to establish an effective "program of implementation," in connection with an water objectives in any water quality control plan, to include, without limitation:
- a. "A description of the nature of **actions which are necessary to achieve the objectives**, including **recommendations for appropriate action by any entity, public or private.**"
 - b. "A **time schedule for the actions to be taken.**"

⁴⁸ Water Code, § 13000, *et seq.*

⁴⁹ Concerning water quality, the Porter-Cologne Act, and the Federal Water Pollution Control Act, see also, Water Code, §§ 13160, 13170, 13170.1.

⁵⁰ Note: The Porter-Cologne Act's definition of a "nuisance," includes "anything which [...] [a]ffects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individual may be unequal." (See Water Code, § 13050, subd. (m).)

⁵¹ Water Code, § 13241.

- c. “A description of surveillance to be undertaken to determine ***compliance with objectives.***”⁵²
9. The State Water Board’s joint “adjudicatory and regulatory functions” in the area of the water quality and water rights,⁵³ as well the reserved adjudicatory powers of the courts and of the State Water Board, including the Board’s latent powers and procedures described with respect to water rights adjudications under Water Code section 2000, *et seq.* and Water Code section 25000, *et seq.*,⁵⁴ as well as the ability of affected persons to bring actions to enforce compliance with established water quality standards through the courts, and the State Board’s powers to compel compliance with past orders and decisions of the board by means of its water rights permitting authorities.⁵⁵
10. The policies of NEPA, as these pertain to water quality, water rights, and water supply, including:
- a. “Attain ***the widest range of beneficial uses*** of the environment ***without degradation***, risk to health or safety, ***or other undesirable and unintended consequences,***”⁵⁶
 - b. “Use the NEPA process to identify and assess the ***reasonable alternatives to proposed actions that will avoid or minimize adverse effects*** of these actions upon the quality of the human environment,”⁵⁷
 - c. “Use ***all practicable means***, consistent with the requirements of [NEPA] ***and other essential considerations of national policy***, to restore and enhance the quality of the human environment and ***avoid or minimize any possible adverse effects*** of [proposed] actions upon the quality of the human environment.”⁵⁸
11. The policies and requirements of the CEQA as these relate, specifically, to water quality, including:
- a. The legislative declaration that “maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.”⁵⁹
 - b. The legislative declaration that is “the policy of the state” to:
 - i. “Develop and ***maintain a high-quality environment now and in the future***, and take ***all action necessary*** to protect, rehabilitate, and enhance the environmental quality of the state”; and

⁵² Water Code, § 13242.

⁵³ See Water Code, § 174.

⁵⁴ With respect to statutory and court adjudications, see, especially, Water Code, §§ 2000, 2501, 2525, 2700, and 2768.

⁵⁵ See Water Code, § 1825, *et seq.*

⁵⁶ 42 U.S.C. § 4331(b)(3).

⁵⁷ 40 CFR § 1500.2, subd. (e).

⁵⁸ *Id.* at § 1500.2, subd. (f).

⁵⁹ Pub. Resources Code, § 21000, subd. (a).

- ii. “Take *all action necessary* to provide the people of this state with *clean air and water*, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise.”⁶⁰
 - c. Also, CEQA’s mandate that public agencies “should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.”⁶¹
- 12. CEQA Guidelines Appendix G (“Environmental Checklist”), as that guidance document relates, without limitation, to potential adverse water quality- and water supply-related impacts of the proposed project or required consideration of alternatives, impacts, mitigation measures, and specific findings in the areas of “Agricultural Resources,” “Hydrology / Water Quality,” and any necessary “Mandatory Findings of Significance,” as follows:
 - a. Agricultural Resources: “Would the project...”
 - i. “[c]onvert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?”
 - ii. “[i]nvolve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?”
 - b. Hydrology and Water Quality: “Would the project...”
 - i. “[v]iolate any water quality standards or waste discharge requirements?”
 - ii. “[s]ubstantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river[...].?”
 - iii. “[o]therwise substantially degrade water quality?”
 - c. Mandatory Findings of Significance:
 - i. “Does the project have the potential to degrade the quality of the environment[...].?”
 - ii. “Does the project have impacts that are individually limited, but cumulatively considerable[...].?”
 - iii. “Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?”

⁶⁰ Pub. Resources Code., § 21001, subd. (a) and (b).

⁶¹ Pub. Resources Code, § 21002. See, also, Pub. Resources Code, § 21002.1 (“Each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.”); Pub. Resources Code, § 21081.

Potential Integration with Future Surface and Groundwater Storage Projects

California Farm Bureau has long advocated in favor of a significant expansion of capacity over and above the state's existing water storage infrastructure. Competition for limited supplies in California is intense and likely to intensify still further in the years and decades ahead. Environmental water needs in particular have grown exponentially over the last few decades, even as the state's population has roughly doubled—yet, during that time, the state's major water infrastructure has remained largely static.

Surface water storage has distinct advantages that water efficiency, groundwater storage, and other sources of water supply can certainly complement and enhance, but *not* replace. Meanwhile, long-term sustainability issues, along with reduced snowpack, intensifying drought and flood cycles, changing seasonal runoff patterns, increasing ambient and water temperatures, and rising sea levels associated with climate change, highlight the urgent need for new surface water storage facilities and improved regional and interregional conveyance.

Additional storage, both upstream and south of the Delta, in combination with possible new Delta conveyance facilities could greatly enhance system capacity to meet co-equal water supply and ecosystem goals. In particular, an enhanced ability to move water at opportune times (i.e., in wetter years and at less biologically sensitive times of the year) and in more environmentally friendly ways (through improved operations and screened diversions designed and located to avoid conflict with fish and ecosystem management goals) has great potential to improve system flexibility and sustainability statewide.

While surface water storage is currently outside of the scope of the BDCP, in seeking to address Delta conveyance and Delta ecosystem issues, the BDCP addresses two fundamental components of a general consensus that has recently emerged around what is, in essence, a single statewide strategy. Yet, while improvements to Delta conveyance and a stable and functioning ecosystem are a necessary part of this overall solution, so too is strategic investment in new surface water storage facilities with broad statewide benefits.

This was the conclusion reached by the Delta Vision Blue Ribbon Task Force in their initial Delta Vision Report in fall 2007:

“Existing Delta water conveyance systems are inadequate and must be improved. Similarly, existing groundwater and surface water storage capacity is inadequate and must be improved. Linking improvements in these two areas is critical to California's water future.... Current storage and conveyance systems often fail to meet competing expectations or even to allow accurate short-term predictions of water availability.... Any construction or change in the operations of conveyance facilities in the Delta must be ‘coupled’ to the construction and operations of storage facilities to ensure that the physical structures, timing, and operations of all facilities can be managed to meet all competing needs—for both environmental and economic

uses.” (Delta Vision Blue Ribbon Task Force Delta Vision Report, November 30, 2007 at pp. 12-13.)

The same conclusion was reiterated and reinforced in the Task Force’s Final Strategic Plan a year later:

“Achieving the co-equal goals requires a strategy that expands conveyance and storage options statewide and builds facilities that move water through and around the Delta.” (Delta Vision Final Strategic Plan, October 2008, p. 101.)

“New conveyance alone is not enough. Storage must be increased and smarter operation of existing reservoirs implemented, to improve reliability for water users and reduce risk to the environment. If flow managers are to have the flexibility to move water through or around the Delta at appropriate times, there must be places for the water to be stored until it is needed. This applies both to upstream locations (from which water could be released to increase Delta inflow), and to locations downstream of export diversions (from which users could access it directly).” (Strategic Plan, p. 102.)

“Any new water conveyance must allow flexibility in the timing and quantities of diversions to shift away from periods with highest impacts on Delta and upstream ecology while still providing predictable and acceptable volumes of quality water for diverted uses.” (Strategic Plan, p. 102.)

Equally importantly, the Delta Vision Task Force was consistent in the message that progress on the environment must go hand-in-hand with an adequate and reliable water supply for California’s economy:

“[Our] recommendations [on new storage, conveyance, and the Delta ecosystem] are inextricably linked. There won’t ever be a sustainable and reliable water supply without a vibrant Delta ecosystem. And the reverse is also true.” (Transmittal Letter to Governor for to Delta Vision Strategic Plan, October 2008.)

“[T]he Task Force’s Vision for the Delta and the following Strategic Plan are based on two co-equal goals: Restore the Delta ecosystem and create a more reliable water supply for California. They are co-equal goals because one objective can’t be achieved without the other.” (Delta Vision Strategic Plan, October 2008, p. v.)

Underscoring the growing consensus around the notion of a comprehensive strategy that emphasizes flexibility and sustainability through strongly linked storage, conveyance, and ecosystem elements, many of these same concepts were echoed in a series of “Planning Principles” identified in the Bay-Delta Conservation Plan’s January 2009 “Overview of the Draft Conservation Strategy for the Bay Delta Conservation Plan”:

BDCP Overview Planning Principle No. 2: “Divert More Water in the Wetter Periods and Less in Drier periods: An approach that shifts diversions away from sensitive ecological periods and locations would provide an opportunity to avoid the existing need to divert all water in excess of minimum regulatory requirements in drier periods, and would reduce conflicts between water supply and species conservation.”

BDCP Overview Planning Principle No. 4: “Build in Flexibility: Flexible water management infrastructure and operational criteria, and an adaptive regulatory regime are more likely to achieve both water supply and conservation objectives.”

BDCP Overview Planning Principle No. 6: “Provide for Reliable Water Supplies: Providing a reliable and sufficient water supply is essential for the state economy and to the success of the BDCP.”⁶²

Additionally, while a summary of “Lessons Learned” from the same January 2009 BDCP Overview noted that limited existing South of Delta storage would continue to significantly constrain exports in the future, even with new conveyance, a hypothetical combination of such conveyance and a one million acre-feet increment in available storage could “significantly increase flexibility in meeting water supply and environmental objectives,” and that the “same is generally true [of potential new] North of Delta storage.” (BDCP Overview, “Lessons Learned,” p. 19.)

The general consensus, then, throughout much of the broader water user and water planning and stakeholder community, is that additional surface and groundwater storage, both north and south of the Delta, are an essential component of a long-term, sustainable solution to California’s complex and vexingly persistent water management problems. For new storage to provide far-reaching benefits, however, such storage must be sized, designed, and operated to provide the greatest flexibility and reliability to optimally satisfy *all* of the State’s competing needs, for as much of the state as possible.

A new, twenty-first century view of surface and groundwater storage must be taken by water users, state and federal agencies, and environmental advocates alike, that sees new storage neither in any calloused exploitative sense, nor as a symbol of environmental harm, but rather as a means to better reconcile competing needs through enhanced flexibility and reliability and, thus, achieve long-term sustainability.

Such policy concerns and recommendations are quite relevant to the scoping process of the BDCP EIR/EIS: For example, the CEQ’s NEPA regulations direct lead agencies to “[i]ndicate any public environmental assessments and other environmental impacts statements which are being or will be

⁶² BDCP Overview, pp. 9-10.

May 14, 2009

FWS (Lori Rinek); DWR (Delores Brown)

BDCP EIR/EIS; State Clearinghouse No: 2008032062

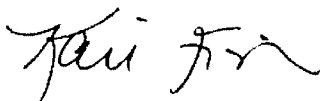
prepared that are related to but are not part of the scope of the impact statement under consideration.”⁶³

Given the long-term 50-year planning horizon of the BDCP, California Farm Bureau sees potential future storage improvements currently outside of the scope of the BDCP as both closely related to, and imminently compatible with proposed Delta conveyance and ecosystem improvements in the BDCP. In this context, it is our strong recommendation that the lead agencies consider the potential for possible integration between the BDCP EIR/EIS and subsequent environmental documents for future water storage projects, by way of existing tiering, staging, supplemental EIR, and other similar provisions of NEPA and CEQA.⁶⁴

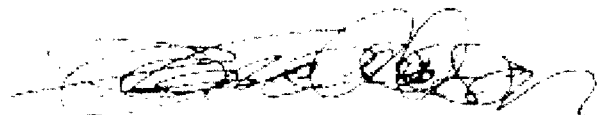
Conclusion

California Farm Bureau recognizes that the status quo is unacceptable and improved conveyance is needed. We applaud the Agencies for addressing conveyance improvements in a forthright and decisive manner. The foregoing comments are provided in the manner of constructiveness to ensure adequate environmental review. Thank you for the opportunity to provide our comments. We look forward to further involvement and discussion with the Agencies on the development of the Bay Delta Conservation Project.

Sincerely,



Kari E. Fisher
Associate Counsel



Justin E. Fredrickson
Environmental Policy Analyst

KEF\JEF\mmm

cc:

⁶³40 C.F.R. § 1501.7(a)(6).

⁶⁴ See Pub. Resources Code, § 21093; Cal. Code Regs., tit. 14, §§ 15152, 15385, 15162, 15163, and 15167; 40 C.F.R. §§ 1502.9(c), 1502.20.

Attachment A

9-8-80
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federal register

Monday
September 8, 1980

COUNCIL ON ENVIRONMENTAL QUALITY

Publishing of Three Memoranda for Heads of Agencies

August 20, 1980.

The Council on Environmental Quality is publishing three Memoranda for Heads of Agencies.

The first memorandum, dated August 11, 1980, on Analysis of Impacts on Prime and Unique Agricultural Lands in Implementing the National Environmental Policy Act was developed in cooperation with the Department of Agriculture. It updates and supersedes the Council's previous memorandum on this subject of August 1978.

The second memorandum, dated August 11, 1980, requests information on agency agricultural land policies and other information related to the implementation of the first memorandum.

The third memorandum, dated August 10, 1980, on Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory is intended to assist federal agencies in meeting their responsibilities under the President's August 2, 1979 directive.

Edward L. Strohbehn, Jr.,
Executive Director.

Executive Office of the President,
Council on Environmental Quality,
722 Jackson Place, NW., Washington, D.C.
August 11, 1980.

Memorandum for Head of Agencies

Subject: Analysis of Impacts on Prime or Unique Agricultural Lands in Implementing the National Environmental Policy Act

Approximately one million acres of prime or unique agricultural lands¹ are being converted irreversibly to nonagricultural uses each year. Actions by federal agencies such as construction activities, development grants and loans, and federal land management decisions frequently contribute to the loss of prime and unique agricultural lands directly or indirectly. Often these losses are

¹ As used in this memorandum, prime and unique agricultural land is cropland, pastureland, rangeland, forest land or other land, but not urban built-up land, which is capable of being used as prime and unique farmland as defined by the Department of Agriculture (see attachment) [The attachment to this memorandum was § 637.5 of title 7 CFR.]

unintentional and are not necessarily related to accomplishing the agency mission.

On August 30, 1978, CEQ, in cooperation with the Department of Agriculture, issued a memorandum to the heads of federal agencies on the need for analysis of prime or unique farmlands in the preparation and review of environmental impact statements. The memorandum also recommended steps for agencies to take in making such analyses. Since that memorandum was issued, federal agencies' environmental impact statements have begun to include references to the presence of prime or unique farmlands that would be affected by the proposed federal action. Moreover, they have clearly indicated that many federal and federally assisted projects have direct and indirect adverse impact on prime or unique farmlands.

Recent studies by the Council and the General Accounting Office indicate that federal agencies have not adequately accounted for the impacts of their proposed actions on agricultural land through the environmental assessment process. Furthermore, agency project plans and decisions have frequently not reflected the need and opportunities to protect these lands. The purpose of this memorandum is to alert federal agencies to the need and the opportunities to analyze agricultural land impacts more effectively in the project planning process and under the National Environmental Policy Act (NEPA).

Agencies can substantially improve their analysis of impacts on prime or unique agricultural lands by following closely our recently established NEPA regulations (40 CFR 1500-1508, Nov. 29, 1978). The regulations apply to these lands in several specific respects. Determining the effects of a proposed federal agency action on prime or unique agricultural lands must be an integral part of the environmental assessment process, and must be a factor in deciding whether or not to prepare an environmental impact statement. For example, when an agency begins planning any action, it should, in the development of alternative actions, assess whether the alternatives will affect prime or unique agricultural lands. Then, recognizing the importance of these lands and any significant impacts that might affect them, it must study, develop, and describe appropriate alternative uses of available resources. (Sec. 1501.2(c).)

In determining whether to prepare an environmental impact statement, the regulations note that the "Unique characteristics of the geographic area such as . . . prime farmlands . . ." (Sec. 1508.27(b)(3)) must be considered, among others. If an agency determines that a proposal significantly affect the quality of the human environment, it must initiate the scoping process (Sec. 1501.7) to identify those issues, including effects on prime or unique agricultural lands, that will be analyzed and considered, along with the alternatives available to avoid or mitigate adverse effects. An environmental impact statement must include a description of the area that will be affected by the proposed action (Sec. 1502.15) and an analysis of the environmental consequences of the proposal, including a discussion of "natural or depletable resource

requirements and conservation potential or various alternative and mitigation measures" (Sec. 1502.16(f)). These resource requirements include prime or unique agricultural lands. The effects to be studied encompass indirect effects that may include "growth inducing effects and other effects related to induced changes in the pattern of land use . . ." (Sec. 1508.8(b)). The cumulative effects of a proposal must be studied (Secs. 1508.7, 1508.8(b)), as must any mitigation measures that could be taken to lessen the impact on prime or unique agricultural lands (Secs. 1505.2(c), 1508.20). Agencies must also cooperate with state or local governments in their efforts to help retain these lands (Secs. 1502.16(c), 1506.2(d)).

Federal agencies with technical data on the occurrence, value, or potential impacts of federal actions on these lands will provide the lead agency with data that may be useful in preparing environmental assessments or impact statements. The U.S. Department of Agriculture will cooperate with all agencies in planning projects or developments, in assessing impacts on prime or unique agricultural lands, and in defining alternatives. Technical data as assistance regarding agricultural land may be obtained by contacting the Chairperson of the USDA Land Use Committee (list attached) or any USDA office. In addition to providing technical data and assistance, the USDA will continue to emphasize the review of EISs on federal actions likely to have significant effects on prime and unique farmlands. Under Section 1504 of the regulations, USDA should refer to CEQ those proposed federal actions which it believes will be environmentally unsatisfactory because of unacceptable effects on prime or unique farmlands. CEQ will review such referrals, and take necessary steps in accordance with Section 1504 of our regulations.

Because prime and unique agricultural lands are a limited and valuable resource, the Council urges all agencies to make a particularly careful effort to apply the goals and policies of the National Environmental Policy Act to their actions and to obtain necessary assistance in their planning processes so that these lands will be maintained to meet our current national needs and the needs of future generations of Americans.

Gus Speth,
Chairman.

Attachments.

U.S. Department of Agriculture State Land Use Committee Chairpersons

- Mr. William B. Lingle, State Conservationist, Soil Conservation Service, P.O. Box 311, Auburn, Alabama 36830
- Mr. Marvin C. Meier, Director, State and Private Forestry, 2221 E. Northern Lights Blvd., Box 6606, Anchorage, Alaska 99502
- Mr. Thomas G. Rockenbaugh, State Conservationist, Soil Conservation Service, Federal Bldg., Rm. 3008, 230 N. First Street, Phoenix, Arizona 85025
- Mr. M. J. Spears, State Conservationist, Soil Conservation Service, P.O. Box 2323, Little Rock, Arkansas 72203
- Mr. James H. Hansen, State Resource Conservationist, Soil Conservation Service,

- 2828 Chiles Road, P.O. Box 1019, Davis, California 95616
- Mr. Sheldon G. Boone, State Conservationist, Soil Conservation Service, P.O. Box 17107, Denver, Colorado 80217
- Ms. Maria Maiorana Russell, Assistant Director, Community Resource & Staff Dev., Cooperative Extension Service, University of Connecticut, Storrs, Connecticut 06268
- Mr. Otis D. Fincher, State Conservationist, Soil Conservation Service, 204 Treadway Towers, 9 East Lockerman Street, Dover, Delaware 19901
- Mr. William E. Austin, State Conservationist, Soil Conservation Service, P.O. Box 1208, Gainesville, Florida 32601
- Mr. Dwight Treadway, State Conservationist, Soil Conservation Service, P.O. Box 832, Athens, Georgia 30601
- Mr. Jack P. Kanalz, State Conservationist, Soil Conservation Service, P.O. Box 50004, Honolulu, Hawaii 96850
- Mr. Randall Johnson, Farmers Home Administration, U.S. Department of Agriculture, 304 North Eighth Street, Boise, Idaho 83702
- Mr. Warren J. Fitzgerald, State Conservationist, Soil Conservation Service, P.O. Box 678, Champaign, Illinois 61820
- Mr. Robert Bollman, Assistant State Conservationist, Soil Conservation Service, 5610 Crawfordville Road, Suite 2200, Indianapolis, Indiana 46224
- Mr. Rollin Swank, Assistant State Conservationist, Soil Conservation Service, 883 Federal Bldg., 210 Walnut Street, Des Moines, Iowa 50309
- Mr. John W. Tippie, State Conservationist, 760 South Broadway, P.O. Box 800, Salina, Kansas 67401
- Mr. Glen E. Murray, State Conservationist, Soil Conservation Service, 333 Waller Avenue, Lexington, Kentucky 40504
- Dr. Floyd L. Corty, Ag. Econ. & Agribusiness, Louisiana State University, Baton Rouge, Louisiana 70803
- Mr. Eddie L. Wood, State Conservationist, Soil Conservation Service, USDA Bldg., Univ. of Maine, Orono, Maine 04473
- Mr. Gerald R. Calhoun, State Conservationist, Soil Conservation Service, Rm. 522, Hartwick Bldg., 4321 Hartwick Road, College Park, Maryland 20740
- Dr. Gene McMurtry, Assoc. Dir., Coop. Ext. Service, Stockbridge Hall, Rm. 211, University of Massachusetts, Amherst, Massachusetts 01003
- Dr. Raleigh Barlowe, 323 Natural Resources Bldg., Michigan State University, East Lansing, Michigan 48824
- Mr. Harry M. Major, State Conservationist, Soil Conservation Service, 316 North Robert Street, St. Paul, Minnesota 55101
- Mr. Billy C. Griffin, Deputy State Conservationist, Soil Conservation Service, P.O. Box 610, Jackson, Mississippi 39205
- Mr. Kenneth G. McManus, State Conservationist, Soil Conservation Service, 555 Vandiver Drive, P.O. Box 459, Columbia, Missouri 65201
- Mr. Van K. Haderlie, State Conservationist, Soil Conservation Service, Federal Bldg., P.O. Box 970, Bozeman, Montana 59715
- Mr. Russell Schultz, Soil Conservation Service, Federal Bldg., U.S. Courthouse, Rm. 345, Lincoln, Nebraska 68508
- Mr. Gerald C. Thola, State Conservationist, Soil Conservation Service, P.O. Box 4850, Reno, Nevada 89505
- Mr. Roger Leighton, James Hall, University of New Hampshire, Durham, New Hampshire 03824
- Mr. Plater T. Campbell, State Conservationist, Soil Conservation Service, 1370 Hamilton Street, P.O. Box 219, Somerset, New Jersey 08873
- Mr. Thomas G. Schmeckpeper, Deputy Regional Forester, U.S. Forest Service, Rm. 5424, Federal Bldg., 517 Gold Avenue, S.W., Albuquerque, New Mexico 87102
- Mr. Robert L. Hilliard, State Conservationist, Soil Conservation Service, U.S. Courthouse & Federal Bldg., 100 South Clinton St., Rm. 771, Syracuse, New York 13260
- Mr. Mitchell E. Clary, Assistant State Conservationist, Soil Conservation Service, P.O. Box 27307, Raleigh, North Carolina 27611
- Mr. Sylvester C. Ekart, Chairman, North Dakota Land Use Comm., Federal Bldg., P.O. Box 1458, Bismarck, North Dakota 58501
- Mr. Robert R. Shaw, State Conservationist, Soil Conservation Service, Federal Bldg., Rm. 522, 200 N. High Street, Columbus, Ohio 43215
- Mr. Bobby T. Birdwell, Soil Conservation Service, Agricultural Center Office Bldg., Farm Road & Brumley Street, Stillwater, Oklahoma 74074
- Mr. Guy Nutt, State Conservationist, Soil Conservation Service, Federal Bldg., 18th Floor, 1220 SW Third Avenue, Portland, Oregon 97204
- Mr. Thomas B. King, Associate Director, Cooperative Extension Service, The Pennsylvania State University, 323 Agricultural Admin. Bldg., University Park, Pennsylvania 16802
- Mr. Richard F. Kenyon, State Executive Director, Agricultural Stabilization and Conservation Service, 222 Quaker Lane, West Warwick, Rhode Island 02893
- Mr. K. G. Smith, State Director, Farmers Home Administration, 240 Stoneridge Drive, Columbia, South Carolina 29210
- Mr. Wayne D. Testerman, State Executive Director, Agricultural Stabilization and Conservation Service, 200 Fourth Street, SW., Federal Bldg., Rm. 210, Huron, South Dakota 57350
- Dr. M. Lloyd Downen, Director, Agricultural Extension, University of Tennessee, P.O. Box 1071, Knoxville, Tennessee 37901
- Mr. George C. Marks, State Conservationist, Soil Conservation Service, P.O. Box 648, Temple, Texas 76501
- Mr. Reed Page, State Director of the Farmers Home Administration, 125 South State St., Rm. 5434, Salt Lake City, Utah 84138
- Mr. Coy Garrett, State Conservationist, Soil Conservation Service, One Burlington Square, Suite 205, Burlington, Vermont 05401
- Mr. Manly S. Wilder, State Conservationist, Soil Conservation Service, 400 North Eighth Street, P.O. Box 10028, Richmond, Virginia 23240
- Mr. Lester N. Liebel, Ext. Rural Development Coord., Cooperation Extension Service, Washington State University, 417, Ag. Phase II, Pullman, Washington 99163
- Mr. Craig M. Right, State Conservationist, Soil Conservation Service, P.O. Box 865, Morgantown, West Virginia 26505
- Mr. Jerome C. Hytry, State Conservationist, Soil Conservation Service, 4601 Hammersley Road, Madison, Wisconsin 53711
- Mr. Robert W. Cobb, Assistant State Conservationist, Soil Conservation Service, P.O. Box 2440, Casper, Wyoming 82601

Executive Office of the President,
Council on Environmental Quality,
722 Jackson Place, NW., Washington, D.C.
August 11, 1980.

Memorandum for Heads of Agencies

Subject: Prime and Unique Agricultural Lands and the National Environmental Policy Act (NEPA)

The accompanying memorandum on Analysis of Impacts on Prime or Unique Agricultural Lands in Implementing the National Environmental Policy Act was developed in cooperation with the Department of Agriculture. It updates and supersedes the Council's previous memorandum on this subject of August 1978.

In order to review agency progress or problems in implementing this memorandum the Council will request periodic reports from Federal agencies as part of our ongoing oversight of agency implementation of NEPA and the Council's regulations. At this time we would appreciate receiving from your agency by November 1, 1980, the following information:

- identification and brief summary of existing or proposed agency policies, regulations and other directives specifically intended to preserve or mitigate the effects of agency actions on prime or unique agricultural lands, including criteria or methodology used in assessing these impacts.
- identification of specific impact statements and, to the extent possible, other documents prepared from October 1, 1979 to October 1, 1980 covering actions deemed likely to have significant direct or indirect effects on prime or unique agricultural lands.
- the name of the policy-level official responsible for agricultural land policies in your agency, and the name of the staff-level official in your agency's NEPA office who will be responsible for carrying out the actions discussed in this memorandum.

Gus Speth,

Chairman.

Executive Office of the President,
Council on Environmental Quality,
722 Jackson Place, NW., Washington, D.C.
August 10, 1980.

Memorandum for Heads of Agencies

Subject: Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory

In his second Message on the Environment, issued in August 1979, the President underscored the need to strengthen the National Wild and Scenic Rivers System and to take particular care not to harm rivers

which may qualify for inclusion in the System.

The President issued a directive on August 2, 1979 in conjunction with his Message which required that:

"Each Federal agency shall, as part of its normal planning and environmental review process, take care to avoid or mitigate adverse effects on rivers identified in the Nationwide Inventory prepared by the Heritage Conservation and Recreation Service in the Department of the Interior. Agencies shall, as part of their normal environmental review process, consult with the Heritage Conservation and Recreation Service prior to taking actions which could effectively foreclose wild, scenic, or recreational river status on rivers in the Inventory."

This memorandum is intended to assist your agency in meeting its responsibilities under the President's directive. A brief set of procedures is attached which provides guidance on how to integrate these responsibilities with your normal environmental analysis process under the National Environmental Policy Act (NEPA). The objective is to ensure that the President's directive is met promptly and efficiently.

Development along our rivers continues to outpace our ability to protect those rivers that might qualify for designation in the National Wild and Scenic Rivers System. The Heritage Conservation and Recreation Service (HCRS) in the Department of the Interior has been preparing a Nationwide Inventory of river segments that, after preliminary review, appear to qualify for inclusion in the System. It is therefore essential that federal agencies proceed carefully and limit any adverse effects of their actions on rivers identified in the Nationwide Inventory. Otherwise, the Inventory could be depleted before the identified rivers can be fully assessed to determine the desirability of including them as components of the National Wild and Scenic Rivers System.

Although the President's directive does not prohibit an agency from taking, supporting or allowing an action which would adversely affect wild and scenic values of a river in the Inventory, each agency is responsible for studying, developing and describing all reasonable alternatives before acting, and for avoiding and mitigating adverse effects on rivers identified in the Inventory. Where agency action could effectively foreclose the designation of a wild, scenic, or recreational river segment, the President has directed the agency to consult with HCRS. It is difficult to restore a river and its immediate environment once its wild and scenic qualities have been lost.

The purpose of this consultation requirement, which is meant to be part of the normal environmental analysis process, is to provide the opportunity for HCRS experts to assist other agencies in meeting program objectives without irreparably damaging potential wild, scenic, and recreational river areas. Consultation with HCRS should encourage better planning at an early stage in order to reduce resource management conflicts or to avoid them altogether. The consultation requirement also provides an

opportunity to seek early resolution of problems by policy-level officials if necessary.

Completed portions of the Nationwide Inventory—those for the Eastern half of the country—were sent to you from HCRS Director Chris T. Delaporte on November 13, 1979. Forthcoming portions of the Inventory will be transmitted as they are completed. You should ensure that the list of rivers in the Inventory and the attached procedures receive wide distribution in your agency.

Copies of orders, guidance, or memoranda which you use to adopt or to transmit the attached procedures within your agency should be sent to the Council on Environmental Quality (Attention: Larry Williams) and to the Interagency Wild and Scenic Rivers Study Group (Attention: Jack Hauptman, HCRS, 440 G Street, N.W., Washington, D.C. 20243).

Gus Speth,

Chairman.

Attachment.

Procedures for Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory

These procedures are designed to assist federal officials in complying with the President's directive (attached) to protect rivers in the Nationwide Inventory through the normal environmental analysis process. NEPA, E.O. 11514, CEQ's NEPA Regulations, and agency implementing procedures should be used to meet the President's directive.

Although the steps outlined below pertain to wild and scenic river protection, they also fit clearly within agencies' existing environmental analysis processes. Agencies are already required: to identify and analyze the environmental effects of their actions; to consult with agencies with jurisdiction by law or special expertise (in this case, HCRS); to develop and study alternatives; and to use all practicable means and measures to preserve important historic, cultural, and natural aspects of our national heritage.

The procedures outlined below simply link the appropriate elements of the normal environmental analysis process with the President's directive "to take care to avoid or mitigate adverse effects on rivers identified in the Nationwide Inventory." Federal officials should promptly take steps to incorporate the actions specified below into their planning and decisionmaking activities and the conduct of their environmental analyses.

1. Determine whether the proposed action could affect an Inventory river.

Check the current regional Inventory lists to determine whether the proposed action could affect an Inventory river.

If an Inventory river could be affected by the proposed action, an environmental assessment or an environmental impact statement may be required depending upon the significance of the effects.

If the action would not affect an Inventory river, no further action is necessary under these procedures. (The agency is still required to fulfill any other responsibilities under NEPA).

2. Determine whether the proposed action could have an adverse effect on the natural,

cultural and recreational values of the Inventory river segment.

Using the Guide for Identifying Potential Adverse Effects, which is appended to these procedures, you should determine whether the proposed action could *adversely* affect the natural, cultural, or recreational values of the Inventory river segment. Adverse effects on inventoried rivers may occur under conditions which include, but are not limited to:

- (1) Destruction or alteration of all or part of the free flowing nature of the river;
- (2) Introduction of visual, audible, or other sensory intrusions which are out of character with the river or alter its setting;
- (3) Deterioration of water quality; or
- (4) Transfer or sale of property adjacent to an inventoried river without adequate conditions or restrictions for protecting the river and its surrounding environment.

If you have prepared a document which finds that there would be no adverse effects—such as a Finding of No Significant Impact under the CEQ NEPA regulations—you should send a courtesy copy to the HCRS field office in your region.

3. Determine whether the proposed action could foreclose options to classify any portion of the Inventory segment as wild, scenic or recreational river areas.

In some cases, impacts of a proposed action could be severe enough to preclude inclusion in the Wild and Scenic Rivers System, or lower the quality of the classification (e.g. from wild to recreational). If the proposed undertaking would effectively downgrade any portion of the Inventory segment you should consult with HCRS.

Proposed actions (whether uses or physical changes), which are theoretically reversible, but which are not likely to be reversed in the short terms, should be considered to have the effect of foreclosing for all practical purposes wild and scenic river status. This is because a river segment, when studied for a possible inclusion in the Wild and Scenic River System, must be judged as it is found to exist at the time of the study, rather than as it may exist at some future time.

If a proposal, including one or more alternatives, could have an adverse effect on a river in the Inventory, an environmental assessment or, if the effects are significant, an environmental impact statement must be prepared. HCRS staff is available to assist you in determining the significance or severity of the effects in connection with your assessment, scoping process, and EIS, if one is needed. A detailed analysis of each of the rivers in the Inventory is available from HCRS for your use.

You should request assistance in writing from HCRS, as early as you can, providing sufficient information about the proposal to allow HCRS to assist you in determining whether any of the alternatives under consideration would foreclose designation. HCRS will in turn provide you with an analysis of the impacts on natural, cultural and recreational values which should enable you to make a determination as to whether or not designation would be foreclosed. HCRS is available to assist you in developing appropriate avoidance/mitigation measures.

When environmental assessments are prepared on proposals that affect Inventory

ivers, copies should be sent in a timely fashion to the HCRS field office in your area before a proposed action is taken and while there is still time to avoid or mitigate adverse effects. When environmental impact statements are prepared on proposals that affect inventory rivers the lead agency should request HCRS and the affected land managing agency to be cooperating agencies as soon as the Notice of Intent to prepare an EIS has been published.

If HCRS does not respond to your request for assistance within 30 days, you may proceed with completing preparation and circulation of the environmental assessment or EIS as planned. Even where HCRS has been unable to comment on the environmental assessment or Draft EIS, you are still obligated by the President's directive to "... take care to avoid or mitigate adverse effects on rivers identified in the Nationwide Inventory . . ."

4. Incorporate avoidance/mitigation measures into the proposed action to maximum extent feasible within the agency's authority.

Any environmental documents prepared on the proposed action should identify the impacts on natural, cultural and recreational values, address the comments submitted by HCRS, and state the avoidance/mitigation measures adopted. Any disagreements will be resolved through existing procedures. For projects requiring environmental impact statements, the record of decision must adopt appropriate avoidance/mitigation measures and a monitoring and enforcement program as required by the CEQ regulations. (40 CFR 1505.2(c)).

A Note on the Meaning of "Federal Actions"

The above procedures are meant to apply to all federal actions that could adversely affect a river in the Nationwide Inventory (see Section 1508.18 of CEQ's NEPA Regulations (40 CFR 1508.18) for the meaning of "major federal actions"). For actions which are known in advance to require an environmental assessment or environmental impact statement these procedures would be followed in the normal course of NEPA compliance. If a federal action would *not* normally require an environmental assessment or an environmental impact statement, but could adversely affect a river in the Nationwide Inventory, the action should either (1) not be "categorically excluded" under agency implementing procedures, or (2) be considered an "extraordinary circumstance" in which a normally excluded action must be subjected to environmental analysis (see Section 1508.4 of NEPA Regulations).

The above procedures should be used for any proposals (including the evaluation of alternative courses of action) for which the NEPA process is not yet completed. The above procedures should therefore also be applied to a proposed modification or supplement to a previously authorized or implemented action.

For Further Information or Guidance

The HCRS regional office will usually provide the best source of information on rivers in the Nationwide Inventory and on

specific ways that these rivers could be protected. For general assistance on policy and procedural matters, please contact the Chairman of the Interagency Wild and Scenic Rivers Study Group (202/343-4793), or contact the Council on Environmental Quality (202/395-4540).

Appendix I.

Guide for Identifying Potential Adverse Effects

The impact of a proposed action should be assessed in relation to the eligibility and classification criteria of the Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287, as amended.

In order to be eligible for inclusion in the National System, a river must:

1. Be "free-flowing," i.e., "existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. The existence, however, or low dams, diversion works, and other minor structures at the time any river is proposed for inclusion in the national wild and scenic rivers system shall not automatically bar its consideration for such inclusion: *Provided*, That this shall not be construed to authorize, intend, or encourage future construction of such structures within components of national wild and scenic rivers system." (16 U.S.C. Sec. 1286)

2. Possess "outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values." (16 U.S.C. Sec. 1271)

Eligible river segments are classified according to the extent of evidence of man's activity as one of the following:

1. "Wild river areas—Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America."

2. "Scenic river areas—Those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads."

3. "Recreational river areas—Those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past." (16 U.S.C. Sec. 1273(b))

Any action which could alter the river segment's ability to meet the above eligibility and classification criteria should be considered an adverse impact. Actions which diminish the free-flowing characteristics or outstandingly remarkable values of a river segment could prevent the segment from qualifying for inclusion in the national system. Actions which increase the degree of evidence of man's activity, i.e., level of development, could change the classification of the river segment.

The effect of all proposed developments within the river corridor should be assessed in terms of severity of effect and extent of area affected. Development outside the corridor which would cause visual, noise, or

air quality impacts on the river corridor should also be examined.

Only proposed new construction or proposed expansion of existing developments need be considered in assessing impacts. Repair or rehabilitation of existing structures would not have a negative impact except if the action would result in significant expansion of the facility or if the construction process itself would cause an irreversible impact on the environment.

Placement of navigation aids such as buoys and channel markers will not be considered as causing adverse effects.

The following are examples of types of developments which would generally require consultation with HCRS because of the potential for adverse effects on the values of a potential wild, scenic, or recreational river. The list is not exhaustive.

Small dock	Road
Small bulkhead	Railroad
Clearing and snagging	Building (any type)
Drainage canal, culvert or outfall	Pipeline, transmission line
Irrigation canal	Bridge or ford
Levees or dikes	Gas, oil or water well
Rip-rap, bank stabilization or erosion control structure	Sub-surface mine opening
Small reservoir	Quarry
Increase in commercial navigation	Power substation
Dredging or filling	Recreation area
Run-of-the-river dam or diversion structure	Dump or junkyard
	Change in flow regime
	Clear-cut timber harvest
	Radio tower, windmill

The following are examples of types of development which appear most likely to cause serious adverse effects if they are constructed adjacent to or in close proximity to an inventory river. Such development proposals will almost always require consultation with HCRS because their effects are likely to conflict with the values of a potential wild, scenic or recreational river. These effects could be severe enough to foreclose designation of the affected river segment. This list is not exhaustive.

Impoundment	Major highway
Channelization	Railroad yard
Instream or surface mining	Power plant
Lock and dam	Sewage treatment plant
Airport	Housing development
Landfill	Shopping center
Factory	Industrial park
Gas or oil field	Marina
	Commercial dock

Appendix II

[For a memorandum from the President on Wild and Scenic Rivers and National Trails dated August 2, 1979, see the *Weekly Compilation of Presidential Documents* (Vol. 15, page 1379).]

(FR Doc. 80-27023 Filed 9-5-80; 8:45 am)

BILLING CODE 3125-01-M

Attachment B

STATE WATER RESOURCES CONTROL BOARD

RESOLUTION NO. 68-16

STATEMENT OF POLICY WITH RESPECT TO
MAINTAINING HIGH QUALITY OF WATERS IN CALIFORNIA

WHEREAS the California Legislature has declared that it is the policy of the State that the granting of permits and licenses for unappropriated water and the disposal of wastes into the waters of the State shall be so regulated as to achieve highest water quality consistent with maximum benefit to the people of the State and shall be controlled so as to promote the peace, health, safety and welfare of the people of the State; and

WHEREAS water quality control policies have been and are being adopted for waters of the State; and

WHEREAS the quality of some waters of the State is higher than that established by the adopted policies and it is the intent and purpose of this Board that such higher quality shall be maintained to the maximum extent possible consistent with the declaration of the Legislature;

NOW, THEREFORE, BE IT RESOLVED:

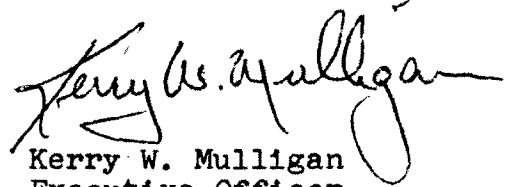
1. Whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies.
2. Any activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.
3. In implementing this policy, the Secretary of the Interior will be kept advised and will be provided with such information as he will need to discharge his responsibilities under the Federal Water Pollution Control Act.

BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to the Secretary of the Interior as part of California's water quality control policy submission.

CERTIFICATION

The undersigned, Executive Officer of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on October 24, 1968.

Dated: October 28, 1968

A handwritten signature in dark ink, appearing to read "Kerry W. Mulligan", with a large, stylized loop at the end.

Kerry W. Mulligan
Executive Officer
State Water Resources
Control Board

Attachment C



1 of 1 DOCUMENT

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*** THIS SECTION IS CURRENT THROUGH THE MAY 7, 2009 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 40 -- PROTECTION OF ENVIRONMENT
CHAPTER I -- ENVIRONMENTAL PROTECTION AGENCY
SUBCHAPTER D -- WATER PROGRAMS
PART 131 -- WATER QUALITY STANDARDS
SUBPART B -- ESTABLISHMENT OF WATER QUALITY STANDARDS

Go to the CFR Archive Directory

40 CFR 131.12

§ 131.12 Antidegradation policy.

(a) The State shall develop and adopt a statewide antidegradation policy and identify the methods for implementing such policy pursuant to this subpart. The antidegradation policy and implementation methods shall, at a minimum, be consistent with the following:

(1) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(2) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully. Further, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

(3) Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

(4) In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with section 316 of the Act.

HISTORY: 48 *FR* 51405, Nov. 8, 1983.

AUTHORITY: 33 *U.S.C.* 1251 et seq.

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:

[PUBLISHER'S NOTE: Nomenclature changes to Chapter I appear at 65 *FR* 47323, 47324, 47325, Aug. 2, 2000.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter 1 Notice of implementation policy, see: 71 *FR* 25504, May 1, 2006.]

NOTES TO DECISIONS: COURT AND ADMINISTRATIVE DECISIONS SIGNIFICANTLY DISCUSSING SECTION --

Ky. Waterways Alliance v Johnson (2006, WD Ky) 426 F Supp 2d 612

296 words

bdcpccomments

From: JLucas1099@aol.com [JLucas1099@aol.com]

Sent: Thu 5/14/2009 4:40 PM

To: bdcpccomments

Cc:

Subject: BDCP - Bay Delta Conservation Plan comments 5-14-09

Attachments:

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

May 14, 2009

Dear Ms. Brown,

In regards the Bay Delta Conservation Plan and extension of a water supply diversion system in the Delta, I would like to submit the following comments for consideration:

~ One of the basic resource components of river systems in the Bay Delta is the sediment carrying capacity of their flows. This sediment not only replenishes riverbank vegetation, floodplain and intertidal marsh, but is essential for migratory fisheries in providing benthic nutrients as well as cover from predators. The sediment load delivered to the Delta from Sacramento and San Joaquin River system watersheds is well documented in a 1992 report prepared for the San Francisco District Corps of Engineers titled "Sediment Budget Study for San Francisco Bay". The data on Delta river flows from 1922 to 1991 is essential for any modeling of delta diversions and for assessment of minimum flows that are necessary to sustain beneficial in-delta resources, as well as carry sufficient sediment loads through San Francisco Bay and out to the Pacific Ocean.

~ In reviewing the range of flows that are recorded for the Sacramento River it appears that a diversion of 15,000 cfs, as is proposed is unsustainable in consideration of flows that are diverted just upstream for the Yolo Bypass, or shipping channel, historically between 4000 and 5000 cfs (plans to deepen this channel to 35 feet may require more cfs.). In last recorded year, 1991, total annual flow in Sacramento River at Sacramento was recorded as 7,276 thousand acre feet which could not accommodate any further diversion than that 4000 cfs allocated for the shipping channel. A modeling of historic flows is essential to this plan.

~ Since a diversion of 15,000 cfs from the Sacramento River is not feasible, it would appear that a diversion channel should be sized to accommodate a quarter of that amount (say 10' X 125') which would reduce impact to Delta marshes, and lower water loss to evaporation, cost of construction and cost of wetlands mitigation. If more water is needed it needs to be obtained from another river system.

~ A formula needs to be scientifically arrived at that will define minimum flows needed to retain the integrity of the rivers that flow through the delta marshes and provide critical spawning and rearing habitat for resident and migratory fish, and birds, as well as sustain habitat biodiversity by overflow into marshes and wetlands. The Uplands Habitat Goals report and studies such as the 1985-86 Interagency Ecological Studies Program for the Sacramento-San Joaquin Estuary should provide sufficient data without commissioning new research. Elements of shallow benches, overhanging shade and instream woody materials will have top consideration, while entrainment and water diversion operations which contribute to such critical loss of fish and organisms need an entirely new design, preferably making most of gravity flow. Clifton Court pumps are rather medieval.

~ Before any consideration can be given to this or any other modification of Delta diversions, a successful recovery plan must be instituted to reverse this collapse of Delta Smelt and salmon populations in the Bay. A plan needs incorporate all recipients of Sierra water supplies, to contribute fish friendly streams or financially. Rather than construct bigger reservoirs with thermal pollution and rampant algae growth, smaller underground containment must be encouraged and groundwater reserves returned to some semblance of historic levels. Agriculture needs subsidy, but here again, farmers could rotate with dry farming crops in drought years.

~ Please establish appropriate conservative base flows for rivers of the Bay Delta Estuary that can sustain historic uses and resources, and in particular restore a West Coast fishery to support the Pacific Flyway, and California's dedicated band of fishermen. Fishing, if anything, has more tenure in our state than farming.

~ Thank you for all consideration that you can give to these concerns. If I run across any engineer who can devise a formula for sustaining Delta flows, I will forward it on. One last thought, the de-sedimentation plant planned at

the diversion point from the Sacramento River mainstem is a poor concept. Might I suggest that a Colorado hydrologist and sediment specialist, Dave Rosgen, be consulted before any such plant is built.

Libby Lucas, Conservation, CNPS Santa Clara Valley Chapter, 174 Yerba Santa Ave., Los Altos, Ca 94022

Dell Mini Netbooks: Great deals starting at \$299 after instant savings!

BDCP

BAY DELTA CONSERVATION PLAN

ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT

— Comment Card —

Please Print

Name: Joseph Horn Organization: CSBA
Telephone: 925 757 0797 e-mail: JoeHorn-2000@yahoo.com
Address: 3115 Elizabeth Ln.
City: Antioch State: CA Zip: 94509

☒ Yes, I would like to be added to your e-mail list.

Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 14, 2009.

If you are worried about LA being a city
of 25- or 30 million people stop shipping water
to the M.C.D. Metropolitan Water District of
Southern Cal. If they have no water they will not
come. The people that is.

Real Estate is important in the northern
part of the state. we can't cover the top half
of the state with water storage so people can
live in the southern desert. Southern Cal. ought
be storing there run off water or stop having
so many swimming pools. Last desert
plants may be the answer

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:

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

You may also e-mail your comments to BDCPcomments@water.ca.gov. Comments must be received by May 14, 2009.

BDCP

BAY DELTA CONSERVATION PLAN

ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT

— Comment Card —

Please Print

Name: Hugh Chamberlin Organization: Calif. Striped Bass Assoc.

Telephone: 209-469-4507 e-mail: seahughfish@yahoo.com

Address: 3131 Christina Ave.

City: Stockton State: CA Zip: 95204

☒ Yes, I would like to be added to your e-mail list.

Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 14, 2009.

Dear Chief Brown,

I am deeply concerned about the negative environmental effects
of the peripheral canal. In addition, I feel as if the legislature
's going to push it through without enough voters being fully aware
of the fiscal impact and the dreaded consequences for Northern CA
homeowners such as myself - let alone the environmental effects
to our beloved jewel, the San Joaquin Delta. As it stands, we already
have sea lions trying to cross I-5. We don't need the peripheral
canal. I feel as if it is a bad idea for all of us - and for the
future generations as well.

Hugh Chamberlin

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:

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

You may also e-mail your comments to BDCPcomments@water.ca.gov. **Comments must be received by May 14, 2009.**



California Striped Bass Association
West Delta Chapter

P.O. Box 2691
Antioch, CA 94531-2691

Dedicated to the preservation, conservation and enhancement of Striped Bass



Dear Sirs

Let get to the point, the reason for
Bill 1253 is to raise the salinity in the rivers
by pumping more water from up the river
that is the Sacramento.

Water salinity have to meet levels for
fish. So if levels are high you can't pump.
Don't beat around the bush and blame
the striped bass for your failure to
save the salmon in the pumps and all
the other fish too.

J Horn Life Time member of
C.S.B.A.



May 14, 2009

Ms. Dolores Brown
Chief, Office of Environmental Compliance
Department of Water Resources
PO Box 942836
Sacramento, CA 94236

Sent via email to BDCPcomments@water.ca.gov

RE: Comments Regarding EIR/EIS for Bay Delta Conservation Plan

Dear Ms. Brown:

On behalf of the California Waterfowl Association (CWA), I am writing to provide our input during the scoping period on the proposed joint Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) for the Bay Delta Conservation Plan (BDCP). CWA is a charitable 501(c)(3) organization dedicated to conserving California's waterfowl, wetlands, and outdoor heritage, representing the interests of over 21,000 members statewide. We have done extensive wetland restoration work within the Central Valley, including projects within the Delta planning area.

CWA is founding partner of the Central Valley Joint Venture (CVJV) a partnership of 21 public and private entities, whose mission is to work collaboratively through diverse partnerships to protect, restore, and enhance wetlands and associated habitats for waterfowl. As a partner in CVJV, we helped develop and support the goals and objectives of their Implementation Plan, and agree with all the comments submitted previously by them regarding the EIS/EIR for the BDCP.

California has lost more than 95% of its historic wetlands, largely due to urbanization, flood control and agriculture. As a result, many species have declined from historic levels, and are increasingly dependent on fewer wetlands. Despite these tremendous habitat losses, California arguably remains the most important wintering area for waterfowl and other waterbirds in the Pacific Flyway. Avian species from the north, some as far as Alaska and the Canadian Arctic, rely on our wetlands for nutritional and other needs while visiting during the winter. In addition, many resident bird species nest within or near local wetland habitats.

The San Francisco Bay-Delta is an important region for wintering and breeding waterfowl. However, it has been described as an ecosystem in a state of collapse. While the ecosystem still contains an abundance of fish and wildlife, waterfowl populations are but a fraction of those documented historically. Creating a Delta that is better for

desirable fish and wildlife while providing the needs of most Californians is not simple, and previous attempts have not been successful. We are encouraged by the recent efforts stimulated by Delta Vision and BDCP, and urge the planners to insure the effort is comprehensive, based on sound science, and restoration and management remain truly adaptive.

CWA and other CVJV partners have invested considerable time and resources in the Delta proper, as well as the Yolo Basin, Suisun Marsh, and Cosumnes River. As a result of these efforts, the habitat in the Delta region, while considered degraded for native fish, has actually become considerably more hospitable to avian species. In the Delta region, the CVJV has protected almost 5000 acres and restored almost 9000 acres of wetland habitat. In addition, almost 40,000 acres of agricultural land are flooded annually in the Delta. However these accomplishments are still far below the CVJV goals for the Delta region. These goals are primarily based on the nutritional needs of migratory birds wintering in the Central Valley, of which the Delta provides an important, but yet to be fully achieved, component. In addition to biological goals and habitat objectives, the water needed to maintain and manage wetlands are specifically mentioned in the CVJV Implementation Plan.

Consequently, we strongly support additional wetland restoration in the Delta. However, as a general principal, we caution planners to fully recognize and protect the existing ecological values of the region. We believe that there is the potential to reverse much of the wetland benefit we have painstakingly accomplished (and at great public and private expense) unless conservation measures promoted are done in a manner sensitive to needs of the entire ecosystem. The potential for restoring ecological conditions favorable for native fish species is great, but should be additive to, rather than at the expense of, existing avian and other terrestrial values.

Therefore, it is important that the BDCP EIR/EIS consider the goals and objectives of the CVJV Implementation Plan. The BDCP could impact, either positively or negatively, both past accomplishments and future progress towards CVJV Plan goals. Furthermore, this analysis should address impacts on all the goals and objectives of the CVJV, not just those specific to the planning basins in the Delta region. This recommendation is justified, because the BDCP has far-reaching implications for water availability and management, and subsequent land use changes throughout the Sacramento and San Joaquin River watersheds.

At a minimum, the scope of the EIR/EIS should include the following components relative to the protecting existing and future non-aquatic ecological values of the Delta region:

- Analyze the potential change in food availability for waterfowl resulting from conversion of managed wetlands to tidal wetlands in the project area and Suisun Marsh.

- Analyze the potential change in breeding habitat for waterfowl resulting from the conversion of managed wetlands to tidal wetlands in the project area.
- Analyze the potential change in food availability and breeding habitat for waterfowl resulting from temporary loss (or changes in management) of managed wetlands and agriculture due to either prolonged floodplain inundation or conversion to floodplain habitat, especially in the Yolo Bypass. Considerable public and private funds have been invested to create managed wetlands with the capacity to create optimal habitat for waterfowl and other waterbirds.
- Analyze the potential changes in food availability for wetland-dependent migratory birds resulting from conversion of certain farmlands or change in agricultural crop type. Especially in the Yolo Bypass, where proposed actions for fish habitat restoration may preclude the ability to plant a rice crop.
- Analyze how improved water conveyance may simplify and perhaps increase transfers of water south of the Delta, potentially reducing the amount of rice farmed in the Sacramento Valley. More specifically, analyze:
 - The impacts of potentially reduced rice acreage on foraging habitat for wintering and breeding waterfowl
 - The impact of potentially reduced winter flooding of harvested ricefields on energy supply for waterfowl and other wildlife in the Sacramento Valley.
 - The impact of reduced spring/summer flooded rice habitat, and potentially increased fallow cropland, on breeding habitat for waterfowl and other birds.
 - The potential to establish cover crops to reduce erosion and provide habitat (e.g., nesting cover) for breeding waterfowl and other wildlife if cropland becomes idle/fallow as a result of BDCP actions,
- Analyze whether and to what extent the project alternatives are consistent with the existing legal requirements regarding refuge water supply requirements of the CVPIA.
- Analyze how water supply and reliability to wetlands and agricultural habitats for migratory birds will change within the BDCP planning region, and in other potentially impacted regions of the Central Valley, given the different project alternatives.
- Analyze the costs and benefits of various project alternatives associated with the socio-economic values of seasonal wetland-related recreational opportunities, like hunting, fishing, and birding. Waterfowl hunting is a tradition in managed wetlands proposed to be converted to tidal wetlands, especially in the Suisun Marsh.

Thank you for the opportunity to comment, and I look forward to reviewing the full EIR/EIS.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gregory S. Yarris', with a stylized, cursive script.

Gregory S. Yarris
Director of Conservation Policy



CENTRAL VALLEY JOINT VENTURE

North American Waterfowl Management Plan

California Waterfowl

California Association of
Resource Conservation
Districts

Defenders of Wildlife

Ducks Unlimited, Inc.

National Audubon
Society

PRBO
Conservation Science

River Partners

The Nature Conservancy

The Trust for Public Land

May 13, 2009

Ms. Dolores Brown
Chief, Office of Environmental Compliance
Department of Water Resources
PO Box 942836
Sacramento, CA 94236

Sent via email to BDPCcomments@water.ca.gov

RE: Comments Regarding EIR/EIS for Bay Delta Conservation Plan

Dear Ms. Brown:

On behalf of the Central Valley Joint Venture Management Board, I am writing to provide our input during the scoping period on the proposed joint Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) for the Bay Delta Conservation Plan.

The Central Valley Joint Venture (CVJV) is a partnership of 22 public and private entities comprised of agencies, and conservation and corporate organizations. Our mission is to work collaboratively through diverse partnerships to protect, restore, and enhance wetlands and associated habitats for migratory birds, in accordance with conservation actions identified in the *Central Valley Joint Venture 2006 Implementation Plan* (Plan). Through these biologically-based actions, CVJV partners work to sustain migratory bird populations in perpetuity for the benefit of those species, resident wildlife, and the public.

Background

California has lost more than 95% of its historic wetlands, largely due to urbanization, flood control and agriculture. As a result, many species have declined from historic levels, and are increasingly dependent on fewer wetlands. Despite these tremendous habitat losses, California arguably remains the most important wintering area for waterfowl and other waterbirds in the Pacific Flyway. Avian species from the north, some as far as Alaska and the Canadian Arctic, rely on our wetlands for nutritional and other needs while visiting during the winter. In addition, many resident bird species nest within or near local wetland habitats.

The importance of wetland habitat in California is now recognized and policies have been established to insure conservation of existing wetlands and restoration of additional wetland acres:

- 1) Through the passage of Senate Concurrent Resolution 28 (January 1, 1983), the Legislature, in recognition of the importance of wetlands, indicated its “intent to preserve, protect, restore and enhance California's wetlands and the multiple resources which depend upon them for the benefit of the people of the State”.
- 2) In 1993, Governor Wilson signed Executive Order W-59-93, to “ensure no overall net loss and achieve a long-term net gain in the quantity, quality, and permanence of wetlands acreage and values in California in a manner that fosters creativity, stewardship, and respect for private property”.
- 3) The State Fish and Game Commission policy states (Amended 8/18/05):
“...it is the policy of the Fish and Game Commission to seek to provide for the protection, preservation, restoration, enhancement and expansion of wetland habitat in California”.
- 4) On April 15, 2008, the State Water Resources Control Board adopted Resolution No. 2008-0026, “Development of a Policy to Protect Wetlands and Riparian Areas in Order to Restore and Maintain the Water Quality and Beneficial Uses of the Water of the State”.

The CVJV has strived to support these policies, and gone a step further by identifying specific goals and objectives for wetland and agricultural conservation. The CVJV also has promoted and implemented non-traditional management solutions to fulfill the needs of waterbirds by working extensively with the private wetland managers and agriculture. In addition to conventional restoration and protection, the CVJV has also emphasized active management and enhancement of wetlands and agriculture to maximize the benefits to waterbirds. Managing wetlands involves prescriptive water control and timing of flooding (or irrigation) to improve food production or availability. Enhancing agriculture for waterbirds involves applying water to cropland to provide additional foraging habitat and thus energetic needs not met by the Central Valley's limited natural or managed wetlands. Enhanced agriculture also provides breeding habitat for certain focus species of the CVJV.

The CVJV Plan defines specific habitat goals and objectives for 6 avian groups deemed of ecological or economic value in the Central Valley. The CVJV goals and objectives are outlined in detail in the Plan, and it is available at our website http://www.centralvalleyjointventure.org/materials/CVJV_fnl.pdf. Summarized objectives for the Delta, Yolo, and Suisun basins are provided in a separate attachment. Since 1990, CVJV has protected nearly 57,000 acres of wetland habitat and restored over 65,000 acres of wetland habitat; however, we have not yet met our wetland goals. Agricultural habitat enhancement goals have been exceeded valley-wide, largely due restrictions on burning, yet certain basins are short of enhancement goals.

Comments regarding proposed BDCP EIR/EIS

The San Francisco Bay-Delta has been described as an ecosystem in a state of collapse. While the ecosystem still contains an abundance of fish and wildlife, invertebrates and plants, many are undesirable species that were not around a few decades. Creating a Delta that is better for desirable fish and wildlife while providing the needs of most Californians is not simple, and previous attempts have not been successful. We are encouraged by the efficient recent efforts stimulated by Delta Vision and BDCP, and urge the planners to insure the effort is comprehensive, based on sound science, and restoration and management remain truly adaptive.

The CVJV was created during a similar crisis situation not long ago. In the 1980's waterfowl populations plummeted to all time lows, also partly due to drought. In response, the United States and Canadian wildlife agencies developed the North American Waterfowl Management Plan (NAWMP). The NAWMP recognized that wide-ranging degradations to wetlands and associated uplands across the continent required a comprehensive response to improve landscapes using public policies, wildlife friendly agriculture, and traditional habitat restoration programs. The purpose of the plan was, and remains, to sustain abundant waterfowl populations (and now other birds) by conserving landscapes, through self-directed partnerships (e.g., CVJV) guided by sound science.

The success of that strategic partnership can be seen throughout the Central Valley, including the Delta region. CVJV partners have invested considerable time and resources in the Delta proper, as well as the Yolo Basin, Suisun Marsh, and Cosumnes River. As a result of CVJV activities, the habitat in the Delta region, while considered degraded for native fish, has actually become considerably more hospitable to avian species. In the Delta region, the CVJV has protected almost 5000 acres and restored almost 9000 acres of wetland habitat. In addition, almost 40,000 acres of agricultural land are flooded annually in the Delta. However, these accomplishments are still far below the CVJV goals for the Delta region. These goals are primarily based on the nutritional needs of migratory birds wintering in the Central Valley, of which the Delta provides an important, but yet to be fully achieved, component (see attachment). In addition to biological goals and habitat objective, the water needed to maintain and manage wetland goals are specifically mentioned in the CVJV Plan.

We strongly support additional wetland restoration in the Delta. However, as a general principal, we caution planners to fully recognize and protect the existing ecological values of the region. We believe that there is a sizable potential to undo much of the good work we have painstakingly and at great public and private expense accomplished to date unless this new work is done in a manner sensitive to needs of the entire ecosystem. The potential for restoring ecological conditions favorable for native fish species is great, but should be additive to, rather than at the expense of, existing avian and other terrestrial values.

With that in mind, it is important that the architects of the BDCP EIR/EIS consider the goals and objectives of the CVJV Plan. The BDCP could impact, either positively or negatively, both past accomplishments and future progress towards CVJV Plan goals. Furthermore, this evaluation should address impacts on all the goals and objectives of the

CVJV, not just those specific to our planning basins in the Delta region. This request is justified, because the BDCP has far-reaching implications for water availability and management, and subsequent land use changes throughout the Sacramento and San Joaquin River watersheds. We also encourage the EIR/EIS to consider areas beyond the Delta and Suisun Marsh for implementing conservation measures and potential mitigation. The present crisis originated outside the Delta, with its origins in water projects that diverted increasing amounts of water from the rivers upstream. To limit the scope of the solution to the Delta region could be overly restrictive, especially given predictions of sea level rise and subsequent potential changes in terrestrial species distributions

At a minimum, the scope of the EIR/EIS should include the following components relative to the protecting existing and future non-aquatic ecological values of the Delta region:

- Analyze the potential change in food availability for wetland-dependent migratory birds resulting from conversion of managed wetlands to tidal wetlands in the project area and Suisun Marsh.
- Analyze the potential change in breeding habitat for wetland-dependent migratory birds resulting from the conversion of managed wetlands to tidal wetlands in the project area.
- Analyze the potential change in food availability and breeding habitat for wetland-dependent birds resulting from temporary loss (or changes in management) of managed wetlands due to either prolonged floodplain inundation or conversion to floodplain habitat, especially in the Yolo Bypass.
- Analyze the potential changes in food availability for wetland-dependent migratory birds resulting from conversion of certain farmlands or change in agricultural crop type.
- Analyze how improved water conveyance may simplify and perhaps increase transfers of water south of the Delta, potentially reducing the amount of rice farmed in the Sacramento Valley. More specifically, analyze:
 - The impacts of potentially reduced rice acreage on foraging habitat for wintering and breeding migratory birds (and other wildlife, e.g., giant garter snake).
 - The impact of potentially reduced winter flooding of harvested ricefields on energy supply for waterfowl and other wildlife in the Sacramento Valley.
 - The impact of reduced spring/summer flooded rice habitat, and potentially increased fallow cropland, on breeding habitat for waterfowl and other birds.

- The potential to establish cover crops to reduce erosion and provide habitat (e.g., nesting cover) for breeding migratory birds if cropland becomes idle/fallow as a result of BDCP actions,
- Analyze whether and to what extent the project alternatives are consistent with the existing legal requirements regarding refuge water supply requirements of the CVPIA.
- Analyze how water supply and reliability to wetlands and agricultural habitats for migratory birds will change within the BDCP planning region, and in other potentially impacted regions of the Central Valley, given the different project alternatives.
- Analyze the costs and benefits of various project alternatives associated with the socio-economic values of seasonal wetland-related recreational opportunities, like hunting, fishing, and birding.

Thank you for the opportunity to comment on this important effort.

Sincerely,

A handwritten signature in black ink, appearing to read "Kim Delfino". The signature is fluid and cursive, with the first name "Kim" and last name "Delfino" clearly distinguishable.

Kim Delfino
Management Board Chair

cc: CVJV Management Board

Summarized Central Valley Joint Venture habitat objectives for migratory birds in the region of the Delta, including the Delta, Yolo, and Suisun basins

The Central Valley Joint Venture (CVJV) set habitat objectives, for a 5-year time horizon, for six bird groups, including the following: breeding and non-breeding waterfowl, breeding and non-breeding shorebirds, waterbirds, and riparian dependent songbirds. CVJV approaches to establishing conservation objectives for the different bird groups are described in Appendix A.

For background in understanding summarized objectives below, note that for breeding and wintering waterfowl and riparian dependent songbirds, the JV used drainage basins at the planning unit for which to establish conservation objectives. These include: (1) Butte; (2) Sutter; (3) Colusa; (4) American; (5) Suisun; (6) Yolo; (7) Delta; (8) San Joaquin; and (9) Tulare basins. And for breeding and non-breeding shorebirds and waterbirds, the JV used four planning regions to establish conservation objectives: (1) Sacramento Valley, consisting of Colusa, Butte, American, and Sutter Basins; (2) Delta, consisting of Yolo and Delta Basins for shorebirds, and of Yolo, Delta, and Suisun basins for waterbirds; (3) San Joaquin Basin; and (4) Tulare Basin. For shorebirds, Suisun Marsh was not included, as counts were not available at the time of the CVJV Implementation Plan development.

The Suisun, Yolo, and Delta basins are dealt with in detail below (language excerpted or summarized from the 2006 Central Valley Joint Venture Implementation Plan).

Description of basins and summarized CVJV objectives for each

Suisun Basin

The Suisun Basin includes 170 square miles in southern Solano County and is bordered on the east by the Sacramento-San Joaquin Delta and on the west by the Carquinez Strait. Suisun Marsh dominates the basin, and is the largest brackish (diked, managed) wetland remaining in California. In 1963 landowners created the 116,000-acre Suisun Resource Conservation District, which includes a complex of managed and unmanaged wetlands as well as upland habitat. There are 158 privately owned wetlands in the Suisun Basin. There are also 15,000 acres owned by the California Department of Fish and Game in the Grizzly Island Wildlife Area complex. Landowners must meet standards for wetland habitat and water quality set by the Suisun Marsh Preservation Act of 1977, enacted by the State of California.

Historically, the Suisun Marsh was a tidally influenced basin that totaled 74,000 acres. Large portions of the marsh were submerged daily until levee construction in the 1850s restricted tidal flows. Tide gates and levees currently protect most of Suisun Marsh from flooding, however salinities have gradually increased because of freshwater diversions from the San Joaquin and Sacramento rivers. Vegetation communities in the marsh reflect this increase in salinity, as many common plant species are salt tolerant.

Summary of migratory bird conservation objectives for Suisun Basin:

- The entire 58,000 acre marsh was assumed to be protected by the Suisun Marsh Protection Act of 1977, so wetland protection objectives were determined to be necessary.
- Wintering waterfowl:
 - Annual enhancement objective for existing wetlands = 2686 acres/year
 - 153,102 acre-feet of water required for wetland management
- Breeding waterfowl: increase semi-permanent wetlands
- Breeding and non-breeding shorebirds: Suisun Marsh was not included, as counts were not available at the time of the CVJV Implementation Plan development. However, it is known that 10s of 1000s, and perhaps as many as 100,000 non-breeding shorebirds use the seasonal wetlands in the basin.

Yolo Basin

The Yolo Basin lies west of the Sacramento River between Cache Creek to the north and the Montezuma Hills and the Delta Basin to the south, and totals about 800 square miles. The basin historically received overflow waters from the Sacramento River as well as Cache, Putah, and Ulatis creeks. Low lying areas near the Delta were tidally influenced and supported permanent marshes, while flooding at higher elevations produced seasonal wetland habitat. Like much of the Central Valley, the hydrology of the Yolo Basin has been modified by levees and flood control structures. The Yolo Bypass was developed along the east side of the basin, and provides flood protection for adjacent lands when flows in the Sacramento River are high.

Summary of migratory bird conservation objectives for Yolo Basin:

- Wetland protection objective = 5000 acres (8700 acres unprotected)
- As of 2003, 2935 acres protected
- Wintering waterfowl:
 - Wetland restoration objective = 3000 acres
 - Annual enhancement objective = 713 acres/year (increases to 963 acres/year when wetland restoration objectives met)
 - 57,790 acre-feet of water will be required once wetland restoration objectives are met
 - Agricultural enhancement objective = 11,000 acres (8000 acres assumed to be corn, 3000 acres assumed to be rice that must be flooded)
- Breeding waterfowl: increase semi-permanent wetlands and restore upland habitat
- Breeding riparian songbirds: 675 acres
- Wintering shorebirds: see Delta (below)

Delta Basin

The Delta Basin totals 2,100 square miles and extends from the American River in the north, to the Stanislaus River in the south. Other borders are the Sierra Nevada foothills to the east, the Sacramento River to the northwest, and the Coastal Range to the southwest. Prior to the mid-1800s, the Delta was tidally influenced and part of a larger estuary that included Suisun Marsh and the San Francisco Bay. Development of the basin began in the 1850s when the Swamp Land Act transferred ownership of all “swamp and

overflow land” from the federal government to the State. By the early 1900s, nearly all the Delta’s wetlands had been converted to agriculture.

The basin is formed by the convergence of the Sacramento, San Joaquin, Cosumnes, Mokelumne, and Calaveras Rivers. This confluence is subject to tidal movement and water diversions as it flows into the San Francisco Bay. A 1,000-mile network of levees has reclaimed sixty former wetland islands in the Delta. These islands are intensively farmed and some are managed as duck hunting clubs after crop harvest.

Summary of migratory bird conservation objectives for Delta Basin:

- Wetland protection objective = 3000 acres (4300 acres unprotected)
- As of 2003, 1704 acres protected
- Wintering waterfowl:
 - Wetland restoration objective = 19,000 acres
 - Annual enhancement objective for existing wetlands = 529 acres/year (increases to 2112 acres/year when wetland restoration objectives met)
 - 120,408 acre-feet of water will be required once wetland restoration objectives are met
 - Agricultural enhancement objective = 23,000 acres
- Breeding waterfowl: increase semi-permanent wetlands
- Wintering shorebirds (Delta + Yolo basins):
 - Seasonal wetland objective = 7334 acres of (6994 conventionally managed and 340 with early flood-up; 50% of seasonal wetlands must provide foraging depths <10cm during some portion of wintering period)
 - Semi-permanent wetland objective = 170 acres
 - Winter flooded rice objective = 5142 acres (64% of winter flooded rice must provide suitable foraging depths during some portion of winter)
- Breeding shorebirds:
 - Semi-permanent wetlands objective in Delta = 875 acres (breeding shorebird numbers are low in the Delta relative to other areas of the Central Valley) + 875 acres of semi-permanent wetlands combined for the American, Butte, Colusa, Sutter, and Yolo basins.
- Waterbirds (Yolo, Delta, and Suisun combined):
 - Semi-permanent wetlands objective = 1000 acres
 - Riparian objective = 1000 acres
- Breeding riparian songbirds:
 - Riparian restoration objective = 1500 acres (900 acres along Mokelumne River and 600 acres along the Cosumnes River)

Appendix A. CVJV approaches to setting conservation objectives

Non-breeding waterfowl:

Conservation objectives for wintering waterfowl were established at the basin scale. An energetic approach was used, assuming that food energy supplies are the limiting factor for support of target populations. First, the relationship between population energy demand and existing food supplies was evaluated for ducks, dark geese, and white geese using a modeling approach. Second, the relative contribution that agriculture and managed seasonal wetlands make to waterfowl food supplies in the basin was estimated. Finally, changes in waterfowl carrying capacity that would result from the loss of agriculture were evaluated, as was the ability of public lands to meet duck energy needs.

Non-breeding shorebirds:

A similar modeling approach for wintering waterfowl was used to determine habitat objectives for non-breeding shorebirds. The CVJV 2006 plan assumes that food is the primary need for shorebirds during migration and winter, and providing adequate foraging habitat at appropriate water depths will enhance survival outside the breeding season. The food energy modeling approach calculates population energy demand and population energy supplies for specific time periods and was used to estimate shorebird habitat needs and to develop conservation objectives. The objectives were distributed across planning regions based on known shorebird distribution.

Breeding shorebirds:

Four factors were considered when establishing conservation objectives for breeding shorebirds in the Central Valley: (1) historic patterns of habitat loss; (2) current distribution of breeding shorebirds among planning regions; (3) an estimate of the habitat resources currently available to breeding shorebirds in each planning region; and (4) annual rates of wetland restoration in the Central Valley. Annual wetland restoration rates provide a basis for identifying how much conservation work might be accomplished on behalf of breeding shorebirds in the next five years, while factors one through three provide the basis for distributing this objective in a biologically meaningful way.

Waterbirds:

Short term conservation objectives for waterbirds include a combination of quantitative habitat objectives and qualitative habitat conservation recommendations to benefit a range of waterbird species that breed and/or winter within the Central Valley. For waterbirds the CVJV: (1) identifies focal species that serve as an “umbrella” for similar species; (2) identifies factors believed to be limiting their populations; and (3) develops conservation strategies to counter these limiting factors.

Focal species that best serve as “umbrella” species for the family or group of waterbirds that they represent, and that would most likely benefit from JV conservation actions,

were selected for each family, if they met the following criteria: (1) listed as Highly Imperiled or of High Concern in the NAWCP; *or* (2) listed as of Moderate Concern in the NAWCP *and* California Bird Species of Special Concern; *and/or* listed as a USFWS Bird of Conservation Concern. Using this process, the JV identified seven focal species representing six families spanning a range of wetland or riparian conditions: Western grebe (*Aechmophorus occidentalis*); snowy egret (*Egretta thula*); least bittern (*Ixobrychus exilis*); white-faced ibis (*Plegadis chihi*); black tern (*Chlidonias niger*); black rail (*Laterallus jamaicensis*); and Sandhill crane (*Grus Canadensis*).

Without population goals on which to base habitat objectives, the JV's approach was to identify factors believed to be limiting populations, and to target conservation strategies that counter these limiting factors. The JV used a two-step process to develop conservation objectives. First, biologists developed quantitative (i.e., acre) habitat objectives for each of five principal waterbird habitats (seasonal wetlands, semi-permanent/permanent wetlands, rice, irrigated crop and pasture, and riparian) and distributed them among each waterbird planning region. Secondly, they provided qualitative focal species conservation recommendations.

Riparian dependent songbirds:

Population objectives are calculated for a suite of focal bird species that primarily breed in riparian habitat. The species were chosen whose requirements define different spatial attributes, habitat characteristics and management regimes believed to be representative of a healthy riparian system. Seven focal species were chosen: Song Sparrow, Yellow-breasted Chat, Black-headed Grosbeak, Common Yellowthroat, Yellow Warbler, western Yellow-billed Cuckoo, and Spotted Towhee. For six of the species (not including Yellow-billed Cuckoo) population objectives were developed based on monitoring data. Current population estimates were derived by estimates of birds per acre multiplied by the area of current habitat available and targets were derived by multiplying an appropriate target density by the area of potentially restorable habitat. The process to develop population objectives for Yellow-billed Cuckoo differed from other species due to its exceptionally low current population size and difficult sampling methodology. Instead, a minimum management goal for populations in each basin was established.

BDCP

BAY DELTA CONSERVATION PLAN

ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT

— Comment Card —

Please Print

Name: Earleen Clark Organization: Clark Farms

Telephone: 916-775-1435 e-mail: _____

Address: 40660 Waukeena Road

City: Clarksburg State: CA Zip: 95612

☐ Yes, I would like to be added to your e-mail list.

Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 14, 2009.

Is it true that no one knows if your proposed project will meet its objectives and that not all aspects of the conservation of threatened and endangered fish species in the Delta have been studied adequately? What experiments have been conducted that show this project to be beneficial to Delta Smelt, Sacramento Splittail, Longfin Smelt, Chinook Salmon, Steelhead, Green Sturgeon, and White Sturgeon?

Adequate experiments and studies need to be conducted to provide assurance that the conservation objectives of the BDCP with regard to threatened and endangered fish species will be obtained.

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:

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

You may also e-mail your comments to BDCPcomments@water.ca.gov. Comments must be received by May 14, 2009.

BDCP

DAY DELTA CONSERVATION PLAN

ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT

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Please Print

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Where will the BDCP get the funds to pay for the project?

How will the source of the funds for the project affect Delta citizens?

How much money will be provided by the state of California?

How much money will be provided by water contractors?

How much money will be provided by the private sector?

Will there be conflicts of interest based on the source of the funds to pay for the BDCP?

Will the BDCP be influenced in any way on the basis of the source of its funding?

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How will increased salinity in Elk Slough, as a result of your project, affect our grape vines?

Who will compensate me for lost or reduced production of my wine grapes when water quality is reduced as a part of this BDCP project? How will that compensation be determined? Also, how will I be compensated for my lost water rights?

Taking water out upstream will reduce our water quality. How will your project affect ground water supply in the Delta? How will our drinking water supply and drinking water quality change as a result of this project?

Answers to the above questions should be addressed and provided to us.

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Will the BDCP result in increased mosquito
populations in the Delta?

Does the BDCP include plans for controlling
mosquito populations?

How will mosquito populations and methods of
controlling mosquito populations affect the
residents of the Delta?

How will methods of controlling mosquito populations
affect threatened and endangered fish species in the Delta?

Will there be an increase of West Nile Disease
because of the BDCP?

What experiments and studies have been done with
respect to mosquito populations and the BDCP?

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:

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How will predator populations be controlled?
Striped bass, a well known Delta fish predator, will benefit from many of the changes being implemented as part of the BDCP. As the young-of-year striped bass populations increase with BDCP implementation, how will fish predation issues be addressed? Striped bass have been the top predator in the Delta since their introduction. How will the BDCP change this fact? Isn't it true that striped bass populations ^{will probably increase} with the implementation of the BDCP? If more predation occurs as a result of the BDCP, will not Delta smelt populations decrease due to the increase in predation?

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:

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Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 14, 2009.

I think an alternative strategy to the BDCP Draft Conservation Strategy may have a greater impact to provide for the conservation of threatened and endangered fish species in the Delta and improve the water supply system within a stable regulatory framework. Since previous efforts similar to the strategies proposed by the BDCP have failed in the past, I would like you to investigate the merit of building more reservoirs north of the Delta to collect spring snow melt and runoff, providing better regulation and control with regard to substances detrimental to fish being released or dumped into water supplies north of the Delta, and providing cleaner water with controlled flow to pass through the existing channels of the northern Delta. Continued →

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:

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

You may also e-mail your comments to BDCPcomments@water.ca.gov. Comments must be received by May 14, 2009.

BDCP

BAY DELTA CONSERVATION PLAN ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT

— Comment Card —

Please Print

Name: Earleen Clark Organization: Clark Farms

Telephone: 916-775-1435 e-mail: _____

Address: 40660 Waukeena Road

City: Clarksburg State: CA Zip: 95612

☐ Yes, I would like to be added to your e-mail list.

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What experiments or studies have been conducted to determine if more reservoirs and stronger regulation of detrimental substances being dumped into waterways north of the Delta would work as well as, or better than, the BDCP draft conservation strategy and, also, might be more cost effective?

What studies and experiments have been done to determine how much the contaminants being dumped into water supplies north of the Delta are impacting threatened and endangered fish species in the Delta?

What studies have been done to determine how many reservoirs (including existing reservoirs and increasing the capacities of those reservoirs) would be needed continued →

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north of the Delta to provide adequate storage of
spring snow melt and runoff to allow for a steady,
controlled year-around amounts of water to pass
through existing channels in the Delta that would
meet the purposes of the BDCP?

What studies have been done to determine the cost
of the above-referenced strategies versus the cost
of the strategies of the BDCP Draft?

How much will the strategies of the BDCP cost?

How much will the aforementioned alternatives cost?

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I am concerned that the BDCP will result in increased salinity in Elk Slough which is the source of our farm's irrigation water. Increased salinity in Elk Slough will adversely affect our grape vines and may make farming our land impossible altogether. At the BDCP EIR/EIS public scoping meeting in Clarksburg, California, on March 26, 2009, we were told that the salinity level in the northern Delta would not change, but stay at the same current levels and would not move inland any further, but stay at the current locations. It has been our understanding that decreasing water flows through the northern Delta will cause increased salinity. It also has been our understanding that additional water storage above the northern Delta →

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would provide for an adequate supply of water flow through the Delta at times when water is being diverted from the Sacramento River to the BDCP peripheral canal to prevent increased salinity in the northern Delta. What will the BDCP include to prevent increased salinity in Elk Slough? Will additional upstream water storage be required as part of the BDCP project to meet salinity standards and maintain current salinity levels without further salinity increases?

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Previous habitat restoration efforts in the Delta have been largely unsuccessful. This project looks similar to those efforts. Why will this project be successful? In what ways is this project similar to previous unsuccessful efforts and in what ways is it different? What data from previous efforts are incorporated in the BDCP? What studies and experiments have been conducted to show that this plan will meet with success when similar past efforts have failed?

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BAY DELTA CONSERVATION PLAN
ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT

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How will the BDCP prevent the spread of
nonnative organisms in the Northern Delta?

How will the BDCP meet the regulations and
requirements of the Yolo County General Plan?

Who will be fiscally responsible if nonnative
organisms and/or water born pathogens become
established in the north Delta?

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:
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CLARKSBURG
WINE GROWERS
& VINTNERS
ASSOCIATION



May 14, 2009

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

Dear Ms. Brown,

The Clarksburg Wine Grape Growers and Vintners Association are strongly opposed to the development of the proposed water conveyance system in our American Viticulture Area (AVA). We believe that any system developed to remove additional water from the Delta will result in a disaster to the Delta and its inhabitants, as well as cost billions of dollars to the taxpayers.

The economic impact on the wine grape industry will be severe if any of the 3 water conveyance options are implemented.

The Clarksburg appellation contains 17,000 acres of wine grapes, all of which come from Delta vineyards. District 17 which includes other Delta wine grape growing areas produced 3,061,421 tons of wine grapes in 2008* (source; Grape Crush Report 2008 CA Dept. of Food & Agriculture, March 10, 2009). The value of this crop to the state was approximately \$46,585,148 at the grape sales level. 54,839,085 cases of wine were produced. The benefit when sold to customers through various distribution channels resulted in sales of several billion dollars a year.

Vineyards are very expensive to plant and maintain. They are considered to be a permanent crop as opposed to an annual crop. The destruction of vineyards as proposed by the 3 options would cause significant negative economic impact to the state.

We demand that the state carefully and thoroughly study, the adverse economic impact the conveyance options being considered would have on the local and state economy.

Cordially,

Timothy W. Waits
CWGVA President

Cc: ND Cares



May 13, 2009

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

Re: Bay Delta Conservation Plan (BDCP) Scoping Comments

Dear Ms. Brown,

In an effort to protect and promote the viability of Delta agriculture, the five Delta County Farm Bureaus; Contra Costa, Sacramento, San Joaquin, Solano and Yolo have joined together to form the Delta Caucus. The Delta Caucus understands and supports the need for water reliability statewide and supports efforts and processes to responsibly plan for California's water future.

Within the framework of the limited information available, the Caucus is concerned the BDCP scoping comments may not be comprehensive or complete. As environmental and conveyance plans are developed, the BDCP must solicit additional comments, especially from Delta interests. However, based upon our knowledge of the BDCP at this time, the Delta Caucus has the following concerns which we have grouped into three categories: fundamental questions, conveyance, and fish recovery efforts.

Fundamental Questions:

1. Has exporting water from the Delta damaged the environment and socio-economic health of the Delta?
2. Will increased reliance and investment to move water from North to South through the Delta institutionalize, perpetuate, and accelerate damage in the Delta?

3. Will species-specific restoration damage the ecosystem and diminish abundance of other sensitive species?
4. Is there enough developed water to support the considerable investment in the Delta being proposed by the BDCP and would that investment be better used to support development of other options such as regional self-reliance?
5. Should Delta conveyance be an interim solution while other viable options to develop a reliable water supply for the State of California are identified and developed?

Conveyance:

1. The EIR must clearly show how each proposed alternative is designed to operate within the multitude of existing legal restrictions, water quality requirements, and contractual constraints such as but not limited to the North Delta Water Agency contract with the State of California, area of origin priorities, and Delta salinity standards. The EIR must include a detailed analysis of all legal constraints on water exports and a thorough explanation detailing how each alternative will comply with them.
2. The EIR must quantify how much Delta outflow is needed to maintain a healthy fresh water Delta (see attached study by Dr. Jeff Hart). This information is critical to determine how much water is available for export, the appropriate size of conveyance facilities, and the overall evaluation of each alternative.
3. The design capacity of proposed conveyance facilities should be determined by the amount of export water available. Each alternative should be developed to reflect the limitation of available water for export.
4. The EIR must explain why the BDCP isolated facility (peripheral canal) is being designed to convey 15,000 cubic feet per second. Do normal river flows justify an isolated facility capable of conveying 15,000 cubic feet per second? How much water will be conveyed "through Delta"? Will smaller capacity isolated facilities be considered? Why build a very expensive, disruptive facility if it is not needed, if it may be used only occasionally, if it could divert substantially all of the Sacramento River summer flow, and if it has the potential to devastate the Delta.
5. The EIR should compare and contrast upstream diversions and their effects on water quality entering the Delta from the Sacramento and San Joaquin Rivers. This information should be used to evaluate the effects of BDCP alternatives which divert water from the Sacramento River before entering or traveling through the Delta.

6. The EIR should examine alternatives in depth to determine if “Through Delta” conveyance is friendlier to the entire Delta ecosystem than removing water from the common pool in the North Delta and conveying it for export in an isolated facility.
7. The Delta Protection Act of 1992 was passed to protect the Primary Zone of the Delta for agriculture, habitat and recreation. The EIR should determine how these Delta resources will be negatively impacted and how alternatives can be designed to be compatible with the Act and its objectives. For example, water from isolated facilities could be piped underground across reclamation districts rather than in surface canals to eliminate negative impacts to drainage, flood control and irrigation systems caused by dividing reclamation districts.
8. The EIR must identify how facilities and changes in river elevations will impact ground water elevations. Plans must be developed to mitigate for seepage and other negative impacts associated with changes in ground water elevation.
9. The EIR must develop governance structures which will protect the Delta environment and its socio-economic interests. Governance structures must be legally required and have the authority to act swiftly to curtail and even stop water exports in order to maintain a healthy fresh water Delta and comply with all water laws, constraints and contracts.
10. Because in the near and intermediate term, water exports must be conveyed through Delta, every effort should be made to make this alternative work for the long term and thus avoid the additional expense and considerable negative impacts of building an isolated facility.
11. The EIR must identify all negative impacts to the Delta economy and ecosystem caused by each of the alternatives, must quantify the cost of the impacts, and must define in detail mitigation actions which will be required. For example, how will the BDCP mitigate for loss of farmland and loss of Swainson’s Hawk foraging habitat?
12. The EIR must determine how each conveyance alternative will affect flood control and especially how each alternative will impact flood plains such as the McCormack Williamson Tract, and the Hood-Franklin pool. BDCP projects must not adversely impact flood safety in the Delta.
13. Loss of income to special districts and counties must be considered. A mechanism must be developed to ensure that tax revenue is not lost due to public acquisition of property for conveyance facilities.

Fish Recovery Efforts (Wetlands/Tidal Wetlands/Fish Habitat):

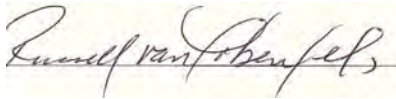
1. The EIR should identify in detail all factors which influence the abundance of targeted fish and only propose those actions which show a strong positive correlation to increased fish abundance.
2. While the adaptive approach might work for small projects, large-scale conversion of agricultural lands should only be based upon sound science linking land conversion to increased fish abundance. Large scale, irreversible experiments should not be conducted and permits should not be issued without sound scientific expectations.
3. Where sound science shows a strong positive correlation between fish abundance and habitat creation, land already owned by the public should be converted first. Eminent domain should not be used to acquire habitat restoration sites.
4. The EIR must analyze the implications of creating wetlands within the borders of reclamation districts. Is it feasible to create wetlands within the borders of reclamation districts where at certain times water is the common enemy? How will flood control, drainage, and irrigation systems be impacted within reclamation districts where fish habitat is created?
5. Redirected impacts caused by moving targeted fish from one area of the Delta to another must be identified and mitigated. For example, if the Delta Smelt population increases due to BDCP projects, water users should not be restricted from pumping water from the channels where this occurs.
6. As with conveyance alternatives, the EIR must identify all negative impacts to the Delta economy and ecosystem caused by water quality changes and conversion of land from agricultural production. It must clearly articulate how the BDCP will mitigate for loss of farmland and habitat such as Swainson's Hawk foraging habitat.
7. The EIR should identify in depth all plant communities and avian and terrestrial species which will be adversely impacted by creation of fish habitat. The analysis should include impacts caused by changes in water quality as well as large-scale conversion of both agricultural and wildlife habitat to fish habitat.
8. The EIR must examine seepage impacts and other changes in ground water elevation caused by creating fish habitat. It must provide detailed and meaningful mitigation when negative impacts restrict owners' use of their property.

9. Loss of income to special districts and counties must be considered. A mechanism must be developed to prevent loss of tax revenue as a result of the creation of wetland/fish habitat.

In conclusion, the Delta Caucus suggests that the BDCP broaden its focus to include more than the Delta. California water reliability for the future should not be dependent on Delta conveyance or circumvention which will likely result in unexpected negative impacts to the Delta ecosystem and socio-economic environment. The water supply for millions of Californians will be more secure and reliable by increasing regional supplies and reducing dependence on the Delta.

Thank you for this opportunity to submit our scoping comments at this time.

Sincerely yours,

A handwritten signature in cursive script, reading "Russell van Loben Sels", written in dark ink on a light-colored background.

Russell van Loben Sels,
Chair, Delta Caucus

Enclosure: California Delta – Estuary (Dr. Jeff Hart)

CC:

Honorable Dianne Feinstein
Honorable Barbara Boxer
Honorable Dan Lungren
Honorable Doris Matsui
Honorable Dave Cox
Honorable Lois Wolk
Honorable Joan Buchanan
Honorable Alyson Huber
Honorable Roger Niello
Honorable Patrica Wiggins
Honorable Dave Cogdill
Honorable Mariko Yamada
Honorable Tom Torlakson
Honorable Bill Berryhill
Honorable Jim Nielson
Mike Chrisman, Secretary of Natural Resources
Karen Scarborough, Natural Resources Agency
Contra Costa County Board of Supervisors
Solano County Board of Supervisors

Sacramento County Board of Supervisors
San Joaquin Board of Supervisors
Yolo County Board of Supervisors
Terry Schulten, County Executive
Paul Hahn, Agency Administrator
Keith DeVore, Sacramento County Department of Water Resources
Contra Costa, Solano, Yolo & San Joaquin County Farm Bureau's
Chris Scheuring, California Farm Bureau Federation

California Delta – Estuary

Comments on Types and Transitions
Jeff Hart, Hart Restoration, Inc.
March 2, 2009

The California Delta is located at the terminus of the Sacramento and San Joaquin Rivers in the Central Valley, immediately east of the San Francisco Bay Estuary complex. The Delta is a relatively young environment, having been formed since the last Ice Age less than 10,000 years ago (Atwater et al. 1979)(Drexler, de Fontaine and Knifong 2007). At the time of European contact, it was a large wetland, but has since been “reclaimed” as a highly productive farming region. The Delta also functions as a conduit for the majority of California's water supply, as well as providing cultural, recreational, and environmental values, this because of and despite its significant physical and biological transformations. The Delta and nearby San Francisco Estuary have been the focus of various planning and scientific studies. Of scientific and policy interest is the extent to which salt water/brackish conditions extended eastward of the Bay-Estuary and into the Delta in pre-European contact times. For purposes of discussion, the border between the Delta and the Estuary is herein defined as a transition zone encompassing the mid to lower portion of Sherman Island; the Delta is found eastward, the Estuary westward. The following discussion provides an argument for this distinction.

Delta vs. Estuary: What's in a Name? In early history, the Delta was referred to as “swamp and overflow” lands, peatlands, or particular areas were named for its rivers and sloughs. It is not clear when the first usage of word “delta” began; by the 1940's the term began to be commonly used as a descriptor for this physical setting (Cosby 1941). The application of word estuary finds a cognate in the early Spanish designation “estero” (such as for Drakes Bay, Pt. Reyes region). Early English usage also did not refer to this region as an estuary, but used the term “bay”. Modern scientific usage clearly distinguishes between delta and estuary environments (Wikipedia 2009). Deltas are defined as more riverine influenced, where rivers, approaching low gradient environments of lakes, valleys and coasts branch out into a series of distributary channels flanked by sediment-deposited natural levees. Estuaries are extensions of oceans, and are characterized as a mixing zone of fresh and salt water (brackish). Both deltas and estuaries can be tidally influenced. Deltas can come in a variety of shapes: the classic triangle-shaped Nile Delta may be the exception more than the rule. The “inverted” California Delta might seem anomalous, but not unexpected given the tectonically active region on its western flank, which causes the numerous distributary channels to re-unite as a single channel (the broom handle) below Sherman Island where the estuary begins. The classic work of Atwater (1979) clearly distinguished the

Delta from the estuarine and bay environments to the west.

Agriculture and Salt. Atwater (1979) noted the lack of salt in Delta soils. Delta residents, especially agricultural interests, have considered the Delta to have been a freshwater environment. Clearly, agriculture could not have flourished had the Delta been a saltwater or brackish environment. A comparison with Suisun Marsh reveals a lack of agricultural practices (mostly limited to initial grazing, but soon managed for hunting) compared to the Delta which has had a rich and productive history of farming numerous crops such as grapes, pears, peaches, corn, wheat, potatoes, and alfalfa, to name a few. While scientists working with Suisun Marsh soils have noted distinctive layers of salt, comparable observations have not revealed such restrictions to agricultural practices in the Delta.

Native Plant Species/Relict Habitats. In addition to soil and agricultural evidence, a comparison of native plant species reveals qualitative differences between Delta and Estuary environments; the following discussion follows from Atwater (1979) as well as personal observations. San Francisco Bay supports about 13-14 vascular plant species. About 40 species occur in the Delta. Plants that occur in the Bay are typical salt marsh plants, and few of these occur in the Delta. Typical low elevation salt marsh plants include pickleweed (*Salicornia pacifica*) and cordgrass (*Spartina foliosa*) which inhabit tidal marsh environments. Higher elevation marsh plants include salt grass (*Distichlis spicata*), marsh grindelia (*Grindelia humilis*), alkali heath (*Frankenia grandifolia*), fleshy Jaumea (*Jaumea carnosa*) and others. Native plants of the pristine Delta include common tule (*Scirpus acutus*), California tule (*Scirpus californicus*) cattails (*Typha* spp.), common reed (*Phragmites communis*), twinberry (*Lonicera involucrata*), dogwood (*Cornus stolonifera*), button bush (*Cephalanthus occidentale*), and several species of willow (*Salix gooddingii*, *S. lasiolepis*, *S. lucida*). The plant community of San Pablo Bay, Suisun Marsh, and Carquinez Strait are transitional between San Francisco Bay and the Delta. That is, some plants of the opposite end of the spectrum can be found in the middle estuary: most salt marsh plants of San Francisco Bay, such as *Salicornia* and *Spartina*, can be found at Suisun Marsh, but not in the Delta. Some species, such as salt grass and *Grindelia*, can be found all the way to some Delta locations. But, significantly, some Delta freshwater species of wetland plants such as lady fern (*Athyrium filix-femina*), mint (*Stachys albens*), dogwood (*Cornus sericea*), twinberry (*Lonicera involucrata*), button bush (*Cephalanthus occidentale*), and willows (*Salix lasiolepis*, *S. lucida*), to name a few, are not found in the Estuary (Carquinez Strait, Suisun Marsh) or points west in San Francisco Bay tidal environments, but are restricted to remnant in-channel Delta islands east of Brown's Island and the Sherman Island transition zone. These remnant in-channel islands harbor a relictual, well-rooted flora characteristic of pre-gold rush Delta conditions. Because these species are salt intolerant and would be slow to re-invade a Delta that might have putatively been more estuarine, this flora would have been characteristic of this landscape for at least several hundred years before European contact. Further, abandoned man-made levees in the delta are colonized by a combination of mostly opportunistic alien and native species, but not the full suite of the relic species mentioned above. A fragmentary, incomplete fossil record does exist; Atwater (NO CITED PAGES FOR REPEATED CITATION) stated there to be no known fossil record of the saltwater marsh plants *Distichlis* or *Salicornia* remains from the Delta.

Early Observations/Effect of Reclamation. Early explorers generally described the freshwater conditions of the Delta (Thompson 1957). However, salinity levels in the larger estuary environment varied spatially on a yearly and seasonal basis, but within a geographical context. During fall and during periods of drought, it would be expected toward the Delta. Brackish water was noted in Antioch as early as August, 1841, and in the 1860's and 1870's (NO CITED PAGES FOR REPEATED CITATION). But Antioch is essentially an estuarine environment below and west of the true Delta. Potential saltwater intrusion upstream into the pre-European contact delta area, however, would likely have been countered by a vast reservoir of freshwater being stored in the Delta wetlands that would have functioned as a natural buffer. This would have been evident before the construction of levees, when the full reservoir effect of the delta would have been in play. The construction of artificially high levees would have cut off this natural supply of within island and floodplain freshwater; likewise, the placement of other water control structures (water diversion canals for irrigation) would have deleted natural floodplain water storage. The effect of these alterations as well as the deepening and widening of channels eventually increased the salt water intrusion. Salt water intrusion became serious in the Delta between 1920 and 1939, and the water was often considered unfit for irrigation. In response, late season irrigations were cut. In 1931, about 70 per cent of the delta channels contained water with 100 or more parts chlorine per 100,000 parts of water; the minimum river discharge was as low as 500 cubic feet per second. Indeed, one rationale for the construction of upriver dams was to mitigate salt water intrusion by the re-introduction of fresh water into the delta (NO CITED PAGES FOR REPEATED CITATION).

Geologic Model For Delta/Estuary Distinction. The botanical/soils/agricultural discontinuity between the eastern Estuary/western Delta necessarily involves an explanation relying proximally on hydrology, and ultimately, on geologic controls. Tectonic uplift of the western end of the Delta (Coast Range, Montezuma Hills) caused for the constriction of the Delta distributary channel system to a single channel (the "broom handle effect"); hydrologically, this functioned as a dam. The Delta islands and immediate floodplains therefore functioned as a large reservoir and watershed, storing water during the winter and spring run-off; and slowly releasing it through the fall, thus buffering salt water intrusion. While periods of more saline conditions might have prevailed downstream in the Estuary, the Delta region would have been buffered by a consistent release of water. This geological control would therefore explain the discontinuity (agriculture/soils/flora) between the SF Estuary and the California Delta.

Recent Paleoecological Studies. To determine historical (Holocene) SF Estuary salt water/freshwater trends, a number of excellent studies recently have been conducted (Goman 2000)(Bryne 2001)(Starratt 2004)(Malamud-Roam et al. 2007). Through core samples of representative native habitat sites and other indirect approaches, scientists have deployed various techniques to assess past conditions: carbon -isotope, diatom, pollen and other fossils, and trends in river flow. These studies have demonstrated trends of hundreds to thousands of years of water quality conditions that reflect broad changes of climate, but not necessarily seasonal variations. In none of these studies have paleoecological data points been gathered in the Delta, however.

Need for More Delta Research. To resolve conflicting views of historic Delta

water quality conditions, we propose continuing the type of research conducted by (Goman 2000)(Bryne 2001)(Malamud-Roam et al. 2007) and others. We would propose collecting core samples from several extant in-channel Delta islands. Most remaining islands are found within the San Joaquin River system (e.g., near Webb least one island in Lindsey Slough and one near Webb Tract would therefore represent conditions of lower water quality than along the Sacramento River.

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Drexler, Judith Z., Christian S. de Fontaine, and Donna L Knifong. 2007. Age determination of the remainig peat in the sacramento - san joaquin delta, california, USA. *USGS. Open File Report 2007-1303*.

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Malamud-Roam, Frances, Michael Dettinger, Lynn B Ingram, Malcolm K Hughes, and Joan L Florsheim. 2007. Holocene climates and connections between the san francisco bay estuary and its watershed: A review. *San Francisco Estuary and Watershed Science* 5 (1).

Starratt, S W. 2004. Diatoms as indicators of late holocene fresh water flow variation in the san francisco bay estuary, central california, U.S.A. . Ed. M Poulin. *Seventeenth International Diatom Symposium*, 371-397.

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Wikipedia. 2009. River delta. *New Reference* http://en.wikipedia.org/wiki/River_delta."

Russell van hoken Sds
Chair of Delta Caucus
President Sacramento County Farm Bureau

I have a whole list of concerns, but in my limited time will only touch on a few of them.
The balance I will submit in written form.

First: The draft EIR must clearly show how each proposed alternative is designed to operate within the multitude of legal restrictions, water quality requirements, and contractual constraints such as:

The North Delta Water Agency contract with the State of California.

Area of origin priorities.

Delta salinity standards.

Second: The draft EIR must identify how much Delta outflow is needed to maintain a healthy estuary and how each alternative will be designed in order to maintain the appropriate outflow and Delta water quality. The EIR should compare and contrast water flow and water quality from the two major rivers (the Sacramento and San Joaquin) which enter the Delta and determine what factors contribute to the major difference in water quality.

Export alternatives can not be developed and evaluated without this critical information.

The appropriate size of facilities can not be determined without this critical information.

Export quantities can not be determined without this critical information.

And finally, how were BDCP alternatives developed without this critical information?

Third: The draft EIR must show a correlation between Delta smelt abundance and creation of tidal and seasonal wetland habitat.

Unless BDCP restoration of fish habitat is based on sound science, an adaptive attempt to try one thing after another will likely end in failure and result in irreparable damage to the Delta environment and agriculture.

Fourth and finally: The draft EIR must explain why the BDCP isolated facility (peripheral canal) is designed to convey 15,000 cfs. Is it based on science to support a healthy Delta or on achieving maximum exports without regard to the health of the Delta environment?

If the maximum export capacity is 15,000cfs and the preferred alternative is a dual conveyance system, why isn't the capacity of the peripheral part of the system reduced by the conveyance capacity of the through Delta part so that the combined capacity is 15,000cfs?

Wouldn't it be more appropriate to size the peripheral part of the dual conveyance system by starting with expected river flows and subtracting Delta outflow requirements to maintain a healthy estuary subtracting through Delta capacity and what is left could be conveyed in an isolated facility. It may be nothing.

So why propose digging a big ditch that you may not be able to use or can only use occasionally and which would make it possible to destroy the Delta.

If the current system of exports has damaged the Delta, then some of the proposed BDCP alternatives could devastate the Delta.

Jerry Creech
Delta Sport BUSTS
Vice Commander.
925-240-6210

— Invited to coordinate Summer
Boat counts



DELTA WETLANDS PROJECT

May 14, 2009

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

Dear Ms. Brown:

The Delta Wetlands Project has reviewed the Notice of Preparation (NOP) for the Bay Delta Conservation Plan (BDCP). This comment letter augments Delta Wetlands' previous scoping comment letter submitted May 30, 2008.

Delta Wetlands Properties, the largest private landowner in the Delta, owns and currently farms approximately 20,000 acres on four Delta islands: Webb, Bouldin, Holland and Bacon. It is responsible for the maintenance of 56 miles of levees. Delta Wetlands Properties is developing the in-Delta storage project known as the Delta Wetlands Project (Project). The Delta Wetlands Project will divert and store water on Webb Tract and Bacon Island and create and enhance wetlands to manage wildlife habitat on Bouldin Island and most of Holland Tract. The stored water will be provided to municipal, industrial and agricultural users within the Central Valley Water Project and State Water Project service areas. The stored water may also be released to enhance Delta outflow and water quality. The Project is anticipated to be funded completely by beneficiaries. The Department of Water Resources (DWR) and the Delta Wetlands Project entered into a protest dismissal agreement that the Project will not harm the operations of the CVP or SWP.

A Final EIR (2001 SCH # 1988020824) and Final EIS (2001) were prepared for the Delta Wetlands Project. The Final EIR is being updated by the Semitropic Water Storage District in response to *Central Delta Water Agency v. State Water Resources Control Board*, 124 Cal.App.4th 245 (2004). Semitropic is preparing the Delta Wetlands Project Place of Use EIR that will analyze the effects of providing water to the proposed places of use, banking water within the Semitropic Groundwater Storage Bank and Antelope Valley Water Bank, and will update prior analyses based on new information and changed circumstances. The Place of Use EIR NOP was provided to DWR. As the Delta Wetlands Project is "likely and foreseeable," BDCP's CEQA analysis must consider the Delta Wetlands Project. We encourage DWR to consider the Delta Wetlands Project documents in preparing the Draft EIS/R for BDCP, as discussed below.

The BDCP NOP provides general descriptions of "covered activities" designed to meet broad planning goals of restoring and protecting water supply, water quality, and ecosystem health. Although little detail is provided, it is likely that any long-term conservation plan will involve or affect the Delta Wetlands islands (Bacon Island, Bouldin Island, Holland Tract and Webb Tract), which are a dominant feature of the central and west Delta. If BDCP does not coordinate with Delta Wetlands Properties and the Delta Wetlands Project, BDCP's proposed activities could interfere with current agricultural operations as well as the development and operation of the Delta Wetlands Project. For example, modification to the flow regime in the Delta could reduce flows and/or impair water quality in a manner that injures Delta Wetlands' existing irrigation water right licenses and Delta Wetlands Project water rights.

Anson B. Moran, General Manager
1660 Olympic Blvd., Suite 350
Walnut Creek, CA 94596
Telephone (415) 730-5637

The Delta Wetlands Project is consistent with and will help accomplish the ambitious BDCP goals, including the conservation of covered species, the restoration and protection of water supply reliability, protection of certain drinking water quality parameters, and the restoration of ecosystem health to proceed within a stable regulatory framework. As a stand-alone project, the Delta Wetlands Project works with BDCP's isolated conveyance alternatives and provides a variety of benefits to BDCP including a more diverse array of restored habitats, strengthening Central Delta levees along the critical Middle River water supply pathway, and reducing conflicts between water demand and supply. The benefits provided by the Project to BDCP, however, are significantly enhanced through incorporation of the Project into BDCP plans. BDCP, therefore, should identify and evaluate in its EIR specific measures to coordinate the BDCP covered activities and conservation measures with the Delta Wetlands Project. This coordination will not only reduce the severity of BDCP's potentially significant effects but will also enhance the BDCP goals. These coordination measures should be reflected in every alternative.

BDCP should consider measures that integrate the Delta Wetlands Project in the following manner:

- Delta water quality impaired by diversions from an isolated facility is most effectively mitigated by releases from an in-Delta storage facility;
- Storage may be the only tool to recover water supply yield reduced by the Wanger decision and future restrictions likely imposed by the State Water Resources Control Board and to satisfy the Endangered Species Act;
- The Delta Wetlands Project will finance the strengthening of 56 miles of central Delta levees, will become the core of a sustainable Delta, and serve as an antidote to the concerns of in-Delta interests that isolated conveyance leads to abandonment of the Delta;
- The 9,000 acres of habitat provided by the Project's Habitat Management Plan will be one of the largest new conservation efforts in the region and will provide an array of wetland and upland habitats that will compliment BDCP's focus on aquatic habitat restoration; and,
- Importantly, the Project can provide these benefits much sooner than the isolated facility will be operational.

Delta Wetlands looks forward to working with DWR and BDCP in the development of the conservation plan and EIR. Please do not hesitate to contact me if you have any questions.

Sincerely,



Anson B. Moran
General Manager

BDCP

BAY DELTA CONSERVATION PLAN

ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT

— Comment Card —

Please Print

Name: Warren Tetrak Organization: Grand Island Ranch
Telephone: (916) 776-2111 e-mail: giranch @ Frontier.net
Address: 14310 Highway 160
City: Ryde State: CA Zip: 95680

☒ Yes, I would like to be added to your e-mail list.

Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 14, 2009.

- 1) Money would be "better spent" on desalinization technology.
- 2) Any approach utilizing the existing "deep water channel" is preferred - regardless of cost.
- 3) Please consider the economic impact on the residents of this area and the effect on their "Constitutional Rights". This property was purchased and managed in "good faith" and no government agency should have the authority to alter what the "minority group" of landowners have legally established.
- 4) Environmental issues are being addressed as a "Smoke screen" to water supply for southern California.

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:

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

You may also e-mail your comments to BDCPcomments@water.ca.gov. **Comments must be received by May 14, 2009.**

San Jose

BDCP

BAY DELTA CONSERVATION PLAN

ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT

— Comment Card —

Please Print

Name: Erin Gil Organization: Gil's Farm
Telephone: 408-463-0500 x307 e-mail: egil@gilfarm.com
Address: 602 Elm Ave
City: Morgan Hill State: CA Zip: 95037

☒ Yes, I would like to be added to your e-mail list.

Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 14, 2009.

- NEED MORE Community input through increased conversation.
- NEED To involve different Community Groups.
- LET people know of the impacts Environmentally & publicly.
- Thank You for the opportunity.

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:

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

You may also e-mail your comments to BDCPcomments@water.ca.gov. Comments must be received by May 14, 2009.

bdcpccomments

From: figfarm@aol.com [figfarm@aol.com]

Sent: Thu 3/26/2009 6:21 PM

To: bdcpccomments

Cc:

Subject: Comment and Question on Western Conveyance-Clarksburg bypass

Attachments:

Ms. Brown,

I would like to accept this as an official comment regarding the proposed/study area for the Western Conveyance canal and the bypass passing through the Reclamation District #999 (RD 999) paralleling the RD 999 west levee, Levee Unit #1. I live in the proposed area and am part owner of 230 acres of highly developed land within the RD 999 service area.

The alternative for routing the canal westerly in lieu of the easterly route is proposed with many obstacles. I would like to enumerate these obstacles as follows:

1. The route is dominated by unwilling sellers who's livelihood and heritage come from the proposed land. Without willing sellers, what will the state do to obtain this land?
2. The estimated costs are \$5 billion for this project. In light of the present economic blight of the State's economy, where will the money come from?
3. The plans presented to the public so far show diversions at approximately LM 4.0 and LM 5.5 of RD 307, right bank of the Sacramento River. Landward elevations of the original ground line are around 12 to 15 feet NGVD. The center of the district (RD 307) is approximately sea level to five feet. Historically the districts made improvements to natural banks, often with ! a side-draft clam shell dredger, using native material, to make the improvements affordable. Has any engineer made a cross section of the proposed levee to see how disproportionately large the levee will need to be to gravity flow water from the east to the west across the district?
4. Assuming #1 and #2 are accomplished, it has been estimated between 5 million to 10 million cubic yards of suitable fill will be needed to build the required levees. My 25 years of experience shows that the native material in these areas, once considered satisfactory for construction material, is now considered by State and Federal geotechnical engineers to be unsuitable for construction of flood control, or in this case, water conveyance facilities. Where does the State of California propose to excavate this material? How do the planners justify economically transporting and placing this material to build these facilities?
5. When the Westerly Conveyance (proposed) is constructed to the east of the Sacramento-Yolo Ship Channel, a very expensive inverted siphon will need to be constructed to continue the flow of water and move it over to the west of the Ship Channel.

There is another easier solution if Westerly is the proposed alignment:

Proposal A. The State of California already has in place upgraded and improved levees on the left bank of the Yolo Bypass. At the base of this levee as constructed in 1964 is the borrow pit, now the toe drain. This drain runs from the Sacramento River to north of Rio Vista and always has water in it.

1. Wouldn't it make incredible sense, cost vastly less money and quick track the project to completion to move the proposed diversion point to the Sacramento Weir?
2. If the State were to widen the weir at the same time it would increase the flood protection

for the Sacramento Area Flood Control Agency levees which includes the City of Sacramento.

3. Using the Yolo Bypass for conveyance, an infinitesimally smaller amount of productive farm land would need be taken out of production.
4. Water already runs along the proposed route south.

Proposal B:

1. The Sacramento-Yolo Ship Channel has a diversion point at the locks into the Sacramento River. These locks could be renovated and used as control structures for diversions.
2. The rights of way and easements are already in place.
3. Diversion pumps could be put in place at the south end near Egbert Tract and begin the cross-Delta conveyance. High volume low head pumps could be used to lift the water into a surface channel moving the water further south and could be designed to lift the water to an adequate head to ensure flows to Clifton Court fore bay. These structures in comparison to the RD 999 structure will cost much, much less and fast track the project.

I await your response.

Sincerely,

RICHARD E. MARSHALL,
Marshall Ranch
RD 999, Clarksburg

[Great Deals on Dell 15" Laptops - Starting at \\$479](#)

bdcpcomments

From: Joseph Rizzi [jrizzi@naturaldesalination.org]

Sent: Mon 3/23/2009 1:30 PM

To: bdcpcomments

Cc:

Subject: Natural Desalination for LA & SF Bay Area

Attachments:

100% of LA's drinking water can easily and more cheaply obtained from the sea, but yet it is not on the plans for study or consideration.

If LA & SF Bay area received its water from the sea, then the issues in the BDCP would not exist.

2 plants off the cost of California can supply most if not all of our drinking water using the simple *Patent Pending* Natural Desalination principles.

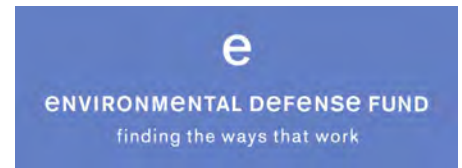
Zero energy required for desalination or transportation of drinking water to distribution points.

Joseph Rizzi

Natural Desalination

707-208-4508

Joseph_Rizzi@NaturalDesalination.org



May 14, 2009

Lori Rinek
Sacramento Fish and Wildlife Office
2800 Cottage Way, W-2605
Sacramento, CA 95825

Sent Via U.S. Mail and email to lori_rinek@fws.gov

RE: Scoping Comments on the Bay Delta Conservation Plan (“BDCP”)

Dear Ms. Rinek:

On behalf of the Natural Resources Defense Council (“NRDC”), The Bay Institute, Defenders of Wildlife, Environmental Defense Fund, and our combined members and activists in California, we are writing to provide comments on the federal agencies’ February 13, 2009 Notice of Intent for the Bay Delta Conservation Plan. Last year our organizations submitted joint scoping comments on BDCP to the State of California, which we have attached hereto as Exhibit A and incorporate by reference. Our prior comments address the range of alternatives to be considered, particular environmental impacts to be analyzed, climate change analysis, and consistency with legal requirements under the Endangered Species Act and other applicable laws. *See* Exhibit A. In addition, we submit the following additional comments regarding:

- (1) BDCP’s consistency with the Delta Vision Strategic Plan;
- (2) BDCP’s consistency with the Central Valley Project Improvement Act (“CVPIA”), and the recent CVPIA Independent Fisheries Review Panel’s Report;
- (3) The EIS/EIR’s analysis of environmental impacts from and consultation on upstream operations and coordinated operations of the CVP and SWP; and,
- (4) The EIS/EIR’s analysis of the impacts of climate change, particularly with respect to (a) water supply and (b) changes in species’ ranges.

(1) BDCP’s Consistency with the Delta Vision Strategic Plan

The BDCP should incorporate and implement the *Delta Vision Strategic Plan’s* recommendations,¹ including, in particular: addressing unresolved issues before making decisions regarding conveyance (*see* Strategy 5.1 and the letter from Delta Vision Task Force to the Governor dated June 20, 2008, which is attached hereto as Exhibit B and incorporated by this reference); improving habitat and flows for fish in the Delta and upstream (*See* Strategy 3.1, 3.2,

¹ The *Delta Vision Strategic Plan* is available online at: http://deltavision.ca.gov/StrategicPlanningProcess/StaffDraft/Delta_Vision_Strategic_Plan_standard_resolution.pdf, and is incorporated by this reference.

and 3.4); investing in water efficiency and alternative water supply sources to reduce reliance on the Delta and increase regional self-sufficiency (*See* Strategies 4.1 and 4.2); and reforming governance and financing of the agencies in the Delta (*See* Strategies 7.1, 7.2, and 7.3). Our organizations strongly support the *Delta Vision Strategic Plan*, and we expect that BDCP will, in conjunction with other legislative and administrative actions, implement the *Strategic Plan*'s recommendations, particularly those identified above.

(2) BDCP's Consistency with the CVPIA and the CVPIA Independent Fisheries Review

As we noted in our prior comment letter, operation of the CVP must comply with the CVPIA, and BDCP should incorporate and implement the CVPIA's anadromous fish doubling goal, which is also a requirement of State law. *See* Exhibit A at p. 7.² Likewise, BDCP must also be consistent with and advance the CVP's water supply obligations with respect to state and federal wildlife refuges under the CVPIA. 106 Stat. 4600 §§ 3406(a), 3406(d).

In addition, the Department of the Interior recently released the CVPIA Independent Fisheries Review Panel's final report on implementation of the CVPIA, which makes several critical recommendations to improve the Department's implementation of the CVPIA's anadromous fish doubling goal, including: development of a new, comprehensive, adaptively managed Anadromous Fish Restoration Program plan and a revised b(2) policy; utilizing the full legal authority of the CVPIA to achieve the Act's goals; and implementing the CVPIA through other regulatory and planning processes to restore Central Valley salmonids.³

Our organizations strongly support the Department's leadership in the BDCP process to ensure that the final plan is consistent with and advances the CVPIA's goals and authorities, including the anadromous fish doubling goal, refuge water supplies, and future implementation of the Independent Fisheries Review Panel's report.

(3) The EIS/EIR's analysis of environmental impacts from and consultation on upstream operations and coordinated operations of the CVP and SWP

As we emphasized in our prior letter to the State, we strongly encourage BDCP to take a holistic approach that analyzes coordinated CVP/SWP operations from upstream reservoirs to the Delta, rather than limiting its planning process to the legal Delta. *See* Exhibit A at 14. We continue to strongly advocate for such an approach. In addition to meeting NEPA/CEQA requirements by analyzing upstream impacts from the coordinated operations of the CVP and SWP in the cumulative effects analysis in the EIS/EIR, we strongly encourage BDCP to also consider changes to reservoir operations in order to achieve the BDCP's goals, as well as to meet other legal requirements applicable to the CVP and SWP (including the CVPIA, state and federal water quality laws, and the state and federal Endangered Species Acts). The NEPA review

² The salmon doubling goal was also incorporated into the *Delta Vision Strategic Plan*. *See Delta Vision Strategic Plan* at 83.

³ A copy of the CVPIA Independent Fisheries Review is available online at http://www.cvpia-independentreview.com/FisheriesReport12_12_08.pdf and incorporated by this reference.

cannot be limited to the Delta, but must consider all direct and indirect impacts on the environmental baseline.⁴

Likewise, the coordinated operations of the CVP and SWP and its infrastructure (including any modifications proposed by BDCP) must undergo a section 7 consultation under the ESA. *See* 74 Fed. Reg. 7257, 7258 (“in a parallel yet separate process, Reclamation will be required to reinitiate Section 7 consultation on the long-term operation of the CVP, as coordinated with the SWP, to the extent that such coordinated operations may be modified to effectively be integrated with any operational or facility improvements that may occur from implementation of the BDCP.”). That consultation must consider the coordinated operations of the projects as a whole, not merely any changes proposed by BDCP, and the consultation must consider all federal, state, private and other actions that may affect listed species, including nondiscretionary actions, to ensure that the proposed project will not cause jeopardy to the survival and recovery of the species or adversely modify its critical habitat. *NWF v. NMFS*, 524 F.3d 917, 928-931 (9th Cir. 2008).

(4) The EIS/EIR’s analysis of climate change impacts, particularly with respect to (a) water supply and (b) changes in species’ ranges;

Our prior State scoping letter addressed the need to analyze climate change impacts, particularly with respect to water supply implications. *See* Exhibit A at 10-11. Recently, the California Department of Water Resources released a new analysis of climate change impacts on water supplies, which estimates that by 2050 (within the expected permit term of BDCP), delta exports would be reduced by 7-10%, and carryover storage would be reduced by 15-19%. *See* DWR, Possible Impacts of Climate Change to California’s Water Supply (April 2009), attached hereto as Exhibit C. BDCP, and the EIS/EIR, should utilize this information in analyzing the long term impacts and benefits of the proposed project and alternatives.

In addition, we note that climate change is likely to result in changes to the range of many avian,⁵ terrestrial,⁶ and aquatic species. The EIS/EIR should incorporate the best available science with respect to changed species’ ranges as a result of climate change, and the BDCP adaptive

⁴ Under NEPA, the environmental baseline generally consists of the biological and other conditions at the time the Notice of Intent is published. 40 C.F.R. §§ 1502.14-.15. Likewise, under the ESA, the environmental baseline includes “the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process.” 50 C.F.R. § 402.02; *see NWF v. NMFS*, 524 F.3d at 929-31. Therefore, the environmental baseline for BDCP should include the biological opinions of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on the Operations Criteria and Plan (OCAP) for coordinated operations of the CVP and SWP.

⁵ To the extent not addressed in our prior comments, *see* Exhibit A at 6-7, 12, we also encourage BDCP to be consistent with existing HCPs and other legal requirements relating to birds, including but not limited to the Central Valley Joint Venture bird conservation plans, which are available online at <http://www.centralvalleyjointventure.org/plans/>.

⁶ In addition, we strongly encourage BDCP to analyze and address impacts to terrestrial species under the legal framework of the NCCPA, which we understand is currently the intent of the parties in BDCP. *See also* Exhibit A at 2-3.

management framework should address such range changes as foreseeable circumstances. *See* Exhibit A at 4-5.

Conclusion:

BDCP is one of the most ambitious, and important, habitat conservation plans ever attempted. In order to ensure that BDCP meets legal requirements, incorporates the best available science, and achieves its goals, we strongly encourage federal biologists and other staff from all relevant agencies (USFWS, NMFS, USBR, EPA, ACOE) to participate in the BDCP process. Federal leadership and involvement is critical to the successful resolution of this planning effort.

Thank you for consideration of our views. Please feel free to contact us at your convenience if you have any questions or concerns with these comments.

Sincerely,



Doug Obegi
Natural Resources Defense Council



Kim Delfino
Defenders of Wildlife



Gary Bobker
The Bay institute



Ann Hayden
Environmental Defense Fund

EXHIBIT A



May 30, 2008

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

VIA U.S. MAIL AND EMAIL TO delores@water.ca.gov

RE: Scoping Comments on the BDCP EIS/EIR

Dear Ms. Brown:

We are writing on behalf of the Natural Resources Defense Council, Defenders of Wildlife, Environmental Defense Fund, and The Bay Institute, and our hundreds of thousands of collective members and activists in California, to submit the following comments on the scope of the Environmental Impact Statement / Environmental Impact Report ("EIS/EIR") that is being prepared for the Bay Delta Conservation Plan ("BDCP"). We expect that analysis of these issues in the environmental review process for the BDCP will help lead the State and federal agencies to sustainably manage the CVP and SWP in the Delta, consistent with the co-equal goals of ecosystem health and reliable water supplies established by the Delta Vision Blue Ribbon Task Force. These comments are supplementary to our joint comments to the National Marine Fisheries Service and U.S. Fish and Wildlife Service dated March 24, 2008, which are attached hereto as Exhibit A and incorporated by this reference.

We present the following recommendations for the environmental review process of the BDCP:

- The BDCP should utilize an ecosystem approach under the Natural Community Conservation Planning Act, Cal. Fish and Game Code §§ 2800 *et seq.* ("NCCPA");
- The BDCP should adopt measurable goals and objectives for the species (e.g., population abundance targets where possible) and habitats covered by the Plan, should include effective monitoring to determine progress towards these goals, and should adapt management of the CVP and SWP over time to meet these goals;
- The BDCP should include operational criteria to respond to a broad range of water years and other foreseeable circumstances, such as poor ocean conditions, in order to operate the CVP and SWP to meet conservation goals and ensure that the regulatory assurances provided in the Habitat Conservation Plan / Natural Community Conservation Plan ("HCP/NCCP") do not adversely affect the Delta environment;
- Consistent with the requirements of the federal Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.* ("ESA"), California Endangered Species Act, Cal. Fish and Game Code §§ 2080 *et*

seq. (“CESA”), and NCCPA, the HCP/NCCP must minimize the take of covered species, must provide guaranteed funding for implementation over the life of the permits, must not jeopardize either the survival or recovery of listed species, and must be consistent with existing legal requirements applicable to the CVP and SWP;

- The EIS/EIR should analyze alternatives that would increase outflow and reduce exports as compared to current conditions, and analyze water conservation, efficiency, and additional demand reduction measures, as well as water recycling, groundwater and conjunctive use programs, urban stormwater capture and other tools to achieve the BDCP’s water supply reliability goal;
- The baseline for analysis in the EIS/EIR must be based on the existing operational and legal constraints for the CVP and SWP;
- The EIS/EIR must analyze the BDCP’s impacts, with particular focus on: (1) global climate change; (2) water quality, including salinity, toxic hot spots, pesticides, mercury, and other pollutants; (3) biological resources, including all species that may be impacted by the CVP and SWP, as well as upland habitats that may be affected; and (4) cumulative impacts; and the approved HCP/NCCP must minimize the Projects’ environmental impacts to a less than significant level if feasible mitigation measures exist;
- The EIS/EIR must adequately analyze the effectiveness of proposed mitigation and conservation measures over the term of the BDCP;
- The EIS/EIR must analyze consistency with and potential impacts on the Delta Vision “vision” document and strategic plan;
- The EIS/EIR should consider broadening the Project Area and scope to include all parts of the CVP and SWP, including reservoirs upstream of the Delta, as well as other activities that impact covered species;
- The EIS/EIR should analyze the economic costs and benefits of water conservation and efficiency improvements to meet water supply needs, as well as identifying reasonable sources of funding to implement the BDCP; and
- The scoping and comment period for the EIS/EIR should be reopened upon completion of the BDCP conservation strategy and adoption of the Delta Vision Strategic Plan.

On the pages that follow, we address these issues in greater depth.

I. The BDCP Must Utilize the NCCPA, Rather Than an Incidental Take Permit under CESA, to Ensure Long-Term Conservation.

The BDCP must utilize the ecosystem approach of the NCCPA, rather than relying on an incidental take permit under CESA, to ensure that the plan will provide long-term conservation in the Delta. The March 17, 2008 Notice of Preparation for the BDCP EIS/EIR (“NOP”) reflects uncertainty as to whether a Natural Community Conservation Plan under the NCCPA, or an incidental take permit under CESA, will be utilized to comply with State law requirements. The NCCPA was designed for multi-species conservation planning, with an emphasis on habitat protection and restoration, as well as adaptive management, to meet the Act’s goals. As discussed further below in part IV(C) of this letter, restoration of species and habitats is a key goal of the NCCPA, Fish & Game Code § 2801(i), and the Act requires that implementation of the approved plan will help bring about the recovery of listed species and prevent additional

listings. *See* Cal. Fish & Game Code § 2805 (definition of “conserve”). Therefore, we strongly urge that the BDCP utilize the NCCPA because it will provide a more holistic and ecosystem-based approach to conserving and managing the Delta than a species-centric approach under CESA.

II. The BDCP Must Include Clear, Measureable Conservation Goals and Objectives, Monitor Progress towards those Goals, and Adapt Management to Meet these Goals.

The BDCP Points of Agreement and the NOP both emphasize the use of adaptive management to meet the BDCP’s goals. We support the use of adaptive management in the BDCP, and we note that both the NCCPA and ESA require the use of adaptive management in an HCP/NCCP. Cal. Fish & Game Code § 2820(a)(2), (8), (b)(5), (f)(1)(G); *see* U.S. Fish and Wildlife Service, Habitat Conservation Plan Handbook (1996 and 2000 Addendum) (“HCP Handbook”) at 3-24. The BDCP should include a robust adaptive management program, as well as effective monitoring to determine whether program goals are being achieved and how to adapt management to better achieve those goals. The BDCP must include an effective monitoring program, *see* Fish and Game Code § 2820(a)(7); 50 C.F.R. § 17.22(b)(1)(iii)(B), (b)(3), and the EIS/EIR should include some analysis of monitoring programs, including the levels of anticipated take of covered species required for effective monitoring.

However, in order for adaptive management to be effective, the HCP/NCCP must have clear, measurable biological goals and objectives. The BDCP’s goals must be consistent with the co-equal goals of ecosystem health and water supplies established by the Delta Vision Blue Ribbon Task Force, but they must be far more specific than the general goals established in the NOP. The BDCP Points of Agreement recognizes that biological goals and objectives for each covered species should be adopted as part of the BDCP, but those goals have not yet been developed.

The BDCP should use measureable goals and objectives with respect to species and habitats, including all species covered by the plan and numerous species and habitat types affected by the plan, to ensure that the BDCP is achieving its conservation purpose. In particular, given the Delta species and habitat information available to the agencies, we believe that many species and habitat goals can be quantified, providing the best possible method of measurability. The Bay Institute, EDF, NRDC, Defenders of Wildlife, and Sierra Club California recently submitted joint comments to the Delta Vision Blue Ribbon Task Force which include ecosystem goals and targets that should be analyzed as potential goals for the BDCP. A copy of those comments are attached as Exhibit B and incorporated by this reference. Likewise, the ecosystem goals and objectives being developed by the CalFed Ecosystem Restoration Program and the Delta Vision Ecosystem Working Group may provide useful models in this regard. Lastly, the BDCP’s biological goals and objectives should be consistent with the numeric recovery plan goals for salmon, smelt and other listed species that have been or are being prepared by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.

III. The BDCP Should Include Operational Criteria and Other Adaptive Management Measures to Respond to a Broad Range of Foreseeable Circumstances.

As noted above, we are encouraged that the BDCP will include adaptive management as part of the actions covered under the HCP. NOP at 5-6. As both the ESA and NCCPA recognize, adaptive management is a necessary element of an ecologically sustainable HCP/NCCP. Fish & Game Code § 2820(a)(2), (8), (b)(5), (f)(1)(G); HCP Handbook at 3-24; *see* 50 C.F.R. § 17.22(b)(2)(C), (b)(5). This is particularly true in the Delta, where water supplies and river flows vary on daily, seasonal, annual, and decadal timelines, where global climate change will change the Delta over time, and where ocean conditions and other causes outside the control of the BDCP can significantly affect covered species. As the CALFED science program has found, because of the inherent variability in the Delta ecosystem, “any management plan for the Delta must retain or restore flexibility and variability if key species, processes, and services are to be maintained.” CALFED Science Program, *The State of Bay-Delta Science 2008, Summary for Policymakers and the Public* (2008) at 8. For instance, with respect to salmon, when ocean conditions are unfavorable, it is even more critical that we conserve the existing population by managing the CVP and SWP to maximize protection of salmon.

The NCCPA requires that the level of assurances provided by a NCCP be “commensurate with long-term conservation assurances and associated implementation measures pursuant to the approved plan.” Fish & Game Code § 2820(f). A critical component in determining the level of assurances is “[t]he degree to which a thorough range of foreseeable circumstances are considered and provided for under the adaptive management program.” *Id.* § 2820(f)(1)(8); *see also* 50 C.F.R. §§ 17.22(b)(5), 222.307(g) (regulatory assurances with respect to changed and unforeseen circumstances under the ESA). In addition, we note that California law requires suspension or revocation of the NCCP if take of the species under the plan will jeopardize the continued existence of the species. *See* Fish & Game Code § 2823. Thus all parties have an incentive in ensuring that the HCP/NCCP achieves its goals and avoids jeopardy to any listed species.

Therefore, we recommend that the EIS/EIR analyze operational criteria to respond to a range of water years and other foreseeable circumstances that will affect covered species, including: (1) poor ocean conditions that affect ocean-going covered species including salmon; (2) continuing toxic pollutants in the Delta, which affect numerous covered species; (3) increased levels of take from non-covered activities; (4) failure of one or more levees in the Delta; (5) changes to hatchery policies; (6) increased upstream diversions (7) further declines in the populations of listed species, (8) impacts from ongoing development in the Delta, and (9) the arrival or spread of invasive species. The operational criteria must alter the timing and/or amount of water exports through the CVP and SWP as necessary to protect covered species and the Delta ecosystem due to such foreseeable circumstances.

Defining operational criteria to respond to different water years and other foreseeable circumstances may be among the most important and difficult parts of the BDCP process. The criteria must be flexible enough to respond to such changed conditions, but also provide sufficient assurances that they will be implemented in a way that protects the Delta ecosystem. And there must be clear criteria for triggering and guiding the adaptive operating criteria.

As such, the flexibility required for the BDCP to succeed precludes any inflexible guarantees or complete regulatory assurances regarding water supplies and exports. As a matter of policy, California should not provide regulatory assurances for reliable water supplies that fail to contribute to the recovery of these species and of the entire ecosystem. Instead, the BDCP must retain sufficient flexibility to respond to changed conditions and continue to conserve and restore listed species and the health of the Delta ecosystem.

IV. Compliance with the Legal Requirements for an HCP/NCCP under the ESA, CESA, and NCCPA

The ESA, CESA, and NCCPA impose several legal requirements for the adoption of an HCP/NCCP. Four of these requirements are of particular importance here.

A. The HCP/NCCP Must Minimize and Fully Mitigate Take of Covered Species

First, under the ESA the HCP must minimize the take of covered species to the “maximum extent practicable.” 16 U.S.C. § 1539(a)(2)(B)(ii). However, State law provides more protection to species listed under CESA. Under CESA, the take must be “minimized and fully mitigated,” and under both CESA and the NCCPA, the measures required to minimize take must be roughly proportional to the amount of take. Fish & Game Code §§ 2081(b)(2), 2820(b)(3)(b), (b)(9). There is no question that the CVP and SWP are significant sources of mortality for most of the fish species proposed to be covered by the BDCP HCP/NCCP. *See, e.g., NRDC v. Kempthorne*, 506 F.Supp.2d 322 (E.D. Cal., 2007). Significantly reducing the Projects’ take of these species below existing levels is critical to the survival and recovery of these species. Changes to the operations of the water projects that significantly reduce take of these species over the term of the permit must be implemented as part of the final approved HCP/NCCP.

B. The HCP/NCCP Must Provide Guaranteed Funding for Implementation Over the Life of the Permit.

Second, the HCP/NCCP must provide guaranteed funding for its implementation over the life of the permits. 16 U.S.C. § 1539(a)(2)(B)(iii); *National Wildlife Federation v. Babbitt*, 128 F.Supp.2d 1274 (E.D. Cal. 2000); Fish & Game Code § 2820(a)(10), (b)(3)(A), (b)(8); *id.* § 2081(b)(4). Reliance on general governmental revenues is not adequate, nor is it consistent with the “beneficiary pays” principle of the CALFED Record of Decision. Rather, in exchange for the regulatory assurances that the HCP/NCCP provides, the beneficiaries of the permit should fund the majority of the implementation of the plan. Elements of the program, such as conveyance facility, which are designed solely to provide water supply benefits and mitigation for water project operations, should be paid for entirely by water users. To the extent that market mechanisms similar to the Environmental Water Account are relied on as conservation measures in the BDCP, the plan must likewise identify and ensure adequate funding to implement such market mechanisms. The NCCP/HCP must identify the user fees or other funding mechanisms that will provide the funding required over the life of the permit.

C. The HCP/NCCP Must Ensure that the Projects do not Jeopardize the Existence or the Recovery of the Covered Species.

Third, the HCP/NCCP must not jeopardize either the survival or recovery of listed species. *See* 16 U.S.C. § 1539(a)(2)(B)(iv); Fish and Game Code §§ 2081(c), 2801(i), 2805, 2823; *NWF v. NMFS*, 481 F.3d 1224, 1235-36 (9th Cir. 2005), as modified, -- F.3d --, 2008 WL 1821470 (April 24, 2008) (jeopardy analysis must consider the effects of the proposed action “within the context of other human activities that impact the listed species,” and “where existing conditions already jeopardize a species, an agency may not take action that deepens the jeopardy by causing additional harm.”). Therefore, to be consistent with the ESA and CESA, the activities authorized under the HCP/NCCP cannot jeopardize the recovery of any listed species, and they should be consistent with the recovery plans for listed species, including the recovery plan for Chinook salmon that is currently being developed.¹ *See NWF v. NMFS*, 481 F.3d at 1236-38, as modified, -- F.3d --, 2008 WL 1821470 (April 24, 2008) (requiring determination that the project will not jeopardize recovery of the species in the section 7 consultation process).

Furthermore, in order to comply with the NCCPA, the approved plan must not only avoid jeopardy to the survival of the species, *see* Fish and Game Code § 2823, but it must also promote the recovery of covered species, and prevent the listing of other species. *Id.* §§ 2801(i), 2805 (definition of “conserve”). Therefore, in order to comply with both the ESA and the NCCPA, the approved HCP/NCCP must promote the recovery of these covered species.

Merely sustaining the existence of these species is insufficient as a matter of law under the ESA and the NCCPA, and it is fundamentally wrong from a public policy perspective. California must require the CVP and SWP to do their part to recover salmon, Delta smelt, and the other species that have been adversely affected by the State and federal water projects for so many years.

D. The Operations Authorized in the HCP/NCCP Must Comply with Other Legal Requirements Applicable to the SWP/CVP.

Finally, the actions authorized under the HCP/NCCP must be incidental to “the carrying out of an otherwise lawful activity.” 16 U.S.C. § 1539(a)(1)(B); Fish and Game Code § 2081(b)(1); Cal. Code Regs., tit. 14, § 783.4(a)(1). Although this statutory language does not require the federal government to ensure that the Projects comply with existing law under the ESA, *Center for Biological Diversity v. U.S. Fish & Wildlife Service*, 450 F.3d 930, 941-943 (9th Cir. 2006), compliance with the incidental take statement “does not immunize its holder for violations of any other law, be it state or federal,” *id.* at 942.² If the activities authorized by the HCP/NCCP are inconsistent with the existing statutory framework applicable to the CVP and SWP, the

¹ *See also* 40 C.F.R. § 1502.16(c); CEQA Guidelines § 15125(d),(e) (requiring analysis of whether the project complies with existing plans).

² In addition, the Ninth Circuit’s analysis suggests that under CESA, the State must determine that the operations of the CVP and SWP are consistent with existing law. *Id.* at 941-43; *compare* Cal. Code Regs., tit. 14, § 783.4(a)(1) (requiring the DFG Director to determine that the taking is “incidental to an otherwise lawful activity”) with 16 U.S.C. § 1539(a)(2)(B)(1) (requiring the Secretary to determine that “the taking will be incidental”).

regulatory benefits of the BDCP will be illusive because the Projects' operations will violate existing law.

Operation of the CVP and SWP must be consistent with numerous environmental laws, including, but not limited to: the Central Valley Project Improvement Act (106 Stat. 4600 §§ 3401-3412 ("CVPIA")); Fish and Game Code sections 5901, 5930-31, 5937, and 6901-3; the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, Porter-Cologne Water Quality Control Act, Cal. Water Code §§ 13000 *et seq.*, Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (2006), and Decision 1641; the public trust doctrine; and article 10, section 2 of the California Constitution (the reasonable use doctrine). In particular, State and federal law require the CVP and SWP to be managed to comply with the goal of doubling natural salmon populations. CVPIA § 3406(b)(1); Cal. Fish and Game Code § 6902. Recent language from DWR suggests that the BDCP process may seek to revise some existing legal requirements, particularly with respect to water quality.³ We strongly recommend that the EIS/EIR specifically analyze whether and to what extent the alternatives analyzed in the environmental review are consistent with these existing requirements, in particular the statutory policy of doubling anadromous fish populations under the CVPIA and State law, and that the final BDCP include tools and flexibility to be consistent with all of these existing legal requirements, including the goal of doubling anadromous fish populations.

V. The EIS/EIR Must Analyze Increased Outflow / Reduced Export Alternatives Among the Reasonable Range of Alternatives, and Analyze Water Conservation, Efficiency, and Demand Reduction Measures, as well as Water Recycling and Conjunctive Use Programs, as Alternatives to Achieve (in part) the BDCP's Water Supply Reliability Goal.

CEQA and NEPA both require that a reasonable range of alternatives to the proposed project be considered in the environmental review process, including a no project alternative. Cal. Pub. Res. Code §§ 21002, 21061, 21100; tit. 14, Cal. Code Regs. ("CEQA Guidelines") § 15126.6; 42 U.S.C. § 4332; 40 C.F.R. §§ 1502.14, 1508.25(b). The EIS/EIR should analyze the conveyance alternatives identified in the Notice of Preparation ("NOP"), however, alternative export regimes must also be analyzed.

In particular, the NOP identifies four alternative Delta conveyance strategies to be considered in the environmental review process, per the Governor's direction. *See* NOP at 3. However, in order to meet CEQA's requirements and to adequately inform decision-making, in addition to these alternative conveyance systems, the EIS/EIR must consider a reasonable range of outflow and export levels from the Delta, including several alternatives that increase the level of freshwater outflow and reduce the amount of water diverted and exported from the Delta, as compared with current conditions. *See Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d 553, 566 (1990) (EIR must consider a reasonable range of alternatives that offer substantial environmental benefits and may feasibly be accomplished).⁴

³ See note 2, *supra*, at 22, 34.

⁴ The Supreme Court's pending decision on review of the case of *In Re Bay Delta Programmatic EIR*, 133 Cal.App.4th 154 (2005), will provide additional guidance on this question. However, even assuming, *arguendo*, that

Increasing outflow and reducing exports from the Delta is likely to have significant environmental benefits, as increased exports over the past several years have coincided with significant declines in many fish species in the Delta, including Delta smelt, Sacramento Splittail, fall run Chinook salmon, and the Pelagic Organism Decline (“POD”). Court-ordered reductions in exports to protect Delta smelt, as well as scientific evidence relating to POD, demonstrate that increased outflow and reduced diversions likely are necessary to protect the Delta ecosystem and covered species.

Increased outflow and reduced exports likely are necessary to meet the ESA/CESA requirements of reducing take to the maximum extent practicable, as demonstrated by Judge Wanger’s order to protect Delta smelt from jeopardy in *NRDC v. Kempthorne*, 506 F.Supp.2d 322 (E.D. Cal., 2007). Increasing freshwater outflow by reducing water diversions is also likely to be required to recover longfin smelt, which is a candidate for listing under State and federal law. In addition, to the extent that the Project causes potentially significant environmental impacts, including impacts on unlisted species or water quality impacts, increased outflow may be necessary to minimize and mitigate those impacts to a less than significant level, as required by CEQA. Finally, increased outflow resulting from reduced diversions and exports may also be necessary to comply with other legal requirements applicable to the operation of the CVP and SWP, including the Central Valley Project Improvement Act and section 6902 of the Fish and Game Code.

Moreover, increased outflow alternatives not only are consistent with the goals of the program as stated in the NOP, but they may be necessary to achieve these goals. The NOP establishes several goals of the program, including: the conservation and management of covered species; preserving, restoring, and enhancing natural habitats and ecosystems that support covered species; and restoring and protecting water supply, water quality, and ecosystem health. *See* NOP at 7. The Delta Vision Blue Ribbon Task Force’s document, “Our Vision for the California Delta” released in December, 2007 also found that reduced diversions may be necessary to achieve the co-equal goals of ecosystem health and water supply.

With respect to increased outflow / reduced export alternatives analyzed in the EIS/EIR, demand reduction, water conservation, and water efficiency measures can be used to meet the water supply reliability goal of the BDCP. Likewise, water recycling, conjunctive use, urban stormwater capture, improved groundwater management, desalination, water transfers and similar programs can also provide additional water supply reliability. In addition, the BDCP should analyze land retirement, including land retirement on the west side of the San Joaquin Valley, as one measure to help achieve increased freshwater outflow and reduced exports/diversions. While land retirement must be carefully designed to avoid impacts to third parties, in the past Westlands Water District has advocated a land retirement program of up to 200,000 acres. Properly designed, land retirement can yield significant conservation benefits by making more water available for fish and wildlife. As more fully discussed in our March 24,

such a range of alternatives is not required as a matter of law by CEQA, such a range of alternatives is critical from a public policy perspective, and as noted above, may be necessary to meet other legal requirements applicable to the CVP and SWP.

2008 letter, the EIS/EIR should include an analysis of such measures to achieve the BDCP goal of water supply reliability. Delta diversions and exports should not be the only method of achieving water supply reliability analyzed in the BDCP.

The document should also analyze the water supply reliability benefits of reduced diversions. Such reductions could reduce ongoing conflicts, unexpected pumping curtailments and judicial involvement. Reduced pumping alternatives with a “buffer” to protect the ecosystem could prevent additional listings and recover listed species more rapidly. All of these factors suggest that a lower level of average diversions could be more reliable than a higher level. In fact, experience in the past several years demonstrates this. Unsustainably high levels of diversions led a federal judge to order significant pumping reductions. In short, recent record levels of pumping have proven to be unreliable. The document must clearly distinguish between increased average diversions and increased reliability. The two terms are not identical.

Therefore, we strongly encourage the EIS/EIR to analyze a range of alternative outflow and export levels, which includes several alternatives that increase outflow and reduce exports compared to existing levels, and analyze alternative measures to achieve water supply reliability. In addition, as stated in the NOP, the environmental document should analyze a range of operational alternatives to meet the Projects’ goals. NOP at 2 (“The EIR/EIS will also analyze the impacts of alternative water operations and management actions to achieve conservation and water supply reliability goals.”).

VI. The Proper Environmental Baseline Is Existing Operations, Not the Maximum Exports that the System is Operationally Capable of or Permitted For.

Both NEPA and CEQA require that the Project be analyzed against the existing environmental conditions (the “environmental baseline”), so that the Project’s impacts can be meaningfully analyzed. 40 C.F.R. § 1502.15; CEQA Guidelines § 15125(a); *see County of Amador v. El Dorado County Water Agency*, 76 Cal.App.4th 931, 952 (1999). In order to meet CEQA and NEPA’s informational goals, the environmental baseline must be based on actual conditions on the ground, rather than the maximum exports that the CVP and SWP are operationally capable of or the full extent of the Projects’ paper water rights. Likewise, the ESA requires that the baseline for the section 7 jeopardy analysis include the effects of existing human activities, even if those activities are outside of the scope of the federal action currently contemplated. *NWF v. NMFS*, 481 F.3d at 1236-38, as modified, -- F.3d. --, 2008 WL 1821470 (April 24, 2008) (rejecting use of hypothetical reference case that ignored impacts from related, nondiscretionary activities).

The requirement of using a realistic baseline takes on additional significance because of our concern that DWR’s recent analysis of the potential benefits of a dual conveyance model rely on an inflated, hypothetical “reference case,” rather than actual export levels.⁵ Using an unrealistic baseline significantly skews the environmental analysis, and it likely will understate the actual environmental impacts of the Project and overstate its benefits.

⁵ DWR, “An Initial Assessment of Dual Delta Water Conveyance,” April 2008, available online at http://deltavision.ca.gov/BlueRibbonTaskForce/April2008/Handouts/Item_5d_Report.pdf.

Therefore, the environmental baseline analyzed in the EIS/EIR must be based on current levels of exports and withdrawals, including the restrictions to protect Delta smelt pursuant to the court's order in *NRDC v. Kempthorne*, 506 F.Supp.2d 322 (E.D. Cal., 2007), limitations to comply with D-1641, and other current legal and operational constraints on the system. The impacts of the Project must be measured against this baseline, and those impacts must be minimized to a less than significant level if feasible mitigation measures exist.

VII. Potentially Significant Impacts to be Analyzed in the EIS/EIR

The NOP identifies a list of potential issues to be analyzed in the EIS/EIR. NOP at 9. We offer the following recommendations for the analysis.

A. The EIR/EIS Must Analyze the Effects of Global Climate Change on the CVP/SWP, Minimize the Projects' Environmental Impacts in Light of Global Climate Change, and Minimize the Projects' Contributions to Global Climate Change

As the NOP recognizes (NOP at 9), and as DWR and other stakeholders are aware, global climate change is likely to substantially affect the operation of the State and federal water projects. In terms of water supply, global climate change is likely to significantly alter the timing, amount, and form of precipitation. It is anticipated that due to global climate change, significantly less snowfall will occur, particularly in the Sierra Nevada range, and that precipitation will come in the form of more frequent, more intense storms. In addition, it is likely that earlier snowmelt and increased spring runoff will occur; indeed, the date when 50% of annual runoff has occurred is one to four weeks earlier than it was 50 years ago. The percentage of total flows on the Sacramento River that occur between April to July flows declined by nearly ten percent over the last century, and it is likely that global climate change will continue this trend, resulting in substantially reduced summer runoff and flows in the Delta.

At the same time, global climate change will continue the existing trend of sea levels rise, which threatens to inundate many low lying lands in the Delta, and it likely will increase risks of flooding in the Delta. These effects have significant implications for operation of the CVP and SWP, which rely on melting snowpack for a substantial amount of the water supply that the Projects export.

In addition to effects on water supply and flood control, global climate change will affect Delta ecosystems. Changes to the timing, magnitude and form of precipitation will affect ecosystems directly, as well as likely resulting in increased water temperatures, adversely affecting cold water species like salmon. Temperature control devices, like those installed at Shasta, may be needed in other dams to protect covered species and minimize the Projects' take of these species. Increased carry-over storage to provide larger cold water pools may also be required to provide adequate protection for salmonids.

DWR's analysis of climate change indicates that climate change is likely to increase water evaporation and could reduce total stream flows, and may make it difficult for the CVP and SWP to meet existing demands for water. *See DWR, Progress on Incorporating Climate Change into*

Management of California's Water Resources (July 2006) at 2-6, 2-56, 4-14 to 4-17. Given the 50 year permit term under consideration in the BDCP, the EIS/EIR must anticipate reductions in the amount of stream flow available for export and delivery.

The operation of the State and federal water projects must adapt to the changes that global climate change will bring. In order to ensure that the Projects' impacts are minimized and mitigated, and that take of covered species is minimized and fully mitigated, the EIS/EIR must analyze how the Projects will adapt to climate change and minimize the Projects' impacts on the environment in light of these expected changes.

At the same time, CEQA requires that the Projects minimize their greenhouse gas emissions and contributions to global climate change. The water projects require significant amounts of energy to export water to destinations outside of the Delta; on average, pumping one acre-foot of SWP water to Southern California requires 3,000 kWh, and the SWP as a whole consumes an average of approximately 5 billion kWh/yr, accounting for 2 to 3 percent of all electricity used in California. Reducing exports from the Delta may significantly reduce the amount of energy used by the CVP and SWP, and thereby reduce the Projects' greenhouse gas emissions. The BDCP should analyze other actions that can be included in the BDCP to reduce greenhouse gas emissions and/or sequester carbon, such as the planting of tules and wetlands restoration.

B. The EIS/EIR Must Analyze and Minimize the Full Range of Water Quality Impacts

The analysis of the Projects' water quality impacts in the EIS/EIR must consider the full range of pollutants in the Delta, including pesticide pollution, toxic hot spots, salinity, mercury, and algal blooms. Any reduction in fresh water inflow to the Delta and/or outflow from the Delta may exacerbate existing water quality problems, resulting in a significant impact to the environment under CEQA/NEPA. In particular, salinity may not be used as a surrogate for an analysis of all water quality impacts. For example, changes in inflow patterns could change Delta residence time, lead to dissolved oxygen problems, and change the ratio of Sacramento River inflow to San Joaquin River inflow. These water quality impacts are unlikely to be adequately analyzed by a narrow focus on salinity. While many pollution problems are not caused by the Projects, the operation of the Projects undoubtedly plays a role in the magnitude, duration, and location of these water quality impacts. In addition, these water quality impacts may have cascading effects; for instance, it has been hypothesized that altered salinity levels resulting from Delta exports has increased the habitat suitability for invasive species, such as the Asian clam, that harm covered species like Delta smelt. The EIS/EIR must analyze the Projects' effects on water quality, including indirect effects to covered species and other wildlife, and those effects must be mitigated to a less than significant level.

C. The EIS/EIR Must Analyze and Minimize Impacts to Biological Resources and Habitats, Including Upland Habitats

CEQA and NEPA require that the EIS/EIR's analysis of the impacts to biological resources include the full range of plant and animal species and habitats that depend on the Delta ecosystem and may be affected by the covered activities in the BDCP. Impacts to these

biological resources must be minimized and mitigated to a less than significant level. Under CEQA, a project results in a mandatory finding of a significant impact if it would “substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; substantially reduce the number or restrict the range of an endangered, rare or threatened species.” CEQA Guidelines § 15065. Such impacts must be minimized to a less than significant level if feasible mitigation measures can be implemented. Pub. Res. Code §§ 21002, 21002.1(b), 21081; CEQA Guidelines §§ 15021, 15091-93.

The EIS/EIR therefore must analyze the impacts of the Project on listed and covered species, as well as the full range of plants, birds, fish, and wildlife that live in the Delta and are affected by the CVP and SWP. This includes upland habitats and species, including grasslands and wetlands in the South Delta, Suisun Bay, and state and federal protected areas, including wildlife refuges such as the San Luis National Wildlife Refuge. The EIS/EIR should also analyze the BDCP’s consistency with existing HCPs in the Delta, as well as HCPs that are in development now.

We also note that the inclusion of fall-run Chinook salmon on the list of covered species (NOP at 6) raises significant concerns. Although not currently listed under either the ESA or CESA, the fall run’s population has declined precipitously in recent years, in part due to the operation of the SWP and CVP. For the first time in the State’s history, the commercial and recreational fisheries for salmon were closed this year, and current data suggests that this closure may be extended to at least 2009. Inclusion of this species provides an unwelcome suggestion that DWR and the Bureau of Reclamation will manage the water projects in a manner that fails to prevent the listing of the species during the life of the permits. The analysis in the EIR/EIS must focus particular attention on this issue, and the HCP/NCCP must be designed so as to avoid the need for listing fall-run Chinook under CESA or the ESA. Fish and Game Code § 2805 (definition of “conserve”); *see* CEQA Guidelines § 15065(a)(1). But that is far from sufficient; a goal of the BDCP must be to maintain healthy sport and commercial fisheries, and the BDCP must include conservation measures to conserve, restore and sustain the fall-run Chinook population.

In particular, the analysis of potential impacts to salmonids and natural resources upstream of the Delta should include, but not be limited to, the following potential impacts: entrainment in any new conveyance facility; entrainment or interrupted downstream migration as a result of continued Delta pumping; increased predation; degraded water quality; reduced carry-over storage (particularly in light of the potential for deeper and longer droughts as a result of climate change); reduced cold-water pools, increased in-stream temperatures; and changes in river flows upstream of the Delta.

Finally, the EIS/EIR must analyze impacts to the entire Bay-Delta ecosystem as a whole. For example, a species-by-species approach is likely to fail to address fundamental issues related to ecosystem function.

D. The EIS/EIR Must Analyze and Minimize Cumulative Impacts

Finally, the EIS/EIR must analyze and minimize the cumulative impacts of the covered activities in conjunction with other reasonably foreseeable projects and activities, including urban and

agricultural runoff, in-Delta diversions, upstream diversions, continued and reasonably foreseeable increases in these diversions, and implementation of the San Joaquin River settlement. Even if the BDCP is limited to the covered activities specified in the NOP, and other impacts to the Delta ecosystem are not included, CEQA and NEPA require that the cumulative impacts of these other stressors be analyzed in conjunction with the impacts of the SWP/CVP. It is critical – and CEQA requires – that the cumulative impacts of the BDCP and other foreseeable projects on fish, wildlife and habitats be minimized to a less than significant level.

VIII. Effectiveness of the BDCP's Conservation and Mitigation Measures

Given the proposed fifty year term of the BDCP, ensuring that the conservation strategies and mitigation measures are likely to be effective is critical to the success or failure of the BDCP. As discussed above, the EIS/EIR must include a detailed analysis of impacts to all fish, wildlife, and habitats that could be affected by the BDCP. In order to do so, the EIS/EIR must analyze the effectiveness of the proposed conservation and mitigation measures in the BDCP.

In particular, to the extent that flexible operations and/or market mechanisms are relied upon in the plan, the document must include a thorough analysis of the performance of the Environmental Water Account (“EWA”). The EWA failed due to a wide range of problems, including: weakening of the regulatory baseline; the failure of operational flexibility to provide anticipated supplies; inadequate funding; the failure to trigger Tier 3 resources when needed; increases in the price of water on the market; a failure to fully implement the recommendations of the scientific community and regulatory agencies; the failure to analyze emerging problems and “adaptively manage” the EWA, and more. *See* Environmental Defense Fund, “Finding the Water,” (2005), available online at http://www.edf.org/documents/4898_FindingWater.pdf; Letter from K. Poole and B. Nelson to S. Cervantes dated December 10, 2007, attached hereto as Exhibit C and incorporated by this reference. To the extent that the BDCP relies on similar conservation measures, the EIS/EIR must analyze the EWA and the likelihood that the BDCP could suffer from similar problems.

IX. Consistency with the Delta Vision “Vision” and Strategic Plan

The EIR/EIR should analyze consistency with and potential impacts on the Delta Vision “vision” and strategic plan. The Delta Vision process is addressing some of the same issues as the BDCP. However, the Delta Vision process is broader in scope. It is not yet clear to what extent the BDCP and Delta Vision will have identical or complementary ecosystem restoration goals and strategies. Given the scope of the BDCP and the 50 year proposed term of permits, the BDCP could have a significant impact on the ability of the state of California to implement the Delta Vision strategic plan. The BDCP and Delta Vision may or may not reach the same conclusion regarding conveyance. The BDCP’s proposals could have indirect effects on Delta resources within the scope of the Delta Vision process. We will mention here only two possible impacts. First, if the Delta Vision Strategic Plan recommends reductions in water diversions, the achievement of that goal could be affected if the BDCP provides assurances regarding an operational scenario for the water projects at a higher rate of diversion. In addition, Delta Vision recommends governance reform to allow more balanced operation of the projects, the assurances in the BDCP could interfere with the implementation of this recommendation.

X. Scope of the BDCP

A. Scope of the BDCP and Project Area

We strongly encourage the BDCP to consider expanding the geographic scope of the BDCP. The NOP identifies the Project Area as limited to the statutory Delta, NOP at 7, even though the NOP notes that other conservation actions required by the BDCP may take place outside of the Project Area, *id.*, and the BDCP includes the operation of the SWP and CVP within the covered activities, NOP at 5. In order to manage the CVP and SWP facilities in the Delta, however, changes to upstream CVP and SWP facilities may be required; for instance, maintaining water and/or salinity levels in the Delta is dependent upon releases from CVP and SWP dams and reservoirs, which are currently not included in the Project Area. The BDCP therefore should include these reservoirs within the scope of the BDCP and include an evaluation of upstream reservoir reoperation to achieve the water quality and quantity in the Delta necessary to achieve the BDCP's goals. We also note that if these upstream reservoirs are not included in the Project Area, it would appear that they must seek separate take authorization under State and federal law. Likewise, the BDCP may want to include Suisan Bay in the Project Area, as it is a key spawning area for Delta smelt and the site of proposed restoration activities under the BDCP.

A holistic approach to managing the Delta requires that these upstream and downstream facilities and habitats be included in the BDCP. Even if such facilities and habitats are not included in the EIS/EIR, impacts outside of the Project Area must be analyzed and mitigated to a less than significant level.

B. Duration of BDCP Permits

The BDCP has proposed a fifty-year permit term. In light of the changing nature of the Delta and scientific uncertainty over causes of species declines, we encourage the BDCP to consider shorter permit terms, such as 5-10 years, rather than a fifty-year permit. *See also* Fish and Game Code § 2820(f)(1)(D), (H) (extent of regulatory assurances depend on the duration of the permit). The EIS/EIR should consider including alternative permit durations among the range of reasonable alternatives.

C. Other Activities to Potentially Include in the BDCP

The BDCP Points of Agreement asserts that other conservation actions outside of the habitat restoration program should be developed to address other stressors on the Delta, such as exposure to contaminants and toxics, entrainment in non-CVP/SWP intake facilities, and invasive species. BDCP Points of Agreement (Nov. 16, 2007) at 3, 7. However, the NOP does not include these activities within the scope of the BDCP. *See* NOP at 5-6. These activities cause significant impacts on the Delta ecosystem and listed species, and excluding these activities from the BDCP compromises its ability to develop a sustainable "solution" for the Delta.

Therefore, we encourage the BDCP to work with parties involved with these activities in order to consider including these activities in the framework of the BDCP. Regardless of whether they

are included in the regulatory framework, NEPA and CEQA require that their impacts be included in the current regulatory baseline, and that the cumulative impacts of the BDCP and these activities be analyzed and mitigated to a less than significant level.

D. Inclusion of Mirant Delta Power Plants in the BDCP HCP/NCCP

We have some concerns about including the operations of the Mirant Delta power plants within the scope of this HCP/NCCP. While there are significant concerns with effect of the operation of these power plants on endangered species, notably Delta smelt, *see* Mike Taugher, *Mirant plants attract attention in delta crisis*, Contra Costa Times, March 15, 2006, there are also numerous other activities that cause potentially significant harm to Delta smelt and other covered species, as discussed above.

If the Mirant Delta power plants are included in the BDCP, particular attention should be paid to the following issues related to operation of the plants and their environmental effects:

- Analysis and minimization of the impacts of the entrainment of fish, effects of thermally heated discharges, and other impacts on covered species and other fish and wildlife species, including operational and structural changes such as:
 - Requiring more effective screening of the plants' cooling water intakes;
 - Changes to existing cooling water intakes and intake flow velocities;
 - Monitoring and reporting the plants' take of covered species;
 - Temporal and/or other restrictions on water withdrawals; and
 - Elimination of the existing once-through cooling systems for the plants, and replacement with dry cooling or recirculating cooling systems;
- Operational changes or other actions to reduce greenhouse gas emissions from plant operations; and,
- Establishing strict and enforceable numeric limits on the take of covered species.

As with operation of the SWP and CVP, the operations of the Mirant Delta power plants authorized by the HCP/NCCP must minimize take of covered species, minimize all environmental impacts to a less than significant level, and comply with existing legal requirements applicable to the plants.

XI. The EIS/EIR Should Analyze the Economic Costs and Benefits of Water Conservation and Other Measures to Meet Water Supply Needs, as well as Identifying Reasonable Sources of Funding to Implement the BDCP.

Although not required by CEQA, *see* CEQA Guidelines § 15064(e), an EIS under NEPA often includes an analysis of the economic impacts of the Project. *See also* 40 C.F.R. § 1502.23. In addition, as noted earlier, both the ESA and NCCPA require an identification of the guaranteed funding sources for implementation of the actions contemplated in the approved HCP. 16 U.S.C. § 1539(a)(2)(B)(iii); Cal. Fish and Game Code § 2820(a)(10), (b)(6), (8), (f)(1)(E).

More broadly, informed policy-making on the question of sustainably managing the Delta requires some analysis of the economic costs and benefits of each alternative, as well as an identification of funding sources that will implement the alternative plans being considered in the BDCP. While some environmental benefits are likely to be speculative and unquantifiable, and economic considerations cannot trump environmental considerations under NEPA and CEQA, economic considerations can be useful to inform decision-making.

In particular, numerous studies have demonstrated that water conservation and investments in water efficiency are far more cost effective than developing new storage facilities or otherwise expanding water supplies, including DWR's California Water Plan Update 2005. In light of the BDCP's water supply reliability goal, to the extent that the BDCP looks at how to meet the water supply needs of exporters in light of alternatives that reduce water exports over historic levels, the EIS/EIR should compare the cost effectiveness of water conservation and efficiency, and a full range of water supply alternatives with the construction, maintenance and operation of Delta conveyance facilities and other water supply components identified in the BDCP.

XII. The Scoping and Comment Period for the EIS/EIR Should be Reopened Upon Completion of the BDCP Conservation Strategy and Adoption of the Delta Vision Strategic Plan.

Consistent with our March 24, 2008 letter, and in order to improve informed public participation in the process, we respectfully request that the agencies re-open the scoping and comment process upon completion of the draft BDCP conservation strategy and Delta Vision Strategic Plan. Doing so will ensure that the conservation actions and alternatives that are developed through the BDCP conservation strategy are analyzed in the EIS/EIR, and it will better ensure that the BDCP is consistent with the Delta Vision Strategic Plan.

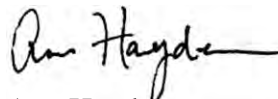
XIII. Conclusion

Thank you for consideration of our views. Please feel free to contact us at your convenience if you have any questions or concerns.

Sincerely,



Doug Obegi
Natural Resources Defense Council



Ann Hayden
Environmental Defense Fund



Kim Delfino
Defenders of Wildlife



Gary Bobker
The Bay Institute

cc: Russell Strach, National Marine Fisheries Service
Donald Koch, Department of Fish and Game
Steve Thompson, U.S. Fish and Wildlife Service
Donald Glaser, Bureau of Reclamation
Karen Schwinn, Environmental Protection Agency

Enclosures:

Exhibit A: Scoping Comments on BDCP EIS/EIR from NRDC, EDF and Defenders of Wildlife
submitted to NMFS and USFWS dated March 24, 2008

Exhibit B: Key Elements of a Strategic Plan to Implement the Delta Vision (May 2008)

Exhibit C: NRDC Comments on the Draft Supplemental EIS/EIR for Extending the
Environmental Water Account and OCAP Consultations (Dec. 10, 2007)

EXHIBIT B



June 30, 2008

Honorable Arnold Schwarzenegger
Governor
State of California
State Capitol
Sacramento, CA 95814

Dear Governor Schwarzenegger:

The Delta Vision Blue Ribbon Task Force is providing this letter to fulfill its goal of commenting on a possible preferred water conveyance alternative by June 2008. We present these views against the backdrop of your February letter directing DWR to proceed with NEPA/CEQA analysis of at least four alternatives:

- ✓ The possibility of no new Delta conveyance facility;
- ✓ The possibility of a dual conveyance facility, as suggested by the Task Force;
- ✓ The possibility of an isolated facility;
- ✓ The possibility of substantial improvements and protections of the existing water export system, most often referred to as 'armoring the Delta' or a 'through-Delta' solution.

Background

Executive Order S-17-06 directs the Blue Ribbon Task Force to include consideration of reliable water supply, the environment, and infrastructure in developing a vision and strategic plan. Of the 12 linked recommendations in the Vision we adopted in November 2007, Recommendation 1 states that the Delta ecosystem and a reliable water supply for California are the primary, co-equal goals for sustainable management of the Delta. Recommendation 8 states that new facilities for conveyance and storage, and better linkage between the two, are needed to better manage California's water resources to meet the dual objectives of reliable water supply and ecosystem health.

To achieve both of these linked objectives, the adopted vision made these additional recommendations: (1) Immediate improvements to the existing through-Delta export system; (2) an assessment of a dual conveyance system as the preferred direction, focused on understanding the optimal combination of through-Delta and isolated facility improvements; (3) to urgently assemble available information on design features, cost, and performance of alternative conveyance options against specified criteria to allow selection of a preferred alternative by June 2008.

In recent months, we have received a number of reports and presentations by Task Force work groups, and by CALFED, DWR, and others, described in Attachment A.

1416 Ninth Street, Suite 1311, Sacramento, CA 95814 Ph. 916.653.5656 Fax 916.653.8102 <http://resources.ca.gov>



Honorable Arnold Schwarzenegger
June 30, 2008
Page Two

Conclusions and recommendations on a preferred water conveyance alternative.

Through review and discussion of the information presented to us, we have grown more confident that dual conveyance, including both an improved, resilient through-Delta conveyance component and an isolated component, is a strong choice, provided the chosen design fully embraces the co-equal goals of a resilient ecosystem and reliable water supply. This is not just a choice of conveyance, or even of conveyance and storage, but also a choice with large implications for the future Delta ecosystem.

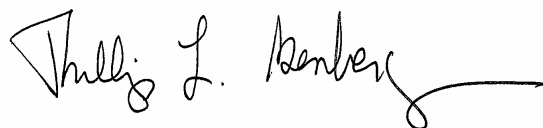
Analysis of conveyance facilities and associated storage must focus on more than the maximum amount of water that can be moved through the Delta. Beyond maximum flows, the analysis should determine the combination of facilities that can best achieve the management flexibility required to meet ecosystem needs, to provide greater reliability in water supply, to maximize the taking of water in wet periods when it is most available, and to accommodate the kinds of transfers and regional self-sufficiency needed. Management flexibility will be increasingly critical to capture water during wet periods and to cope with predicted increased volatility of weather and extreme weather events.

Much more analysis of sizing combinations, impacts, and costs of *both* an improved through-Delta component and an isolated component are needed to confirm any decision regarding dual conveyance and to finalize a design that contributes to our vision of co-equal goals for sustainable Delta management. In Attachment B, we recommend several elements for any conveyance facility investigation.

As your Delta Vision Blue Ribbon Task Force moves toward our final goal of developing a Strategic Plan to implement our Vision for the Delta and the water future of California, we again reemphasize that improvements to the existing through-Delta conveyance system must begin immediately. It is equally critical that improvements to the ecosystem must begin now to ensure progress as rapidly as possible. The recommended approach requires both analysis and action; as dual-conveyance is studied in greater detail, interim steps must be taken to improve the through-Delta conveyance system today.

Consistent with our Vision's first recommendation, our Strategic Plan will provide a framework within which a more resilient ecosystem and reliable water conveyance system can be effectively implemented and operated and may make additional recommendations regarding conveyance facilities and associated storage.

Sincerely,

A handwritten signature in black ink, reading "Phillip L. Isenberg". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

Phillip L. Isenberg, Chair
Delta Vision Blue Ribbon Task Force

cc: (See attached list.)

Honorable Arnold Schwarzenegger
June 30, 2008

List of Courtesy Copies

Honorable Mike Chrisman
Secretary for Resources
Resources Agency
1416 Ninth Street, Room 1311
Sacramento, CA 95814

Mr. Lester Snow, Director
Department of Water Resources
1416 Ninth Street, 11th Floor
Sacramento, CA 95814

Attachment A: Information provided since adoption of *Our Vision for the California Delta*

- The Task Force's Water Supply and Reliability and Healthy Ecosystem Work Groups have suggested that a wet-year diversion system (a shift of export diversion timing to wetter periods, when least harmful to the ecosystem) be considered as a strategy to achieve greater water supply reliability and ecosystem health. To do so would require increased storage and conveyance capacity statewide. A dual conveyance system would increase conveyance capacity and options, and could support a wet-year diversion system if properly managed.
- CALFED submitted a "Summary Review of Prior Delta Conveyance Reports", which reviewed the findings of over 100 reports that dealt with Delta water conveyance and potential effects on water quality and ecosystem health and resilience. The report identified data gaps, especially regarding ecosystem performance, in previous studies and conveyance designs that would be critical to address when assessing an improved conveyance system.
- DWR submitted "An Initial Assessment of Dual Delta Water Conveyance", which gave a preliminary assessment of a dual conveyance strategy as part of ongoing efforts related to the Bay-Delta Conservation Plan development process, including preliminary design features, cost, and preliminary performance results of alternative conveyance options. The Task Force found that the assessment explained the merits of an isolated component, but fell short of addressing the long-term resilience and recoverability of the through-Delta component of the dual conveyance strategy.

Attachment B: Recommended elements for assessing conveyance facilities and related storage

1. **Directly address alternative choices and design configurations by how well they serve the co-equal goals of protecting the Delta ecosystem and providing water for Californians.** Include a clear description of near-term actions to improve ecosystem function and water system reliability of the existing through-Delta conveyance system.
2. **Incorporate ecosystem health and resilience.** Analyze a full range of through-Delta flows *and* isolated facility flows on in-Delta ecological processes and functions, and analyze how reduced pumping operations may reduce entrainment of certain fish species. The analyses should ensure that restoring ecological functions is a central component of the plan, and not treated merely as mitigation to offset continued water export functions – an approach which has failed to break through the political deadlock on water and the ecosystem for the past 40 years.
3. **Incorporate anticipated levels of usage of available ground and surface storage.** Include not only existing ground and surface water storage but also possible increases in ground and surface water storage. Incorporate timelines by which additional surface and ground water storage may become available for use into analyses. In addition, assess possible gains from changed operations of storage capacity (e.g., more effective flood plain protection and management allows effective increases in reservoir capacity).
4. **Face up to the question of anticipated future water diversion and exports from the Delta.** In order to make an intelligent decision on alternative water export facilities it is essential to state the expectations on water diversions and describe the decision processes and rules that would be used to determine allowable diversions under a range of hydrologic and climatic conditions. A greater emphasis on wet period diversion will require a more comprehensive set of regulatory requirements for the Delta and upstream tributaries than exists today, in order to ensure the achievement of our co-equal goals. We understand the political difficulty of this discussion. However, failure to face up to the question will once again lead to a divisive and bitter statewide battle about water and the Delta. Analyze the performance of all conveyance systems considered in terms of wet period diversion; that is, the ability to *divert, move and store* more water during wetter periods and reduce water diversions in drier periods in part to provide for Delta environmental protection and as a strategy to cope with reduced snowpack as a result of climate change. Quantify thresholds for water required in the Delta (in volume, timing, and quality at various locations) for effective functioning of the estuarine ecosystem under different conditions.
5. **Analyze implications for migratory fish species and upstream rivers.** Analyze the implications of conveyance and operational options, including a full range of diversion levels, on representative migratory fish species and upstream riverine habitat.
6. **Incorporate realistic estimates of reliable water transfers as part of the evaluation.** Reliable water transfers are a valued public policy goal and specific estimates of such transfers should be included in designing and assessing alternative conveyance systems.

7. **Identify and evaluate improvements to through-Delta conveyance for resiliency and recoverability in the event of catastrophic loss and incorporate effective improvements in analyses.** Do not merely assume the status quo of existing through-Delta conveyance is acceptable; improvements to the existing through-Delta system must occur to protect California's water and the ecosystem regardless of dual conveyance design details chosen. Near-term improvements on through-Delta conveyance could contribute to the two important goals of (1) increased conveyance capacity and (2) reducing risk of catastrophic failure, including the value of repairable through-Delta conveyance capacity. This is consistent with our Vision recommendations 7, 8, and 9.
8. **Incorporate a sea level rise projection of at least 55 inches (by 2100) in facility designs.** Additionally, clearly state and assess the possible implications of other dimensions of climate change, such as increased extreme storms, on any conveyance facility.
9. **All alternative facilities should be evaluated against a common level of seismic and flood durability.** This analysis should include not only effects on the facilities themselves as structures but the risks to other human uses of the Delta and the Delta ecosystem resulting from effects of earthquakes or floods on facilities.
10. **Incorporate water quality objectives in analyses.** Clearly evaluate the implications of alternative approaches to conveyance and to the proposed conservation program on water quality objectives for the Delta, and how these objectives will be affected by the various alternatives. These analyses should incorporate a full range of water quality issues, including salinity, temperature, dissolved oxygen, pesticides and toxics and turbidity.
11. **Ensure transparency and accountability in decisions.** Specify projected schedules for construction, the cost of the activities, and their funding sources. Include sufficient details to guarantee that ecosystem restoration and conservation measures will be fully and properly implemented. Devise assurances that the actions will be implemented, including, for example, directly incorporating actions into any and all state water contracts, and as conditions for receipt of bond funds, either for facility development or for ecosystem purposes. Concurrently, ensure that a system of adaptive management is implemented so that progress is monitored and decision makers can manage adaptively.
12. **Develop a baseline that reflects current conditions.** Analyses of alternative conveyance facilities and operations should be compared against a common baseline that reflects current operations and legal requirements.

EXHIBIT C

Possible Impacts of Climate Change to California's Water Supply

Introduction



The State Water Project (SWP) and federal Central Valley Project (CVP) provide water for over 23 million people in California. Water stored in reservoirs flows through the Sacramento-San Joaquin Delta where pumps and canals transfer the water to central and southern California. A 2009 report by the California Department of Water Resources on *Using Future Climate Projections to Support Water Resources Decision Making in California* looks at how projected future climate conditions could affect the reliability of California's water supply. Following are the key findings of the report.



Future Uncertainty

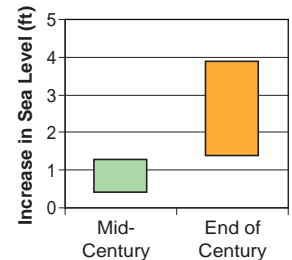
Planning for the future involves uncertainties. This study uses current projections for climate, population, and water demands to estimate California's future water supply. Uncertainties in the analyses increase the farther that we look into the future.

Sea Level Rise Projections

Section 4.1 in the report.

Warmer future air temperatures are expected to cause sea levels to rise. In fact, the sea levels near San Francisco increased by over 0.6 feet in the 20th century. Based on 12 future climate scenarios, projections for global sea level rise are 0.4 feet to 1.2 feet at mid-century and 1.4 feet to 3.9 feet by the end of the century. Rising sea levels will bring more saline ocean water into the Delta. Additional fresh water will need to be released from upstream reservoirs to maintain water quality.

Ongoing research indicates that future sea level rise may be even higher than the projections used in this report.



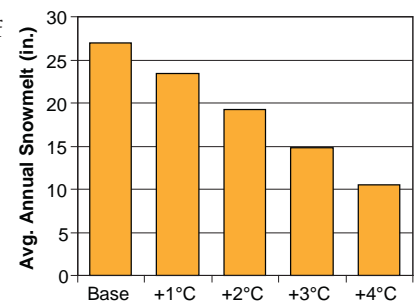
Increasing Air Temperature

Section 5.1 in the report.

Runoff from the upper Feather River basin provides water for Lake Oroville, the main water supply reservoir for the SWP. Because it is a low elevation basin, the snowpack and subsequent snowmelt runoff may be more vulnerable to increasing air temperatures than snowpack in higher elevation watersheds. Warmer air temperatures would shift some precipitation from snow to rain. Snowpack is an important natural reservoir for storing water in the winter and later augmenting the water supply through spring snowmelt.

An air temperature increase of 1°C (1.8°F) is expected to reduce the average annual snowmelt by about 15%, and a 4°C (7.2°F) increase results in about 60% less snowmelt.

Runoff would also shift earlier into the year, which is when reservoirs are operated for flood protection, not water supply. A 4°C (7.2°F) increase in air temperature shifts the mean runoff from mid-March to mid-February.



Climate Change Impacts on Water Supply

Section 5.2 in the report.

Future increases in air temperature, shifts in precipitation patterns, and sea level rise could affect California's water supply by changing how much water is available, when it is available, and how it is used. This study looks at climate change impacts to California's water supply reliability for 12 future projections from Global Climate Models (GCMs) for a higher greenhouse gas (GHG) emissions scenario and a lower emissions scenario. It assumes that current SWP and CVP infrastructure, regulations, and operating rules do not change. However, uncertainties in the results increase as the projections move further into the future.

Expected impacts to the SWP and CVP include pumping less water south of the Delta, having less surplus water in reservoirs that can be used during shortages, pumping more groundwater to augment reductions in surface water supplies, and an increased risk that insufficient water availability could interrupt SWP and CVP operations. A water shortage worse than the one during the 1977 drought could occur in 1 out of every 6 to 8 years by mid-century and 1 out of every 3 to 4 years at the end of the century. The table below shows the range of impacts to the SWP and CVP.

	Mid-Century		End of Century	
	Higher GHG Emissions (A2)	Lower GHG Emissions (B1)	Higher GHG Emissions (A2)	Lower GHG Emissions (B1)
Delta Exports	-10%	-7%	-25%	-21%
Reservoir Carryover Storage	-19%	-15%	-38%	-33%
Sacramento Valley Groundwater Pumping	+9%	+5%	+17%	+13%
SWP & CVP Power Generation	-11%	-4%	-9%	-4%
SWP & CVP Power Use	-14%	-14%	-17%	-16%
System Vulnerability to Interruption*	1 in 6 years	1 in 8 years	1 in 3 years	1 in 4 years
Additional Water Needed to Maintain Operations**	750 TAF/yr	575 TAF/yr	750 TAF/yr	850 TAF/yr

TAF=thousand acre-feet

An acre-foot is the amount of water a family of four will use in a year.

The results at the end of the century are more uncertain than the mid-century results.

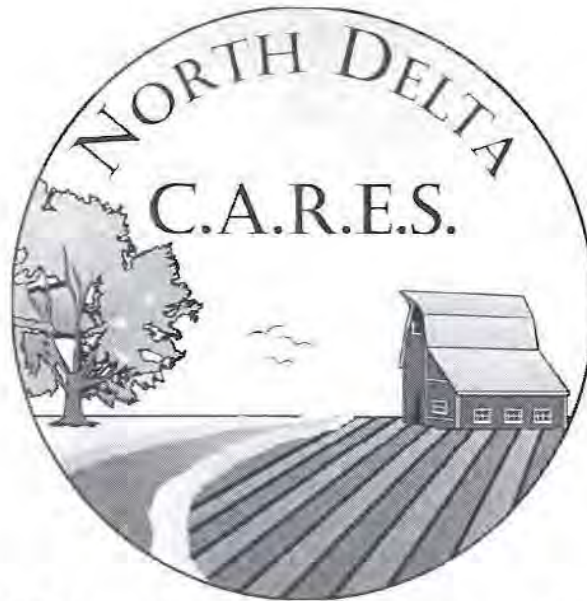
* The SWP-CVP system is considered vulnerable to operational interruption during a year if the water level in one or more of the major supply reservoirs (Shasta, Oroville, Folsom, and Trinity) is too low to release water from the reservoir. Under current conditions, the system is not considered vulnerable to operational interruption.

** Additional water is only needed in years when reservoir levels fall below the reservoir outlets.



For further information, please contact Francis Chung at chung@water.ca.gov or Jamie Anderson at jamiea@water.ca.gov

Clarksburg



North Delta Community Area Residents for Environmental Stability

"North Delta CARES"

Post Office Box 271
Clarksburg, CA 95612

March 16, 2009

Points of Agreement

AN OPEN LETTER TO NORTH DELTA COMMUNITY AREA RESIDENTS ON THE BAY DELTA CONSERVATION PLAN. THE PLAN STILL THREATENS OUR HOMES, OUR FARMS, OUR BUSINESSES AND OUR INTERESTS. ON MARCH 26, 2009, AT THE CLARKSBURG MIDDLE SCHOOL AUDITORIUM, BEGINNING AT 6:00 P.M., THE BDCP WILL PRESENT ITS PLAN AND ASK FOR COMMENTS. THE LETTER THAT FOLLOWS WAS PREPARED BY NORTH DELTA CARES TO PUT OUR CONCERNS AND RESPONSES ON PAPER TO HELP YOU COMMENT ON THE BDCP. FEEL FREE TO USE ALL, SOME OR MAKE UP YOUR OWN COMMENTS TO COMMUNICATE WITH THE BDCP THAT NIGHT OR AT ANY TIME IN THE PROCESS. THANKS. NORTH DELTA CARES STEERING COMMITTEE.

Yolo County Board of Supervisors Chair Mike McGowan, speaking for the Boards of Supervisors of the five Delta counties, recently wrote in a *Sacramento Bee* commentary: "Attempts to address Delta issues will be unsuccessful without local involvement and ultimately without relying on those at the local level to help make it happen ... We want the entire state to understand that the Delta is not a blank slate. People live here. People work here." We are those people.

We recognize that the water, flood protection, economic, and environmental issues related to the Sacramento-San Joaquin River Delta are substantial and complex. Although the state-led Delta Vision and Bay Delta Conservation Planning processes held numerous public meetings where Delta residents, business people, and farmers – some living and working in the Delta many years – stated our concerns and offered our knowledge, experience, and ideas to address those issues, little of that input has been included in the state planners' announced solutions. Nearly all of their current plans are virtually the same as their initial conceptual plans. So we repeat...

- 1) We support only export of water from Northern California and the Sacramento-San Joaquin Delta which is in excess of the present and future human and environmental needs of these areas.
- 2) We support expanded, additional water storage in Northern California for wet-year capture of run-off water to provide for safe and reliable through-Delta export.
- 3) We firmly support conveying export water using the present through-the-Delta route, i.e. the Sacramento River and Delta channels southward, to the state and federal water project pumps, as the most ecologically and economically sound choice. We encourage modifications to this conveyance that:

- a) make water delivery more reliable;
- b) make Delta levee systems structurally more sound;
- c) protect listed fish species from endangerment from the project pumps; and
- d) continue to preserve and defend present in-Delta water quantity and quality standards.

4) We support aggressive and continuing state-wide water conservation efforts.

5) We oppose a "Delta Vision" that seeks the return of Delta lands and hydrologic features to their natural state. We support construction of fish habitat restoration projects and other ecological improvements, provided they are based on sound science and situated on lands currently in public ownership, or on privately-owned lands only with the willing consent of the individual property owners.

6) We firmly oppose the use of an expanded "public trust" doctrine to alter or abolish presently-held water rights of any type.

7) We cannot support new Delta regional governance structures with the "coequal goals" of improving the Delta ecosystem and reliability of water supply unless persons living in the Primary Zone of the Delta, elected by Primary Zone residents, have seats at each decision-making level. We strongly oppose any governance structure comprised of an appointed and unaccountable body of members whose principal mission is to advance the above-mentioned coequal goals without due consideration of the effects of its actions on the lives and livelihoods of the thousands who call the Delta "home". Us!

8) We support a third *tri-equal* goal to protect and enhance the social, economic, and physical viability of the Delta, including:

- a) Delta agriculture, and its supporting businesses;
- b) Delta reclamation districts;
- c) Delta natural gas industry;
- d) Delta tourism, recreation, boating, and fishing industries;
- e) Delta community infrastructure and services, including civic organizations; fire districts, school systems, and communities of faith; and
- f) The present Delta levee system in its entirety.

In conclusion, because we maintain that those who live their lives closest to the Delta's lands and waters make up its most passionate and in many ways most well-informed stewardship group, we cannot support efforts, whether intentional or otherwise, that lead to de-population of the Delta, or large-scale transfer of Delta lands from private to public hands.

Additionally, we firmly maintain that attempts to develop and implement plans to "improve" the Delta's ecological health and water supply roles will inevitably fail without ongoing, substantial input and support from Delta locals at every level. We urge legislators, planners, state and federal agencies, water contractors, environmentalists, the Governor, and the public at large to recognize that natural systems, even degraded ones, will not be nurtured through solutions driven by politics and panic.

We hope all those who read this will inform themselves of the latest plans by the State of California and make comments on March 26, 2009, at the Clarksburg Middle School Auditorium or later in writing or by e-mail.

Visit us online at:

WWW.NORTHDELTA CARES.ORG

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Kevin Johnson

Secretary/Treasurer
Bill Leimbach



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Rick Hawley
Fran Layton
Doug Linney
David Mogavero
Stephanie Pincetl
Lynn Sadler
Teresa Villegas
Terry Watt
Bill Yeates

May 14, 2009

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

via e-mail: BDCPcomments@water.ca.gov

RE: Scoping comments on the Preparation of an Environmental Impact Report/Environmental Impact Statement (EIR/EIS) Regarding the Bay Delta Conservation Plan (BDCP) for the Sacramento-San Joaquin Delta, California

Ms. Brown:

The Planning & Conservation League (PCL) partners with environmental organizations statewide to provide an effective voice in Sacramento for sound planning and responsible environmental policy at the state level. Our mission is to protect and restore California's natural environment, and to promote and defend the public health and safety of the people of California, through legislative and administrative action.

PCL is an active advocate for a healthy Delta ecosystem as well as for water management solutions that improve water reliability without incurring large environmental costs. PCL was a member of the Delta Vision Stakeholder Coordination Group, is a participant in Delta governance discussions in the context of Senator Simitian's Senate Bill 12, and is also an Interested Observer of the Bay Delta Conservation Plan (BDCP) process. We offer our thoughts below on the appropriate scope of analysis in the proposed EIR/EIS on the BDCP. Because the current scoping period concerns the environmental analysis of a plan still under development, we request that the Department of Water Resources (DWR), as lead agency, initiate additional scoping and comment periods as the BDCP progresses. At a minimum, DWR should provide another opportunity for scoping comments upon completion of the proposed plan.

We recommend that DWR address the following issues in the EIS/EIR for the BDCP:

A. THE EIS/EIR SHOULD CLEARLY STATE WHETHER OR NOT THE BDCP WILL BE IMPLEMENTED AS A HCP/NCCP

Neither the Notice of Preparation nor the BDCP Planning Agreement commits its signatories to pursuing take authorizations by drafting the BDCP as a Natural Communities Conservation



1107 9th Street, Suite 360, Sacramento, CA 95814 Phone: 916-444-8726 Fax: 916-448-1789

Website: www.pcl.org Email: pclmail@pcl.org

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Plan (NCCP) (under the state Natural Communities Conservation Plan Act (NCCPA)) or as a Habitat Conservation Plan (HCP) (under section 10 of the Federal Endangered Species Act (FESA)). While these documents state the *intent* to develop the BDCP as an NCCP/HCP, the current ambiguity regarding this issue must be resolved. The EIS/EIR on the BDCP, if it is to provide meaningful analysis on necessary conservation objectives for Delta species and appropriate regulatory assurances, must unambiguously report the BDCP's legal basis for take authorization.

Given the stated intent to develop the plan as an NCCP/HCP, and the independent scientific input provided to the BDCP process as required under the NCCP/HCP laws, the EIR/EIS must include an evaluation of that independent scientific input.

B. THE EIS/EIR SHOULD FULLY ANALYZE AN APPROPRIATE RANGE OF REASONABLE PROJECT ALTERNATIVES

The EIS/EIR on the BDCP should include a comprehensive analysis of reasonable project alternatives. While engineering alternatives that compare different structural or routing solutions for improvements or additions to Delta conveyance infrastructure are certainly appropriate to consider, the reasonable project alternatives should also include:

- **NO PROJECT:** An alternative that fully complies with current regulatory standards, including all water quality objectives. In the recent past, water quality objectives and endangered species laws have been violated. Modeling of the no project alternative must include operations that are consistent with regulatory standards.
- **INCREASED RELIABILITY THROUGH DECREASED DEMAND ON DELTA WATER SUPPLIES* #1:** An alternative that includes reduced Delta exports and aggressive implementation of water conservation, water recycling, and groundwater treatment to fully meet water demand.
- **INCREASED RELIABILITY THROUGH DECREASED DEMAND ON DELTA WATER SUPPLIES* #2:** An alternative that considers the retirement of drainage-impaired lands in the San Joaquin Valley, consistent with the EIR on San Joaquin Valley Drainage.

All alternatives should include full implementation of species conservation measures necessary to comply with federal and state endangered species laws.

** For recommended analytical approaches to assess the effects of reduced demand on water supply and water reliability, see Section E.*

C. THE EIS/EIR SHOULD DESCRIBE HOW EACH PROJECT ALTERNATIVE MEETS NECESSARY CONSERVATION TARGETS

The BDCP process was initiated by Potentially Regulated Entities to comply with endangered species laws. The environmental review must describe how the conservation objectives are met under alternative project scenarios. This discussion must include:

- A comprehensive presentation of evidence in support of any conclusion that the water supply and reliability measures in each project alternative are compatible with the species recovery goals necessary for compliance under endangered species laws.
- A comprehensive presentation of the decision process used to set biological goals and objectives. A key component of the description of biological goals and objectives for aquatic species that spend all or a part of the life cycle in the Bay Delta Estuary should be the identification of the flow regimes (quantity, direction, temperature, turbidity, and other water quality parameters) that are needed in different locations at different times of the year in different types of water year in order to contribute to the restoration of these species. The effects of alternate flow regimes and water quality must also be considered in terms of their impacts on terrestrial (but riparian or wetland association) communities in the Delta region.
- A comprehensive presentation of the decision process used to select conservation measures that are expected to attain the biological goals and objectives. Even for processes that are well understood, selection of conservation measures may not be straightforward.
- A comprehensive presentation of the scientific rationale behind selected conservation measures, including discussion of how the impacts of each measure differ by species, life history stages, or geographic area.
- A comprehensive presentation of other considerations (e.g. economic, social, political, engineering) that influenced the selection of conservation measures.

D. THE EIS/EIR SHOULD DESCRIBE THE STATEWIDE ENVIRONMENTAL IMPACTS OF EACH BDCP PROJECT ALTERNATIVE

The BDCP Planning Agreement and Notice of Preparation identify the planning area as the Statutory Delta. In order to achieve improvements in ecosystem health and water reliability, we believe that an adequate NCCP/HCP must analyze alternative actions and effects upstream, in the Delta and in areas receiving water from the Delta. The EIS/EIR must describe the *impacts* of the BDCP actions both within and beyond the Statutory Delta, including areas that receive water from the Delta.

Upstream impacts that should be considered in development of the EIS/EIR on the BDCP include:

- The potential for changed operations at upstream reservoirs and any resulting change in the availability of cold water pools for fisheries (e.g. Shasta Dam, Oroville Dam)
- The potential for changed management of groundwater resources (e.g. the Tuscan Aquifer)

Within-Delta impacts that should be considered in development of the EIS/EIR on the BDCP include:

- The potential for changed operations to impact needed flows and water quality for in-delta species
- The potential for changed operations and other plan measures to impact in-delta water quality and availability for existing uses in the Delta.
-

Downstream impacts (including in areas that receive water from the Delta through the CVP or SWP) that should be considered in development of the EIS/EIR on the BDCP include:

- the potential for continued water quality degradation caused by delivery of Delta waters to drainage impaired lands in the San Joaquin valley
- the potential for water supply reliability to be improved through local investments in water use efficiency, water recycling, and other programs that do not rely on Delta water supplies.

E. THE EIS/EIR SHOULD FULLY ANALYZE HOW REDUCTIONS IN DEMAND ON DELTA WATER RESOURCES AFFECT THE RELIABILITY OF WATER SUPPLIES FOR USERS UPSTREAM, IN, AND DOWNSTREAM OF THE DELTA.

Many opportunities exist to improve water supply reliability for current users of Delta water supplies that do not adversely impact the Delta ecosystem. Described more fully in the California State Water Plan, those types of investments tend to improve a region's self-sufficiency in water and include implementation of water use efficiency measures as well as development of recycled water (including indirect and direct potable reuse) and graywater supplies.

Recommendations for analysis of alternate demand scenarios

In order to fully analyze the impacts of reducing exports from the Delta, models such as CALSIM II and CALSIM Lite must have the capacity to simulate reduced export scenarios in meaningful ways. Modeling reduced demand in a way that does not change the timing or level of pumping is unlikely to fully capture the potential ecosystem gains of reduced demand on the Delta.

Recommendations for analysis of reliability under alternate demand scenarios

"Exceedance charts", which show the probability of receiving a certain level (or more) of Delta water supply, generally show that large export volumes are less probable than low export volumes.

The current focus of the BDCP seems to be on finding a way to increase water supply reliability by increasing the probability of high-export years, e.g. by changing facilities or operations in some way that changes the "shape" of the exceedance curve. We have doubts that this approach is compatible with protection of the Delta ecosystem. Instead, we recommend an approach that aims to increase water supply reliability by reducing supply expectations. Because lower exports are more probable, contractors would have more consistent delivery of their expected Delta water supplies. Additionally, it's possible that the exceedance curve under a scenario of reduced demand on Delta water is of a different shape than the exceedance curve under a scenario of current demand, which may show additional reliability gains. That is, reliability is almost

certainly increased by demanding a lower export volume; reliability may also be increased if the probability of that lower export volume increases relative to the probability under higher demand scenarios.

F. THE EIS/EIR SHOULD FULLY ANALYZE HOW EACH PROJECT ALTERNATIVE PERFORMS UNDER DIFFERENT CLIMATE CHANGE SCENARIOS

The EIS/EIR on the BDCP should include a comprehensive analysis of how conservation objectives can be met by project alternatives given the expected impacts of climate change, including:

- changes in hydrology, including the potential for less overall precipitation, as noted in a study by Columbia University's Richard Seager referenced in DWR's April 2008 report "California Drought, An Update".

"Or to put it another way, though wet years will still occur, on average they will be drier than prior wet years while the dry years will be drier than prior dry years."

<http://www.water.ca.gov/drought/docs/DroughtReport2008.pdf>

A similar finding was also reported in the February 2009 edition of the New Scientist:

"Now new research suggests that the three-year drought in the Golden State may be a consequence of the expanding tropics, which are gradually growing as human emissions of greenhouse gases warm the planet."

- sea level rise
- the possible failure of multiple Delta islands
- changes in the extent and quality of important aquatic habitats (including level and frequency of inundation, water temperature, salinity, productivity, and food web dynamics)
- changes in the extent and quality of important terrestrial habitats
- potential impacts on vital rates of Delta species (aquatic and terrestrial)
- potential shifts in species ranges of Delta species (aquatic and terrestrial)

For those alternatives which propose changes to water conveyance through the Delta, the EIS/EIR should fully compare performance of these conveyance alternatives under different climate change scenarios. The Planning and Conservation League submitted a letter (March 5, 2008) to the BDCP Conveyance Workgroup on the analyses recommended for assessing the resilience of alternate conveyance options to the expected impacts of climate change. This letter is attached (ATTACHMENT 1), and we incorporate its recommendations by reference.

G. THE EIS/EIR SHOULD PROVIDE BACKGROUND ON THE ANALYTICAL TOOLS USED IN ORDER TO ALLOW APPROPRIATE INTERPRETATION OF RESULTS

The environmental review document must include clear identification of both the strengths and limitations of the analytical tools (e.g. CALSIM II) used for analysis, including the extent to which the tool has been validated and calibrated under (a) past hydrologic variability and (b) under likely future hydrologic variability. A tool's capacity for sensitivity analysis (i.e. comparison of outputs given changes or uncertainties in inputs) is of particular importance given that the Delta ecosystem is both naturally variable and imperfectly understood.

CALSIM and CALLite are helpful in answering certain types of questions, but may be inappropriate for many of the forecasting analyses necessary for the full review of the impacts of the proposed changes to water operations in the Delta.

H. THE EIS/EIR SHOULD DESCRIBE THE GOVERNANCE & ADAPTIVE MANAGEMENT PROCESS ESTABLISHED TO ENSURE THAT REGULATORY ASSURANCES ARE PROVIDED ONLY IF CONSERVATION ASSURANCES ARE MET

Given the tenuous state of the Delta ecosystem, the conservation goals of the BDCP must be supported by an effective governance structure and a strong adaptive management program. We recommend that the BDCP condition regulatory assurances on satisfaction of the conservation objectives. The environmental review document must explicitly describe the conditionality of regulatory assurances, including the timing of review and permitting periods.

For any conservation measure or water operations measure that is expressed as a range of values (as is likely for many, if not most, measures), we recommend that the Precautionary Principle be applied. That is, we recommend that measures be implemented at the level that is most protective of the ecosystem and that the implementation of those measures be modified to a less stringent level of protection only if the response of covered species or new information suggests that a different level of protection would be appropriate.

PCL submitted a letter (May 12, 2008) to the Delta Vision Blue Ribbon Task Force recommending policy guidelines for improving water reliability for California. This letter is attached (ATTACHMENT 2), and we incorporate its recommendations by reference.

I. THE EIS/EIR SHOULD FULLY ANALYZE THE EXTENT TO WHICH THE FACILITIES, OPERATING CRITERIA, GOVERNANCE, FUNDING STRUCTURE AND TIMELINE OF THE BDCP COMPLEMENT OR CONFLICT WITH OTHER PLANNING AND PERMITTING PROCESSES.

NCCP/HCPs already in existence or in development

The EIS/EIR should discuss how the BDCP will be integrated with other conservation plans within and near the BDCP planning area.

Delta Vision

The EIS/EIR should discuss how the BDCP will be integrated with the Governor's Delta Vision strategic and implementation plans.

New OCAP Biological Opinions

The EIS/EIR on the BDCP should clearly explain how the BDCP is consistent with recommended conservation measures in the FWS Biological Opinion released in December of 2008 and the NMFS Biological Opinion that will be released in June of 2009.

We urge your comprehensive analysis of the issues we raise regarding the scope of the environmental review so that the final decision can be based on a full understanding of the types of robust measures sufficient to achieve the conservation goals of the BDCP. We look forward to additional opportunities to comment on the environmental review process as additional project information becomes available.

Sincerely,

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

Barb Byrne
Water Policy Analyst

bbyrne@pcl.org
916-313-4524

ATTACHMENT 1

3-05-2008 letter submitted by PCL to the BDCP
Conveyance Workgroup recommending needed
analyses for changes to Delta conveyance

President
John Van de Kamp

President Emeritus
Sage Sweetwood

First Vice President
Bill Yeates

Senior Vice President
Kevin Johnson

Secretary/Treasurer
Bill Center



Regional Vice Presidents
Elisabeth Brown
Jan Chatten-Brown
Dorothy Green
Phyllis Faber
Rick Frank
Rick Hawley
Doug Linney
David Mogavero
Lynn Sadler
Teresa Villegas

March 5, 2008

Ann Hayden
Co-Chair, BDCP Conveyance Working Group
Senior Water Resource Analyst
Environmental Defense Fund - California Regional Office
123 Mission Street, 28th Floor
San Francisco, CA 94105

Jerry Johns
Co-Chair, BDCP Conveyance Working Group
Deputy Director, Department of Water Resources
California Department of Water Resources
P.O. Box 942836, Room 1115-9
Sacramento, CA 94236-0001

Via e-mail

RE: Questions recommended by the Planning and Conservation League for consideration by the Bay Delta Conservation Plan Conveyance Working Group

Dear Ann, Jerry, and BDCP Conveyance Working Group members:

The Planning and Conservation League appreciates the opportunity to provide comments on the conveyance process now underway at the Bay Delta Conservation Plan (BDCP). PCL urges the BDCP process to gather the necessary information regarding the various conveyance options and their potential benefits and adverse impacts on the Bay Delta Estuary and its watersheds as quickly and as efficiently as possible.

However, the history of Delta policy in California demonstrates that a final decision should be made only after adequate information about the consequences of potential conveyance alternatives is available. In addition, given the likely uncertainties and information gaps that will exist even with the best of efforts, a discussion and decision



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regarding Delta governance reform must parallel and complement a final decision on the conveyance of water. As your group considers how conveyance may be a part of the plan for the recovery of covered species under the Bay Delta Conservation Plan (BDCP), we offer this initial list of important questions.

CLIMATE CHANGE

1. How will various conveyance options reduce or exacerbate the impact of climate change on the water quality, timing and freshwater flow needs of aquatic species?
2. How will water quality at the various proposed intake locations, including an intake on the Sacramento River, be affected by differing levels of sea level rise, changed hydrology, and the possible loss of multiple delta islands?
3. What would it take to protect each conveyance option (including either a canal or pipeline) from the effects of differing levels of sea level rise, changed hydrology, and the possible loss of multiple delta islands?
4. What are the necessary flows including bypass and other flows, and diversion amounts consistent with ecosystem protection under various climate change scenarios, including differing levels of sea level rise, changed hydrology, and the possible loss of multiple delta islands?
5. To what degree are the answers to the questions below sensitive to future climate change scenarios? Are some conveyance configurations more resilient to climate change? How will each conveyance option impact the ability of California's aquatic species to adapt to and recover under climate change?

PHYSICAL CONSIDERATIONS

Fish Screens

6. How will fish screens impact Delta smelt, salmon, green sturgeon, longfin smelt, splittail and other Delta-dependent species?
7. What standards exist or need to be developed for screening delta smelt, green sturgeon and other fish?

8. What bypass flows would be required for the fish screens to work effectively and how can those estimates be tested?

9. How much water could be diverted through screens meeting the necessary standards? Given the uncertainties as to how alternative facilities will impact aquatic species, what options are available for reversible experiments that would be put into place prior to making permanent commitments?

Canal or Pipeline(s)

10. What are the advantages and disadvantages of pipeline(s) versus a canal, including impacts on aquatic and terrestrial species?

11. What are the advantages and disadvantages of building a lined vs. unlined canal, including impacts on aquatic and terrestrial species?

Local drainage

12. How do the various options, including a canal, affect local drainage and the permits necessary for that drainage within and into the Delta?

Alignment

13. What are the advantages and disadvantages of different alignments for the various options, including impacts on aquatic and terrestrial species?

Sizing

14. What are the advantages and disadvantages of different capacities for a canal or pipeline(s), including impacts on aquatic and terrestrial species?

Turnouts

15. What are the advantages and disadvantages of freshwater turnouts from a canal or pipeline(s) that would discharge fresher water at various locations in the Delta, including impacts on aquatic and terrestrial species?

OPERATIONAL CONSIDERATIONS

Flow Objectives

16. What flows are required for:

- a. Hydrologic conditions that promote recovery of covered species?
- b. Effective fish screening?
- c. Support of an adequate food web in the Delta?
- d. Management of invasive species?
- e. Maintenance of water quality for other Delta beneficial uses, including drinking water, ecosystem, and agriculture?

17. How would alternative in-Delta operations change upstream operations, including effects on upstream flows, temperature, water quality and aquatic and terrestrial species?

Water Delivery Objectives

18. What amounts of water could be diverted in different water years, by season, and on average while meeting the planning goals of species recovery?

19. How would those diversion amounts differ under different climate change scenarios including differing levels of sea level rise, changed hydrology, and the possible loss of multiple Delta islands?

Water Quality Objectives

20. What would be the water quality at different locations in the Delta under different operations?

21. How would aquatic and terrestrial species have water of acceptable quality?

22. How would in-Delta agriculture have water of acceptable quality?

23. How would other water users (e.g. Contra Costa Water District and City of Rio Vista) have water of acceptable quality?

24. How would ecosystem water quality be monitored, managed, and protected?

DUAL CONVEYANCE

In addition to the applicable questions above:

25. How would the fish facilities (including both screening and handling) at the existing diversion locations in the South Delta be improved to minimize loss of fish?

26. How would different climate change scenarios affect functionality of pumps in the southern Delta?

27. What operational management conditions are necessary to avoid impacts to pelagic fish and other species at the South Delta pumps under the various conveyance options?

COSTS

28. What would be the costs for different conveyance configurations, including full mitigation and monitoring costs?

29. Who would pay the costs, and (e.g., if funded according to the beneficiary-pays principle) would different conveyance configurations and operations indicate different cost-sharing partners?

TOOLS

As analysis of these, and other, questions proceeds, the work must include clear identification of both the strengths and limitations of the available tools. A tool's capacity for sensitivity analysis (i.e. comparison of outputs given changes or uncertainties in inputs) is of particular importance given that the Delta ecosystem is both naturally variable and imperfectly understood.

In addition, to provide full transparency and openness of decision-making, the analytical tools used to evaluate these questions (for example, CALSIM Lite) must be made available to all stakeholders.

Finally, although your working group is focusing on conveyance questions in particular, we emphasize that similar effort must be put into finding answers to questions relating to issues such as governance (including but not limited to conditions of potential assurances), adaptive management for both ecosystem management and water supply, and funding structures (e.g. beneficiary pays).

Sincerely,

A handwritten signature in black ink that reads "Jonas Minton". The signature is written in a cursive, flowing style.

Jonas Minton
Senior Water Policy Advisor

jminton@pcl.org

w: (916) 313 - 4516

c: (916) 719 - 4049

cc: Karen Scarborough, Undersecretary for Resources

ATTACHMENT 2

5-12-2008 letter submitted by PCL to the Delta
Vision Blue Ribbon Task Force recommending
policy guidelines for improving water reliability
for California

President
Bill Center

President Emeritus
Sage Sweetwood
John Van De Kamp

Senior Vice President
Kevin Johnson

Secretary/Treasurer
Bill Leimbach



Regional Vice Presidents

Elisabeth Brown
Jan Chatten-Brown
Dorothy Green
Phyllis Faber
Rick Hawley
Fran Layton
Doug Linney
David Mogavero
Stephanie Pincetl
Lynn Sadler
Teresa Villegas
Terry Watt
Bill Yeates

May 12, 2008

Phil Isenberg, Chair
Delta Blue Ribbon Task Force
Delta Vision
650 Capitol Mall
Sacramento, CA 95814

via e-mail:

dv_context@calwater.ca.gov

ullrey@calwater.ca.gov

sguillen@calwater.ca.gov

RE: Comments submitted for consideration in development of Delta Vision's strategic plan – Area (2) Reliable Water for California

Dear Mr. Isenberg:

The Planning and Conservation League submits the following recommendations for the Delta Vision strategic plan, with particular emphasis on Area (2) of your invitation: Reliable Water for California. First, we propose some general guidelines for the development of policies that support the co-equal goals of reliable water supply and a healthy Delta ecosystem. Second, we highlight several bills currently under consideration in the California Legislature which exemplify some of our key policy recommendations.

The "Water Efficiency and Security Act" (AB 2153), jointly authored by Assembly Members Krekorian and Hancock, ensures that California maintains water supply reliability while accommodating growth. In doing so, AB 2153 can maximize water availability for the Delta while ensuring water supply reliability by reducing the growth in surface water diversions upstream of the Delta, and reducing reliance on Delta water in exporter areas.

AB 2175, co-authored by Assembly Members Laird and Feuer, establishes mechanisms for reducing per capita water use by 20%.

Our implementation suggestions are particularly relevant for the following Delta Vision recommendations:

1. *The Delta ecosystem and a reliable water supply for California are the primary, co-equal goals for sustainable management of the Delta.*
4. *California's water supply is limited and must be managed with significantly higher efficiency to be adequate for its future population, growing economy, and vital environment.*
5. *The foundation for policymaking about California water resources must be the longstanding constitutional principles of "reasonable use" and "public trust;" these principles are particularly important and applicable to the Delta.*
6. *The goals of conservation, efficiency and sustainable use must drive California water policies.*
7. *A revitalized Delta ecosystem will require reduced diversions -- or changes in patterns and timing of those diversions upstream, within the Delta, and exported from the Delta -- at critical times.*

While we strongly recommend that the Delta Vision strategic plan include recommendations for legislative solutions in 2008 and beyond, we also urge participants in the Delta Vision process to, *this year*, actively support key water legislation (such as AB 2153 and AB 2175) that is consistent with Delta Vision objectives. If supported by both the Assembly and Senate, these bills may already be on the Governor's desk by the time that the Delta Vision Strategic Plan is released. Successful passage of these bills during the current legislative session will assist the Delta Vision process by building momentum for improved management of water in California.

I. Proposed policy guidelines for improving water reliability for California

PCL recommends that Delta Vision include the following policy guidelines in the Delta Vision strategic plan to be released in October 2008.

Proposed policy guidelines:

Policies for a sustainable Delta must have as their foundation an understanding of how much water the Delta ecosystem needs

The recent dramatic declines in native Delta fish populations are clear evidence that current practices in the Delta are not sustainable. Toxics, invasive species, habitat degradation, salinity and turbidity patterns, altered flows and high water exports all contribute to the Delta's ecological problems.

Policies for a sustainable Delta must be built on a comprehensive understanding of what flow regimes (e.g., quantity, flow direction, seasonal, annual and inter-annual variability) and water quality conditions (e.g., temperature, salinity, turbidity, contaminant load) are required under a variety of conditions (e.g., water year types, potential climate change impacts, different points of diversions) to provide for a healthy and sustainable Bay Delta Estuary (e.g., healthy, self sustaining populations of pelagic fish, anadromous fish, wildlife, terrestrial species and all elements of their food webs).

Policies for a sustainable Delta must go beyond “changes in patterns and timing” of diversions

CALFED's Environmental Water Account is just one example of how “changes in patterns and timing” of diversions have failed to adequately protect the Delta ecosystem. While the patterns and timing of diversions are certainly important components of any operation plan, we have seen no plausible evidence that the Delta ecosystem can be recovered simply by “tuning” the Delta.

Policies for a sustainable Delta must be designed with the ecosystem end in mind

Policies to restore the Delta must provide sufficient protections to allow for species recovery. Importantly, the needs for ecosystem restoration should be defined by science, not by what is feasible under current export levels. We are concerned that some processes, such as the Bay Delta Conservation Plan, emphasize maintenance of exports as the barometer of the type and extent of restoration possible.

Policies for a sustainable Delta must address both near- and long-term solutions

It is necessary and appropriate that any plan to restore and protect a healthy Delta include long-term planning on policies or projects that will be implemented on the scale of decades. However, it is crucial that protective policies be implemented in the near-term as well.

Options for near-term actions should be screened for feasibility and, if promising, should be implemented on a reversible, experimental, basis, with real time monitoring and adaptive management.

Policies for a sustainable Delta must take advantage of opportunities throughout the state

Delta ecosystem health and water supply reliability can be and must be addressed at least in part by solutions outside of the Delta itself.

Improvements in regional water efficiency and regional water supplies are key components of a successful revival of the Delta by reducing demand on Delta water supplies. Restoring habitat and flow conditions upstream of the Delta will contribute to a sustainable Delta by improving spawning and rearing conditions for salmon and other Delta species.

Policies for a sustainable Delta must not impair water resources elsewhere in California

While we encourage the development of policies that take advantage of opportunities throughout the state, too often, a solution to an existing problem creates a new problem elsewhere. Policies that manage water demand on the Delta should not simply displace the negative impacts of water delivery, but should reduce the environmental impacts of water delivery statewide.

For example, while one tool to manage demand from the Delta may be a more active management of groundwater storage, the appropriateness of any such plan for groundwater use will depend on local circumstances. Many residents in the Sacramento River Valley north of Sacramento have domestic wells which tap into the Tuscan Aquifer. Because of the region's geology, any intensification of withdrawals from this aquifer is likely to cause serious economic and environmental impacts in the region.

How the proposed policy guidelines will contribute to achieving the vision:

The above policy guidelines contribute to achieving the vision in that they, consistent with Delta Vision's 12 linked recommendations, provide direction for the sustainable management and use of California's limited water supply.

Potential barriers to successful policy solutions:

Besides the usual disagreements over reasonable and beneficial uses of water, some significant barriers to implementing successful policy solutions are:

- the disinclination to reduce exports from the Delta,
- the reluctance to embrace out-of-Delta solutions, and
- the unprecedented challenge of dealing with the coming effects of climate change.

How the proposed policy guidelines will serve California through 2030 and 2070

One of the themes in the policy guidelines recommended above is “living within California’s water means”. Policies that shape California’s water demand within the limitations of the state’s water supply are more likely to be sustained over the long-term than policies that focus on investment in marginal gains in traditional supplies.

How the proposed policy guidelines will address a changing Delta, including population growth, sea level rise, seismic events, and changed hydrology due to climate changes

Our policy recommendations recognize the need for water management strategies to adapt to the changing conditions in the Delta. New policies must clearly identify their resilience to a changing environment.

II. Policy measures currently under consideration in the state legislature

PCL recommends that Delta Vision actively support AB 2153 (the “Water Efficiency and Security Act”, authored by Assembly Members Krekorian and Hancock) and AB 2175 (the water conservation bill authored by Assembly Members Laird and Feuer) and encourage the Assembly, Senate, and Governor to pass these important measures.

Current bills:

AB 2153 (Krekorian/Hancock)

This critical measure (co-sponsored by the Planning and Conservation League and the Environmental Justice Coalition for Water) directs new development projects to use cost-effective water use efficiency measures and to mitigate their water demand through

investments in efficiency in existing communities or development of sustainable local water supplies.

According to the Department of Finance, by 2030 California's population will grow by 11 million. Even if those new residents conserve the 20% called for in the Governor's February letter to state senators, their annual water use will still be over two million acre-feet (of the same order of magnitude as the amount of water that the SWP can reliably deliver). While the surface storage projects currently being debated cannot meet that projected demand, AB 2153 offers a way to accommodate much of this growth.

AB 2175 (Laird/Feuer)

This important bill (sponsored by the Natural Resources Defense Council) directs California's Department of Water Resources to achieve a 20% reduction in urban per capita water use by 2020, and to reduce annual agricultural water use by at least 500,000 acre-feet by 2020.

How the current bills will contribute to achieving the vision:

Delta Vision's linked recommendations, particularly Recommendations 1, 4, 5, 6, and 7, highlight the idea of sustainability. To sustain both the Delta ecosystem and reliable water supply in the long-term, California must come to grips with the idea of limits and start to make the difficult decisions on how best to use and apportion its limited water resources.

Both AB 2153 and AB 2175 encourage the development of more water-efficient practices statewide. AB 2175 focuses on reducing per-capita water use in urban areas and on a statewide reduction in agricultural water use. AB 2153 ensures that the water demands on existing sources will not increase as we accommodate millions of new Californians.

Potential barriers to passage of these current bills:

One barrier to passage of these bills is a reluctance to accept that water from the Delta will not be the primary source to accommodate future growth. Delta Vision's recommendation (#7) for reduced diversions from the Delta is an important message that can help build support for needed changes to water use such as those proposed in AB 2153 and AB 2175.

How the current bills will serve California through 2030 and 2070

AB 2153 manages the water footprint of residential and commercial water use in a way that allows population and economic growth without further damaging the water reliability of current residents and businesses. The water conservation targets for urban and agricultural uses called for in AB 2175 complement AB 2153, since the water needs of new development will in part be mitigated by water efficiencies in the urban and agricultural sectors.

Both AB 2153 and AB 2175 provide the flexibility to incorporate new technologies and adapt to new circumstances. The hard goal of reducing (or at least not increasing) California's water demand is accomplished by measures that can evolve over the next 20 to 50 years.

How the current bills will address a changing Delta, including population growth, sea level rise, seismic events, and changed hydrology due to climate changes

Even under the expected scenario of increasing population growth and effects of climate change such as sea level rise and changing hydrology, both AB 2153 and AB 2175 promote investments in water that will "pay off" year after year. While these two bills are of course not a complete solution to California's water woes, they are an important step forward.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mindy McIntyre', followed by a long horizontal line extending to the right.

Mindy McIntyre
Water Program Manager

(916) 313 - 4518
mmcintyre@pcl.org

cc: John Kirlin

Seen Jose

BDCP

BAY DELTA CONSERVATION PLAN ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT

Comment Card

Please Print

Name: Stan Williams Organization: Poseidon Water
Telephone: 408 332 5819 e-mail: swilliams@poseidon1.com
Address: 111 North Market, Suite 300,
City: San Jose State: CA Zip: 95113

☒ Yes, I would like to be added to your e-mail list.

Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 14, 2009.

Question related to effects of alternatives
on salinity levels at area on edge of delta
(Pittsburg)

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:
Ms. Delores Brown, Chief, Office of Environmental Compliance, Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236.
You may also e-mail your comments to BDCPcomments@water.ca.gov. Comments must be received by May 14, 2009.



RBOC
Protecting your boating interests.

925 L Street • Suite 220
Sacramento CA 95814
916.441.4166

www.rbo.org

April 14, 2009

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

RE: BDCP EIR and EIS

Dear Mrs. Brown:

Recreational Boaters of California [RBOC] requests a meeting to discuss the concerns of the boating community with the regard to Bay Delta Conservation Plan proposals to construct new, permanent barriers and gates in and through Delta waterways.

This is a follow-up to our previous communications [attached] in which RBOC advocates the installation of operable boats locks, and further advocates that such control structures and boat locks be installed, maintained and operated without cost or expense to recreational boaters.

I would also like to confirm and re-iterate the interest of RBOC in working with the Department and stakeholders as data is collected regarding boat usage, as well as the design and function of locks.

RBOC Vice President - North Linda Bendsen recently expressed her interest in being involved, and provided her contact information to you and Mr. Richard Hunn.

It is our understanding that this dialogue is timely, as plans are being made to take counts of boats on waterways at different times during the upcoming months, and locks and intakes are being designed that would extend into the water and impact navigation. RBOC has information that will be helpful on these issues.

RBOC stands ready to assist BDCP to assure that Delta waterways remain navigable and accessible for recreational boating while BDCP strives to restore the Delta ecosystem and protect water supplies. You can contact me during the business day by telephone at 530-823-4860 (where I serve as General Manager of the Placer County Water Agency). Also, you can contact our Director of Governmental Relations, Jerry Desmond, Jr., by phone during the business day at 916-441-4166. The two of us on behalf of RBOC are available to meet with you and other BDCP members at anytime to collaborative in achieving our mutual interest.

Sincerely,


David Breninger, President

C: Mike Chrisman, Secretary of Natural Resources Agency
Karen Scarborough, Under-Secretary of Natural Resources Agency
Joe Grindstaff, Deputy Secretary for Water and Power
Ray Tsuneyoshi, Director Department of Boating and Waterways
Lester Snow, Director Department of Water Resources
Jerry Johns, Deputy Director Delta and Statewide Water Management

Enclosures

rboc/2009/delta/Brown L 4-14-09

David Breninger
President

Linda Bendsen
Vice President - North

Anne Sachs
Vice President - South

Bob White
Secretary - Treasurer

Walt Kadyk
Past President

Legislative Advocates
Jerry Desmond
Executive Vice President

Jerry Desmond, Jr.
Director of
Government Relations

DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-5791

**JUL 29 2008****RECEIVED JUL 29 2008**

Mr. Walt Kadyk, President
Recreational Boaters of California
925 L Street, Suite 220
Sacramento, California 95814

Dear Mr. Kadyk:

Thank you for your letter of June 17, 2008, transmitting the policy of the Recreational Boaters of California (RBOC) regarding access to navigable Delta waterways and providing the contact information for RBOC. We will keep your policy in mind as we develop projects within the Delta.

Attached for your information is a letter from the Department to Mr. David Breninger, RBOC Vice President – North, providing the status of the projects proposed by the Department for the Delta.

If you would like to discuss specific projects in more details, please contact Katherine Kelly, Bay-Delta Office Chief, at (916) 653-1099.

Sincerely,

Original Signed By
Lester A. Snow

Lester A. Snow
Director

Enclosure

cc: David Breninger
Placer County Water Agency
P.O. Box 6570
Auburn, CA 95604

Mike Chrisman
Resources Agency Secretary

Ray Tsuneyoshi
Department of Boating and Waterways
2000 Evergreen Street, Suite 100
Sacramento, California 95815



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JUNE 17, 2008

Re: Access to Navigable Delta Waterways

Michael Chrisman, Secretary, California Resources Agency
1419 Ninth Street, Suite 1311
Sacramento, CA 95814

Lester Snow, Director, Department of Water Resources
1416 Ninth Street
Sacramento, CA 95184

Ray Tsuneyoshi, Director, Department of Boating and Waterways
2000 Evergreen Street
Sacramento, CA 95815

Secretary Chrisman, Director Snow and Director Tsuneyoshi:

We understand that the Delta Vision Blue Ribbon Task Force is working to identify and evaluate alternative measures and management practices that will be necessary to implement the Delta Vision's recommendations.

Recreational Boaters of California [RBOC] urges that access for continued navigation by recreational boats of the waters of the Delta be assured wherever any control structure is planned for placement across a navigable Delta waterway. Our Policy Statement on Access to navigable Delta Waterways is enclosed here. It is critical to the recreational boating community that navigation be preserved as efforts are made to achieve a sustainable Delta.

RBOC contacts on this issue are:

President Walt Kadyk	909-390-0450	wkadyk@advancedelectronics.com
Vice President - North Dave Breninger	530-823-4860	dbreninger@surewest.net
Past President - Lenora Clark	925-634-614	lenoraclark@aol.com
Director Linda Bendsen	707-422-3510	lbendsen@pacbell.net
Legislative Advocate Jerry Desmond, Jr.	916-441-4166	jerry@desmondlobbyfirm.com

RBOC is a nonprofit boater advocacy organization that works to protect and enhance the interests of the state's recreational boaters before the legislative and executive branches of state and local government. RBOC is celebrating its 40th anniversary as a statewide organization which since 1968 has continued its commitment to promoting the enjoyment, protection, and responsible use of our waterways.

Thank you for this opportunity to discuss our request.

Sincerely,

Walt Kadyk

Walt Kadyk, President

C: Board of Directors, Recreational Boaters of California
Southern California Yachting Association
Pacific Inter-Club Yacht Association

Rboc/2008/Delta/Chrisman-Snow-Tsuneyoshi L 6-16-08

Walt Kadyk
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Vice President - North

Anne Sachs
Vice President - South

Bob White
Secretary - Treasurer

Lenora Clark
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George Neill 1997
Joe Balunco 1998
Linda Newland 1999
Bill Lewis 2000
Ivan Marsh-Chune 2001
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Russ Robinson 2003
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Jerry Lounsbury 2006
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June 16, 2008

Phil Isenberg, Chair
Delta Vision Blue Ribbon Task Force
650 Capitol Mall
Sacramento, CA 95814

Re: Access to Navigable Delta Waterways

Chairman Isenberg:

We understand that the Task Force is working to identify and evaluate alternative measures and management practices that will be necessary to implement the Delta Vision's recommendations.

Recreational Boaters of California [RBOC] urges that access for continued navigation by recreational boats of the waters of the Delta be assured wherever any control structure is planned for placement across a navigable Delta waterway. Our Policy Statement on Access to navigable Delta Waterways is enclosed here.

It is critical to the recreational boating community that navigation be preserved as efforts are made to achieve a sustainable Delta.

RBOC contacts on this issue are:

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Legislative Advocate Jerry Desmond, Jr.	916-441-4166	jerry@desmondlobbyfirm.com

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Thank you for this opportunity to discuss our request.

Sincerely,

Walt Kadyk

Walt Kadyk, President

C: Board of Directors, Recreational Boaters of California
Southern California Yachting Association
Pacific Inter-Club Yacht Association

Rboc/2008/Delta/Isenberg L 6-16-08

Walt Kadyk
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Vice President - North

Anne Sachs
Vice President - South

Bob White
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Walt Kadyk
President

David Breslinger
Vice President - North

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Lenora Clark 2007

RECREATIONAL BOATERS OF CALIFORNIA

Policy Statement:

Preservation of Recreational Boating
Access to Navigable California Delta Waterways
- June 13, 2008 -

Recreational Boaters of California (RBOC) will advocate to protect the rights of recreational boaters to assure access for continued navigation by recreational boats the waters of the California Delta where ever any "control structure" (such as, but not limited to gates or barriers whether temporary or permanent) is planned for placement across a navigable Delta waterway. RBOC will seek assurances that as any changes are contemplated which further alter Delta navigable waterways that alternatives are identified and implemented to the satisfaction of RBOC that will best preserve and sustain recreational boat passage at each location. RBOC will seek to have operable boat locks installed as an integral design component to mitigate for the placement of any control structure across any navigable Delta waterway. All control structures and boat locks or other alternatives satisfactory to RBOC for recreational boat passage are to be installed, maintained and operated without cost or expense to recreational boaters.

###

Dave Breninger

From: Kelly, Kathy [kkelly@water.ca.gov]
Sent: Monday, June 09, 2008 2:08 PM
To: Dave Breninger
Cc: Snow, Lester; Ray Tsuneyoshi; Lenora Clark; Linda Bendsen; Walter Kadyk; Jerry Desmond Jr.; Fred Goodwin
Subject: Request status report on operable boat locks at proposed new Delta control structures (gates/barriers)
Attachments: Response to Breninger (letterhead).pdf

Dear Mr. Breninger:

Attached is our response to your request for information on the Department's activities and proposed projects in the Delta. A hard copy of this letter has also been sent to you.

Recreational boating in the Delta is an important consideration in the development of the Department's proposed Delta projects. The attached letter contains links to several Internet sites with additional information on specific projects and the names and contact information for project staff. You may also contact me directly if you wish to discuss your concerns further.

Sincerely,
Katherine Kelly

K²

Katherine Kelly
Bay-Delta Office, Chief
(916) 653-1099

From: Dave Breninger
Sent: Friday, May 23, 2008 11:52 AM
To: ccoron@water.ca.gov
Cc: Lester Snow; Ray Tsuneyoshi; Lenora Clark; Linda Bendsen; Walter Kadyk; Jerry Desmond Jr.; Fred Goodwin
Subject: Request status report on operable boat locks at proposed new Delta control structures (gates/barriers)

May 23, 2008

TO: Charlotte Coron ccoron@water.ca.gov
Chief, Administration and Program Control
Bay-Delta Office

FROM: David Breninger dbreninger@pcwa.net
Recreational Boaters of California
Vice President-north

RE: Request status report on operable boat locks at all proposed new Delta control structures (gates and/or barriers)

Greetings,

I write to you in my capacity as a member of the Board of Directors and Vice President-north of Recreational
8/18/2008

Boaters of California (RBOC). In that regard, and on behalf of recreational boaters of who transit the waterways of the California Delta, I write to inquire about the current status for operable boat locks at all locations proposed for the installation of gates and/or barriers that are planned to serve as new control structures across various Delta waterways. We are aware that such gates and/or barriers are planned as part of the South Delta Improvement Project (at least four structures), Franks Tract Project (at least two structures) and the Cross Channel Re-operation Gates Project. We would appreciate a report as soon as possible on the status on each of these Projects relevant to operable boat locks for passage around all gates and/or barriers that are proposed for controlling or inhabiting the flow of water in Delta waterways.

We are available to meet with you at any time at your Sacramento office. My phone number and email and postal-mail addresses are noted below for easy reference in contacting me.

I look forward to hearing from you soon.

Thank you,
Dave Breninger
RBOC VP-north

David Breninger
General Manager
Placer County Water Agency
PO Box 6570
Auburn CA 95604
530.823.4860
dbreninger@pcwa.net
www.pcwa.net



8/18/2008

DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-5791



June 4, 2008

Mr. David Breninger
General Manager
Placer County Water Agency
P.O. Box 6570
Auburn, California 95604

Dear Mr. Breninger:

I am responding to your letter sent via email regarding the status of the various gates or barriers the Department is evaluating or proposing for the Delta.

The Department is pursuing the installation of the four permanent operable gates proposed in the South Delta Improvements Program. The gates planned for Old River at Tracy, Grantline Canal, and Old River at the Head of Old River will include boat locks to avoid any potential adverse effects to Delta boaters. The fourth gate is planned for Middle River. Middle River is shallow and boat traffic is very light. As such, no boat lock is planned for the operable gate in Middle River. These permanent gates and their associated boat locks will provide a net improvement over the existing seasonal rock barriers, which have ramps to convey boats around the barriers. Permitting for these gates is expected to be completed in September 2009, and construction is scheduled to begin in 2010. Please contact Jacob McQuirk at jacobmc@water.ca.gov or (916) 653-9883 for additional information.

The Department is analyzing the Franks Tract Project. The latest status report is attached. Recreation surveys have just started for the project area. The public scoping meetings for the project will happen this August. I have added your name to the list of interested parties to receive an announcement of the scoping meetings closer to the actual meeting dates. Additional information on this project is available at <http://baydeltaoffice.water.ca.gov/ndelta/frankstract/index.cfm>.

Mr. David Breninger
General Manager

Page 2

The Department and U.S. Bureau of Reclamation have been investigating operational changes at the Delta Cross Channel to improve water quality conditions in the Delta while maintaining fishery protection. The Department and Reclamation have a regional salmon out-migration study planned this winter to collect information on salmon behavior and hydrodynamics to help evaluate potential operational scenarios. In addition, Reclamation has a North Central Delta Improvement Study that is using computer modeling to evaluate operational scenarios. As you may know, the Delta Cross Channel Gate does not have a boat lock and, therefore, changing the DCC gate operation could hinder or improve boat passage through this area. Victor Pacheco, DWR Principal Engineer, is DWR's program manager. You may contact him at vpacheco@water.ca.gov or (916) 653-6636 for additional information. Mona Jefferies-Soniea is Reclamation's program manager. You may contact her at mjefferiessoniea@mp.usbr.gov or (916) 978-5068.

The Department has begun working on an Environmental Impact Report/Environmental Impact Statement for the Bay-Delta Conservation Plan. The objective of the BDCP process is to develop a plan to provide for the conservation of at-risk species in the Delta and improve the reliability of the water supply system within a stable regulatory framework. Information on this effort can be found via DWR's Home Page and clicking on "BDCP EIR/EIS". Scoping meetings were held this month. It is possible that structures, gates, or channel modifications will be proposed for this plan. Boat passage and impacts to flood conveyance are two very important considerations in the design and proposed locations of these structures. We will make sure your email address is on the list of people to be kept abreast of the status of the BDCP EIR/EIS and any related public meetings. If you wish to learn more about this project, please contact Paul Marshall, DWR Principal Engineer, at pmarshall@water.ca.gov or (916) 653-7247.

The Department's activities in the Delta have increased over the past year or so. Keeping up with them is challenging. We are working to make information on all our Delta activities more accessible to the public. The best place for people to start is at the "Delta Initiatives" link on the DWR Home Page, <http://www.water.ca.gov/>. This link will be evolving over the next few weeks to better explain the Delta activities being undertaken or projects being considered by DWR in the Delta.

Mr. David Breninger
General Manager

Page 3

You may contact me at (916) 653-1099 or kkelly@water.ca.gov if you wish to discuss your concerns further. I have also transmitted this letter to you via e-mail. It will make accessing the referenced internet locations more convenient for you.

Sincerely,

Original Signed by

Katherine F. Kelly, Chief
Bay-Delta Office

cc: Mr. Raynor T. Tsuneyoshi, Director
Department of Boating and Waterways
2000 Evergreen Street, Suite 100
Sacramento, California 95815



Walt Kadyk
President

David Breisinger
Vice President - North

Anne Sachs
Vice President - South

Bob White
Secretary - Treasurer

Legislative Advocates
Jerry Desmond
Executive Vice President

Jerry Desmond, Jr.
Director of
Government Relations

FOR IMMEDIATE RELEASE

Fairfax

CONTACT:

Walt Kadyk, President
(909) 941-6622

Jerry Desmond, Jr.
Director of Government Relations
(916) 441-4166

State Water Resources Department to Consider Boater Policies in Delta Planning

Sacramento [August 13] – The boater advocacy organization Recreational Boaters of California is encouraged by and applauds the California Department of Water Resources statement that it will be considering important boater policies regarding access to navigable waterways as the department develops projects for the Sacramento-San Joaquin Delta.

Stated RBOC President Walt Kadyk: "This positive announcement by Director Lester Snow is an important step in our efforts to ensure continued navigation by recreational boats wherever any control structure is planned for placement across a navigable Delta waterway."

The Delta Vision Blue Ribbon Task Force is working to identify and evaluate alternative measures and management practices that will be necessary to implement the Delta Vision's recommendations. RBOC is participating in this process and is guided by the following policy that has been developed by its Board:

Recreational Boaters of California (RBOC) will advocate to protect the rights of recreational boaters to assure access for continued navigation by recreational boats on the waters of the California Delta where ever any "control structure" (such as, but not limited to gates or barriers whether temporary or permanent) is planned for placement across a navigable Delta waterway. RBOC will seek assurances that as any changes are contemplated which further alter Delta navigable waterways that alternatives are identified and implemented to the satisfaction of RBOC that will best preserve and sustain recreational boat passage at each location. RBOC will seek to have operable boat locks installed as an integral design component to mitigate for the placement of any control structure across any navigable Delta waterway. All control structures and boat locks or other alternatives satisfactory to RBOC for recreational boat passage are to be installed, maintained and operated without cost or expense to recreational boaters.

Recreational Boaters of California [RBOC] is celebrating its 40th anniversary as the nonprofit governmental advocacy organization that works to protect and enhance the interests of the state's recreational boaters before the legislative and executive branches of state and local government.

RBOC was formed as a statewide organization in 1968 and from that date forward has continued its commitment to promoting the enjoyment, protection, and responsible use of our waterways.

Suite 220
925 L Street
Sacramento CA 95814
916.441.4166
www.rbo.org

My name is Jane Wagner-Tyack, and I am speaking here on behalf of Restore the Delta, a grassroots network of citizens committed to preserving the Sacramento-San Joaquin Delta. We want to express our dismay once again that the BDCP steering committee was formed to exclude representatives of Delta communities. You have designed a planning process in which the regulated bodies will in effect design the system that will regulate them. We have no confidence in your intention to provide for water quality for any except export purposes, even though a multi-billion dollar economy of farming and recreational and commercial fishing, with the jobs that economy provides, depends on ample clean water in the Delta. We have no confidence in the state's ability to plumb this intricate system in ways that sustain Delta habitat and human communities. We question the science on which you have based many of your decisions. We believe you moved precipitately to consider only an isolated conveyance as the solution to the Delta's challenges. And we think it is a terrible mistake to invest time and resources in planning for more of the kind of infrastructure that has already created unrealistic expectations about water availability and reliability statewide. The state should be putting these resources into efforts toward regional self-sufficiency and the most flexible, resilient systems possible in order to confront unknown conditions in the future.



SACRAMENTO COUNTY FARM BUREAU

8970 Elk Grove Boulevard • Elk Grove, California 95624-1946
(916) 685-6958 • Fax (916) 685-7125

May 14, 2009

Ms. Delores Brown, Chief
Office of Environmental Compliance
Department of Water Resources
PO Box 942836
Sacramento, CA 94236
BDCPcomments@water.ca.gov

RE: Bay Delta Conservation Plan (BDCP) Scoping Comments

Dear Ms. Brown;

Sacramento County Farm Bureau is very concerned about how the Bay Delta Conservation Plan (BDCP) will affect Sacramento County agriculture. Please reference our scoping letter dated May 30, 2008 and include it by reference herewith. These comments should not be considered conclusive due to the lack of detail in plans as presented during the most recent scoping meetings and due to the frequent changes to maps and proposals describing the BDCP. Lack of detail and frequent changes makes it very difficult to understand and comprehensively comment on impacts caused by BDCP.

As Sacramento County Farm Bureau understands the BDCP today, we believe it will harm Sacramento County Agriculture in a variety of ways:

1. Isolated conveyance proposals with multiple outlets and large surface canals will negatively impact the northern Sacramento County Delta far beyond the footprint of the project.
2. Undefined habitat restoration projects in the vicinity of the Cosumnes River Preserve and McCormack Williamson Tract will negatively impact the environment, flood control operations and farming.
3. The BDCP has reduced and will further reduce land values.
4. BDCP environmental projects which convert or destroy agricultural lands will harm the local and regional economies as well as avian and terrestrial species.

The BDCP has published maps showing multiple canals slicing and dicing the northern part of the Sacramento County Delta. The following multiple negative impacts will result from dividing reclamation districts and creating new Delta channels:

To Represent and Promote Agriculture in Sacramento County

1. The BDCP will create new avenues of seepage limiting crop choices and productivity and destroying permanent crops such as cherries, pears and grapes.
2. The BDCP will destroy and make infeasible provision of essential reclamation district services such as flood control, drainage and delivery or irrigation water.
3. The BDCP will interfere with regional flood control in the Delta, the Franklin area and the Cosumnes and Mokelumne Rivers by redirecting normal and historical flow of floodwaters.
4. The BDCP will destroy special status, highly productive farmland both in the footprint of the project and in the areas where infrastructure is destroyed.
5. The BDCP will violate one of the primary goals of the Delta Protection Act of 1992; the promotion and protection of Delta agriculture in the Primary Zone.

The BDCP has developed maps showing areas where it will focus on habitat projects to benefit targeted fish species. One of these areas is composed of the Cosumnes River Preserve, McCormack Williamson Tract and the northern part of New Hope Tract. Although the BDCP has not provided the specifics of how these projects will be designed, Sacramento County Farm Bureau is concerned that the following negative impacts could result from habitat projects:

1. The BDCP will redirect impacts from the State and Federal pumping facilities to pumping facilities in close proximity to the habitat protects, causing controls and restrictions on Sacramento County Delta farmers; ability to operate their pumping facilities.
2. The BDCP will interfere with historical flood flows or change those flows in a manner which is detrimental to the region.
3. The BDCP will include redesigned levee systems which will increase flood risk for neighboring reclamation districts and the entire region.
4. The BDCP will cause seepage impacts which will limit the ability to farm surrounding land.

By putting lines on maps and widely distributing preliminary objectives, the BDCP has reduced land values due to real estate disclosure requirements and uncertainty. As alternatives are developed, land value declines will become even more extreme for the following reasons:

1. The BDCP will reduce or destroy habitat easement values.
2. The BDCP will destroy agricultural land and production and eliminate or restrict crop choices.
3. The BDCP will redirect species impacts and create operational limitations.

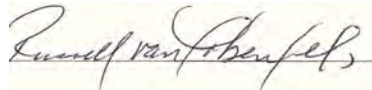
In addition, Sacramento County farmland that is in the direct path of the BDCP highly productive and capable of producing high value crops such as wine grapes, pears, apples and cherries. The Sacramento River District is the largest Bartlett pear growing region in the United States. The BDCP will also destroy vineyards in the emerging Clarksburg Appellation. The loss of Sacramento County farmland and production will negatively impact the regional economy and employment patterns. Job losses in labor-intensive vineyards and orchards will cause extreme hardship for populations least able to adjust.

Finally, Sacramento County agricultural land in the path of the BDCP provides critical foraging habitat for species such as the Swainson's Hawk and Greater and Lesser Sandhill Cranes. Because of the complementary habitat values and the scarcity of adequate and appropriate alternative foraging sites in close proximity to sanctuaries such as Stone Lakes National Wildlife Refuge and the Cosumnes River Preserve, loss of Sacramento County Delta agricultural land will also have a very destructive impact on local and migratory species.

The EIR/EIS for the BDCP must consider all negative impacts caused by conveyance alternatives and habitat restoration/enhancement projects. The EIR/EIS must determine how each alternative will impact regional flood control, land use, land values, the local and regional economies, and other species. All of these impacts must be studied, quantified and mitigated.

Thank you for the opportunity to comment at this time.

Sincerely,

A handwritten signature in cursive script, reading "Russell van Loben Sels", written in black ink on a light-colored background.

Russell van Loben Sels, President
Sacramento County Farm Bureau

CC:
Honorable Dianne Feinstein
Honorable Barbara Boxer
Honorable Dan Lungren
Honorable Doris Matsui
Honorable Dave Cox
Honorable Lois Wolk
Honorable Joan Buchanan
Honorable Alyson Huber
Honorable Roger Niello
Sacramento County Board of Supervisors
Terry Schulten, County Executive
Paul Hahn, Agency Administrator
Keith DeVore, Sacramento County Department of Water Resources

Contra Costa, Solano, Yolo & San Joaquin County Farm Bureau's

San Joaquin Farm Bureau Federation
3290 N. Ad Art Road
Stockton, CA 95215
209-931-4931

May 14, 2009

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

Re: BDCP Scoping Comments

Dear Ms. Brown,

In an effort to protect and promote the viability of Delta agriculture, the five Delta County Farm Bureaus-Contra Costa, Sacramento, San Joaquin, Solano and Yolo-have joined together, to form the Delta Caucus. The Delta Caucus understands and supports the need for water reliability statewide and supports efforts and processes to responsibly plan for California's water future.

Within the framework of the limited information available, the Caucus is concerned that BDCP scoping comments may not be comprehensive or complete. As environmental and conveyance plans are developed, the BDCP must solicit additional comments, especially from Delta interests.

However, based upon our knowledge of the BDCP at this time, the San Joaquin Farm Bureau Federation Caucus has the following concerns which we have grouped into three categories: fundamental questions, conveyance, and fish recovery efforts.

Fundamental Questions:

1. Has exporting water from the Delta damaged the environment and socio-economic health of the Delta?
2. Will increased reliance and investment to move water from North to South through the Delta institutionalize, perpetuate, and accelerate damage in the Delta?
3. Will species-specific restoration damage the ecosystem and diminish abundance of other sensitive species?
4. Is there enough developed water to support the considerable investment in the Delta being proposed by the BDCP and would that investment be better used to support development of other options such as regional self-reliance?

5. Should Delta conveyance be an interim solution while other viable options to develop a reliable water supply for the State of California are identified and developed?
6. Why is it that an insufficient range of alternatives been considered in this proposal. To date, there has only been one alternative, a Peripheral or other “conveyance” facility.
7. Why is it that Delta interests have been ignored in this process?
8. Has the BDCP determined how it will mitigate for the massive amounts of farmland in the Delta will be REPLACED within our geographic regions? To date, there has been no conversation regarding the mitigation for the loss of farmland and HOW THIS WILL IMPACT OUR FOOD SECURITY, let alone where the BDCP process will create NEW FARMLAND that will be preserved in perpetuity to ensure our food supply locally and for export abroad. As this essential step is missing and because local interests have been precluded from meaningful input in this process, we believe that the entire process should be re-started, so we can address our entire states water needs and how we minimize our impact to the food production of our region.

Conveyance:

1. The EIR must clearly show how each proposed alternative is designed to operate within the multitude of existing legal restrictions, water quality requirements, and contractual constraints such as but not limited to the North Delta Water Agency contract with the State of California, area of origin priorities, and Delta salinity standards. The EIR must include a detailed analysis of all legal constraints on water exports and a thorough explanation detailing how each alternative will comply with them.
2. The EIR must quantify how much Delta outflow is needed to maintain a healthy fresh water Delta. This information is critical to determine how much water is available for export and will aid in the overall evaluation of each alternative.
3. The EIR must explain why the BDCP isolated facility (peripheral canal) is being designed to convey 15,000 cubic feet per second. Do normal river flows justify an isolated facility capable of conveying 15,000 cubic feet per second? How much water will be conveyed “through Delta”? Will smaller capacity isolated facilities be considered? Why build a very expensive, disruptive facility if it is not needed, if it may be used only occasionally, if it could divert substantially all of the Sacramento River summer flow, and if it has the potential to devastate the Delta.
4. The EIR MUST INCLUDE A FULL RANGE OF ALTERNATIVES THAT

COULD BE ALLOWED INCLUDING INTERIM MEASURES THAT WOULD ENSURE A SUBSTANTIAL AMOUNT OF WATER CONVEYED (THROUGH THE DELTA) CAN BE UTILIZED BY ALL RESIDENTS WITH MINIMAL DISRUPTION OF ONGOING DELTA OPERATIONS. AS THERE ARE MANY PROSPECTS HERE THAT HAVE NEVER BEEN CONSIDERED, WE HAVE BEEN LIMITED BY THE AGENCIES SUPPORTING THIS ONE AND ONLY PROPOSAL FROM HAVING MEANINGFUL INPUT INTO THIS PROCESS. FURTHER, THIS PROCESS HAS PRECLUDED THE INPUT OF LOCAL INTERESTS THAT STAND TO BE IMPACTED THE MOST.

5. The EIR should compare and contrast upstream diversions and their effects on water quality entering the Delta from the Sacramento and San Joaquin Rivers. This information should be used to evaluate the effects of BDCP alternatives which divert water from the Sacramento River before entering or traveling through the Delta.
6. The EIR should examine alternatives in depth to determine if “Through Delta” conveyance is more friendly to the entire Delta ecosystem than removing water from the common pool in the North Delta and conveying it for export in an isolated facility.
7. The Delta Protection Act of 1992 was passed to protect the Primary Zone of the Delta for agriculture, habitat and recreation. The EIR should determine how these Delta resources will be negatively impacted and how alternatives can be designed to be compatible with the Act and its objectives. For example, water from isolated facilities could be piped underground across reclamation districts rather than in surface canals to eliminate negative impacts to drainage, flood control and irrigation systems caused by dividing reclamation districts.
8. The EIR must identify how facilities and changes in river elevations will impact ground water elevations. Plans must be developed to mitigate for seepage and other negative impacts associated with changes in ground water elevation.
9. The EIR must develop governance structures which will protect the Delta environment and its socio-economic interests while allowing all economic interests the ability to survive should water concerns over endangered species need to be addressed. In this process, we should not undermine the rights of existing water rights holders.
10. Because in the near and intermediate term, water exports must be conveyed through Delta, every effort should be made to make this alternative work for the long term and thus avoid the additional expense and considerable negative impacts of building an isolated facility.

11. The EIR must identify all negative impacts to the Delta economy and ecosystem caused by each of the alternatives, must quantify the cost of the impacts, and must define in detail mitigation actions which will be required. For example, how will the BDCP mitigate for loss of farmland and loss of Swainson's Hawk foraging habitat? Further, how will this process comply with the Agricultural mitigation ordinance that requires that ANY conversion of agricultural resources be addressed? Our expectation is that for every acre converted under this plan to public land, that 5 acres of new farm land be created in our jurisdiction (county) where the conversion took place. Meaning, if you convert 50,000 acres of farmland in our county to habitat and the canal, that you would need to create 250,000 acres of NEW FARMLAND in our county.
12. The EIR must determine how each conveyance alternative will affect flood control and especially how each alternative will impact flood plains such as the McCormack Williamson Tract, and the Hood-Franklin pool. BDCP projects must not adversely impact flood safety in the Delta.
13. Loss of income to special districts and counties must be considered. A mechanism must be developed to ensure that tax revenue is not lost due to public acquisition of property for conveyance facilities.

Fish Recovery Efforts (Wetlands/Tidal Wetlands/Fish Habitat):

1. The EIR should identify in detail all factors which influence the abundance of targeted fish and only propose those actions which show a strong positive correlation to increased fish abundance.
2. While the adaptive approach might work for small projects, large-scale conversion of agricultural lands should be avoided at all costs as they lead to the permanent devastation of our food security potential.
3. Where sound science shows a strong positive correlation between fish abundance and habitat creation, land already owned by the public should be utilized to meet this objective. Eminent domain should not be used to acquire habitat restoration sites.
4. The EIR must analyze the implications of creating wetlands within the borders of reclamation districts. How will flood control, drainage, and irrigation systems be impacted within reclamation districts where fish habitat is created? Redirected impacts caused by moving targeted fish from one area of the Delta to another must be identified and further analyzed. For example, if fish populations do not increase, how much additional land from the region must be converted (subject to mitigation) to maintain the water quality that needs to exist to protect these species, and where will the agency acquire that water?

5. As with conveyance alternatives, the EIR must identify all negative impacts to the Delta economy and ecosystem caused by water quality changes and conversion of land from agricultural production. It must clearly articulate how the BDCP will mitigate for loss of farmland and habitat such as Swainson's Hawk foraging habitat and countless others species that depend on Delta lands. As most species spend most, if not all of their lives on private ground, how will this process ensure that only private working landscapes are utilized to preserve sensitive resources?
6. The EIR should identify in depth all plant communities and avian and terrestrial species which will be adversely impacted by creation of fish habitat within the Delta and the catastrophic conversion of a fresh water habitat system into a salt water dominated system. The analysis should include impacts caused by changes in water quality as well as large-scale conversion of both agricultural and wildlife habitat to habitat. These conversions too, would be subject to the agricultural mitigation ordinance.
7. The EIR must examine seepage impacts and other changes in ground water elevation caused by creating habitat. It must provide detailed and meaningful mitigation when negative impacts restrict owners' use of their property.
8. Loss of income to special districts and counties must be considered. A mechanism must be developed to prevent loss of tax revenue as a result of the creation of wetland/fish habitat.

In conclusion, the San Joaquin Farm Bureau has presented an insufficient range of alternatives and has created a system that precludes meaningful public input into this process. We suggest that the BDCP broaden its focus to include more than the Delta. As the agencies involved see only one objective, we believe this precludes our ability to provide meaningful input on how we can best achieve our goals of delivering water for urban and agricultural water uses in our state. If we can improve upon this process, the water supply for millions of Californians will be more secure and reliable by increasing regional supplies and reducing dependence on the Delta.

Thank you for this opportunity to submit our scoping comments at this time. We fear, that most of our members who stand to be most impacted by this process, have been precluded from having meaningful input into this process.

Sincerely yours,

Bruce Blodgett
Executive Director
San Joaquin Farm Bureau Federation
3290 N. Ad Art Road
Stockton, CA 95215
209-931-4931



SAVE OUR DELTA'S FUTURE

April 22, 2009

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

Subject: EIR/EIS Scoping Meeting for the Environmental Analysis of the BDCP
Proposed Action

Dear Ms. Brown:

I attended and spoke at the BDCP Scoping meeting in Clarksburg on March 26, 2009 on behalf of the Delta-based association, Save Our Delta's Future. As a representative of SODF, and for myself and my family personally, I hereby respectfully request that DWR and the BDCP process directly address the following concerns in your final EIR/EIS. Because much is not known about what the final BDCP will contain and how certain areas within the Delta will be affected, some of the concerns below are prefaced with a hypothetical relative to the final content of the BDCP.

1) Assuming some levees on Grand Island will be demolished, some portion of Grand Island will be inundated, and that "ring levees" will be constructed to protect Walnut Grove and the surrounding land – all of which has been mentioned for some time within the context of restoring the Delta's ecosystem, including large-scale habitat restoration plans – please state:

(a) the environmental impact on people, homes, agricultural operations, natural gas extraction, roads, school transportation, and the like, within the area affected;

(b) the environmental impact of the following: demolishing existing levees, the inundation process, how this will/might affect the adjacent land;

(c) the environmental impact: of constructing levees in locations where none previously existed, of the construction process itself, of the materials to be utilized in the new levees that are seismically sound);

(d) the environmental impact of the physical changes in (a), (b), and (c) above on residents, homes, businesses, churches, schools, agricultural operations, natural gas extraction, and tourism, within the community of Walnut Grove and immediate surrounding area, within the ring levees.

2) Assuming that the activities in 1) (b) and (c) above will cause "pollution" of waters and wetlands as defined in the Clean Water Act and its regulations, will the DWR seek, or will the Army Corps of Engineers require, a section 404 permit for the total BDCP implementation, or multiple section 404 permits for different locations and phases of the BDCP implementation?

3) Assuming some/all levees on Sutter Island will be demolished, and some/all of Sutter Island will be inundated – all of which has been mentioned for some time within the context of restoring the Delta's ecosystem, including large-scale habitat restoration plans – please state:

(a) the environmental impact on people, homes, agricultural operations, natural gas extraction, roads, school transportation, and the like, on Sutter Island;

(b) the environmental impact of: demolishing the island's existing levees, of inundating the island, and how this major physical change to Sutter Island will/might affect the levees on neighboring islands.

4) Assuming the presence of a wide variety of invasive (nonnative) species of plants and wildlife in Delta waters, wetlands, and surrounding lands – Department of Water Resources cites some 260 invasive species in the Delta

(<http://www.publicaffairs.water.ca.gov/swp/delta.cfm#PageTop>), please address the environmental impact of extirpating those invasive species that are directly and indirectly contributing to the decline of the Delta's eco-system, including whether and how it is possible to eliminate those species without doing harm to the wide variety of native species that BDCP is seeking to recover and preserve.

Thank you for addressing these items of concern.

The following are excerpts from my oral comments at the March 26th Scoping Meeting in Clarksburg.

I trust you recognize that for those of us who live, work, and own property in the Delta, this is our home. We are here because we chose, and choose, to be her. This is a way of life for us.

While we recognize that the Delta and Delta waters can be improved, and we support that, we are not prepared to see the Delta completely rearranged so as to return it to its natural state, as some uncompromising environmentalist organizations clamor for. The time has long since passed for restoring the Delta to what it was before the several hundred invasive species made the Delta their home.

We are not prepared to see the public trust doctrine expanded so as to alter or abolish presently held water rights.

We are not prepared to have a governance structure imposed on our Delta region that is composed of appointed and unaccountable political appointees, such as the California Coastal Commission, with no effective local elected representatives with equal voice in Delta affairs.

We support a third "tri-equal" goal added to the two co-equal goals put forward by the Delta Vision Plan – namely, to protect and enhance the social, economic, and physical viability of the Delta as home. This includes:

Delta agriculture and supporting businesses;

Delta non-agricultural businesses;

Delta reclamation districts;

Delta natural gas;

Delta tourism, recreation, boating, and fishing industries;

Delta community infrastructure and services, including schools, churches, and civic organizations; and

The Delta levee system.

For the sake of maintaining good relations of all regions and people of the state of California, please don't throw those of us who call the Delta home "under the bus." If the final plan for the Delta, including the BDCP, effectively ignores the people who live and work at ground zero – many for generations, as the numbers who have attended these meetings in the

Delta demonstrate, your mission may become so embroiled in regional, political, and legal ill-will that nothing positive comes out of the effort, and that would be a shame. Thank you.


M. David Stirling



S. H. Merwin & Sons, Inc.

38065 Z Line Road, Clarksburg, California 95612
Office: (916) 775-1698 Shop: 775-1653 Mill: 775-1282

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

Re: Comments on BDCP Draft EIR/EIS

March 26, 2009

Good evening,

My name is Jeff Merwin and I farm in the Netherlands district (RD-999, Clarksburg, Yolo County), more specifically, west of Jefferson Blvd, along the east side of the Sacramento Deep Water Ship Channel and along Duck Slough. I have attended both the April 30, 2008 scoping meeting in Clarksburg for the BDCP DEIR, and the "Delta Town Hall" meeting that was held in Walnut Grove on Tuesday June 29th 2008. Now we are here again, and I want to ask for the record, that my previous written and verbal comments from last year be included in the record for this EIR/EIS. I can safely say that not one person in this room wants to be here, but you won't go away and we are worried about what you are going to inflict on us.

Tonight I am here to continue to express my grave concerns about the process, and to ask you to utilize sanity rather than panic as the driving force in the process. We are not stupid. Don't even begin to talk to us about habitat restoration solely for enhancement of endangered species. The BDCP is utterly and entirely about mitigating diversion of water for export from the delta. I predict that if that stopped, the delta would miraculously improve with no further action. I know that is not realistic, but what is most exasperating to me are the convoluted and equally unacceptable "fixes" that are being proposed instead.

One example: at the meeting in Walnut Grove last summer was a Fish and Wildlife Scientist (Socialist!?) that blithely spoke of restoring the Delta as much as possible to its pre 1850 historical state to benefit fish, taking 100,000 acres ("perhaps 130,000 or maybe 30,000 acres") for habitat restoration. What planet was he born on that makes him feel completely free to ignore people and constitutional rights to private property ownership and the benefits thereof? Wouldn't it be wonderful if the world looked the way it did 150 years ago. Fine, then let's be fair about it, start bulldozing down housing tracts everywhere without including the people who live there in the discussion leading up to the action. Now that would be an interesting experiment indeed! The time for drawing lines on maps for grand projects such as these has long passed, and yet you continue.

One of my deepest concerns in this process is the ongoing lack of continuity in the maps that are supposed to be an integral part of accurately communicating the BDCP. Some elements proposed may be shown on a map in one meeting, and the next week they may be removed from the maps in another meeting, then they seem to reappear again at yet another meeting. This is disturbing and literally misleading to citizens who are attending these meetings to be as informed as we can be about what you are proposing to do to us.

Tonight's meeting is a case in point. We are here to discuss and offer input for the BDCP "project" draft EIR, and you have maps out in the hall that provide a certain level of detail which include the four proposed alternatives, yet one of them adds a fifth, undocumented alternative, which is to use the Sacramento Deepwater Ship Channel as the northern conduit for a western alignment of the peripheral canal. I would not have recognized it on the map, except that I live on the SDWSC East levee berm, and I suggested that alternative last year. Nobody else seems to have noticed it tonight, and except for one unlabelled series of references on one or two maps in the hall, your team certainly has omitted it as an option in tonight's presentation.

In fact the map that you have left up for our reference in the PowerPoint presentation tonight shows only one alternative conveyance option of five, and broad, vague areas targeted for conservation and habitat restoration. Yet the one BDCP "conservation measure" that would have the most significant impact on the Clarksburg area is completely missing from any of tonight's maps, and has had absolutely no public discussion by your team in this community: Conservation measure FL002 .1 or the Deepwater Ship Channel Flood Bypass. This has been discussed at several different BDCP meetings (technical advisory committee, steering committee, lower bypass committee, etc.) and it has appeared in some maps as either actual line drawings or shaded like the other conservation restoration areas, and then it is omitted from other maps. Based on tonight's presentations, I would be led to believe that conservation measure FL002.1 is no longer a part of the BDCP. Is FL002.1 still in play, or not? If it isn't dead, then why are you not telling us about it?

Let's go back to the DWSC peripheral canal option. Why are you not seriously discussing that alternative? It is already built, it has the most robust levees in the entire delta, and it would be considerably less intrusive on delta landowners (the government already owns Sherman Island, across which the southern portion of a western alignment might travel). Further, if you constructed locks at the Rio Vista end, you could isolate it and raise the water level 5 feet, which would provide 8500 acre feet of in delta storage, while at the same time solving the Port of Sacramento's channel depth problems, and additionally remove a potential flood threat to West Sacramento. While I agree with most of the people in this room that a peripheral canal will likely do nothing but further harm the delta, if this is what is being forced upon us, then at least choose the least obtrusive routing.

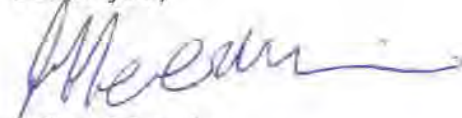
I realize that these are *just* discussions and it's *just* talk and *just* research and *just* thinking outside the box, and all the documents and maps have "draft" stamped on them. But I also know that the simplest and most realistic next step for discussion to become action is to erase the word "draft" from the existing documents and maps, and we're officially screwed. But it was all done "publically".

Anyone in this room who wants to be seriously worried should look up SB-12 (Simitian), and several other bills being prepared by our legislature to fund and administer these proposals. They include language that will curl your hair like: *"Requiring the state board to use its authority to determine reasonable use of water over the coming decades to evolve away from the generally accepted practices of diverting surface water for irrigated agriculture,..."*

Let me end my comments with an analogy, being a farmer I am dedicated and proud to be providing food to the world. Think for a moment how you would feel if it was determined that the public good would best be served if we cut off your food. Would your livelihood be threatened, would you be concerned? That is precisely what you are threatening us with.

Please address these comments directly in your final EIR/EIS.

Thank-you,

A handwritten signature in blue ink, appearing to read 'Merwin', with a long horizontal flourish extending to the right.

Jeffrey Merwin
President
S.H. Merwin & Sons, Inc.

bdcpcomments

From: sunshine@snugharbor.net [sunshine@snugharbor.net] **Sent:** Mon 3/9/2009 9:25 PM
To: bdcpcomments
Cc: Karla Nemeth
Subject: Attn: Barbara McDonnell, Chief
Attachments:

Hello Ms. McDonnell,

This email is written in reference to the Notice of Preparation of the Bay Delta Conservation Plan EIR/EIS dated 2/13/09. Please provide the following information:

A. Page 2, in the paragraph at the bottom refers to the link for the "Overview of Conservation Strategy With Core Elements.pdf" document. I've tried the complete link you've listed, and it does not work. Please provide a link to the 12.19.08 document listed in your notice and perhaps post a notice so others can find that exact document also. Or, in the alternative, if the document name and location has changed, please provide that information to me as well.

B. Are comments due by March 13, 2009 (30 days from notice filed per page 10) or are they due by May 14, 2009?

Thank you in advance for your time and attention to this important matter.

Respectfully submitted,

Nicole S. Suard, Esq., Managing Member, Snug Harbor Resorts, LLC on Steamboat Slough

bdcpcomments

From: Donald Bryant [dobry39@yahoo.com]
To: bdcpcomments
Cc: dobry39@yahoo.com
Subject: DUAL CONVEYANCE-NEIGHBORHOOD COMMENTS
Attachments:

Sent: Wed 5/13/2009 4:42 PM

The Board of Directors and the 380 households of the South Pocket Homeowners Association strongly urge that the Delta Dual Conveyance pumping intakes not be located adjacent to residential developments on either side of the Sacramento River. Both the East and West reaches of the project currently under consideration, situate pumping plants directly across the river from our homes or the homes of neighborhoods close to ours.

Our current experience is that the noise, dust, property damage, unsightly appearance and general disruption caused by the construction and eventual operation of the FRWA project has been a serious detriment to our quality of life. Construction and operation of the currently planned Dual Conveyance intakes, each of which is TEN times the capacity of the entire FRWA plant, can surely be expected to be an even greater violation to the peace and quality of our SPHA neighborhoods.

Nowhere in the Dual Conveyance discussions or materials can we find any analysis or even mention of other water supply alternatives that could be built and operated in conjunction with existing Delta pumping facilities and thereby reduce pressure on the Delta eco-system. Consideration of such alternatives as ocean water desalination and tertiary treatment of reclaimed water are absent from the entire scoping process.

In addition, we are very concerned as to what would be the electrical power source for a project of this magnitude, and what the location and physical configuration would be for power facilities that could meet such a significant demand.

We urge the designers and planners of the Delta Dual Conveyance to locate all intake facilities where their construction and operation will not disrupt the quality of life in ours and other residential developments. Additional large water pumping plants in this vicinity will significantly compromise its residential esthetics and create the appearance of an industrial area. Furthermore, any intake station, even remotely adjacent to a residential area, should be designed with a visual and operational profile that is minimally invasive and disruptive to its surroundings.

SOUTH POCKET HOMEOWNERS ASSOCIATION

BOARD OF DIRECTORS

d

1624 Hood Franklin Road
Elk Grove, CA 95757
www.stonelakes.org



May 14, 2009

Via Email (delores@water.ca.gov)

Ms. Delores Brown
Division of Environmental Services
California Department of Water Resources
901 P St., Bonderson Bldg., 4th Fl.
P. O. Box 942836
Sacramento, CA 95814

Re: Comments on Revised NOP for BDCP EIR/EIS

Dear Ms. Brown:

This letter provides the comments of the Stone Lakes National Wildlife Refuge Association (Association) on the Revised Notice of Preparation (NOP) for the joint Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) for the Sacramento-San Joaquin Bay Delta Conservation Plan (BDCP). The Association also submitted comments on the previously issued NOP, which are attached as Exhibit A. The Association is a nonprofit organization dedicated to preserving and protecting the Stone Lakes National Wildlife Refuge (Stone Lakes NWR), which is located within the legal Delta. Among other activities, the Association has worked to ensure that Stone Lakes NWR is protected from adverse impacts relating to changes in flows and water quality due to surrounding development in coordination with local, state and federal agencies.

The Refuge is the single largest complex of natural wetlands, lakes and riparian areas remaining in the Sacramento-San Joaquin Delta, and provides critical habitat for waterfowl and other migratory birds of international concern, as well as a number of endangered plant and animal species. Stone Lakes NWR and its surrounding agricultural areas are home to several special status species, including the tri-colored blackbird, greater sandhill crane, white-face ibis, long-billed curlew, Swainson's hawk, burrowing owl, giant garter snake and valley elderberry longhorn beetle.

Please consult the "Final Comprehensive Conservation Plan and Environmental Assessment for the Stone Lakes National Wildlife Refuge," available at <http://www.fws.gov/stonelakes/ccp.htm> for specific information regarding Stone Lakes NWR resources and as background for development of the content of the EIR/EIS.

Background

In 1972, the U.S. Army Corps of Engineers recommended establishing a national wildlife refuge in the Stone Lakes Basin after completing a flood control study of Morrison Creek, Sacramento County's largest creek system. In 1994, following six years of study and public meetings, the U.S. Fish & Wildlife Service (FWS) established Stone Lakes NWR in Sacramento County, which borders the Cities of Sacramento and Elk Grove. Stone Lakes NWR is the 505th refuge in the National Wildlife Refuge System and one of the few urban wildlife refuges in the nation. The goals of Stone Lakes NWR are to:

1. Preserve, enhance, and restore a diverse assemblage of native Central Valley plant communities and their associated fish, wildlife, and plant species;
2. Preserve, enhance, and restore habitat to maintain and assist in the recovery of rare, endangered, and threatened plants and animals;
3. Preserve, enhance, and restore wetlands and adjacent agricultural lands to provide foraging and sanctuary habitat needed to achieve the distribution and population levels of migratory waterfowl and other water birds consistent with the goals and objectives of the North American Waterfowl Management Plan and Central Valley Habitat Joint Venture;
4. Create linkages between Refuge habitats and habitats on adjacent lands to reverse past impacts of habitat fragmentation on wildlife and plant species;
5. Coordinate Refuge land acquisition and management activities with other agencies and organizations and to maximize the effectiveness of Refuge contributions to regional habitat needs;
6. Provide for environmental education, interpretation, and fish and wildlife-oriented recreation in an urban setting accessible to large populations; and
7. Manage wetlands and adjacent floodplain lands in a manner consistent with local, State, and Federal flood management; sediment and erosion control; and water quality objectives.

(57 Fed. Reg. 33007 (July 24, 1992).)

General Comments

The Association is concerned that the BDCP as currently proposed, would have significant negative impacts on Stone Lakes NWR and that little is being done to lessen those impacts. Though not disclosed in the NOP, the Association understands that the eastern alignment of the canal, which traverses Stone Lakes NWR, is now being pursued as the preferred conveyance alternative. This component of the BDCP would change to the manner in which the state and federal water projects deliver water to the pumps in the South Delta, shunting Sacramento River water around the Delta prior to entering the state and federal pumps. Assessment of potential impacts on Stone Lakes NWR of this and other potential BDCP project components has been difficult because the BDCP lacks a detailed and stable project description. Moreover, the Association has not been able to obtain the up-to-date conveyance route maps that would assist in providing advice to the BDCP as to how to avoid impacts on Stone Lakes NWR.

The Association requests that the proponents of the BDCP carefully consider impacts of implementing the BDCP on the resources of Stone Lakes NWR in the EIS/EIR. The significant public investments that made Stone Lakes NWR possible should be honored by providing the very highest level of protection to the resources of Stone Lakes NWR. *Project components that would threaten the ability of the Refuge to continue to serve the purposes for which it was created should not be pursued.*

Specific Suggestions

The Association recommends that the EIR/EIS address the following issues:

1. Project Description.

A clear description of the Project is necessary for environmental review purposes. Such a description has not yet been provided. This lack of information interferes with the ability of the Association to meaningfully comment on the Revised NOP. It is only by also monitoring the BDCP Steering Committee meeting proceedings and handouts that the Association is aware of the latest configuration of project components that would affect Stone Lakes NWR, primarily a massive canal and associated infrastructure. Also through these investigations, the Association understands that habitat restoration activities are no longer being targeted for lands within Stone Lakes NWR.

Given the gravity of impacts and long term implications of the BDCP, Association urges that selection of each Project component be underlain by a

strong scientific foundation. The Association questions, for instance, whether an isolated canal actually is a “conservation measure” at all, given the wide-reaching effects that construction and operation of such a canal would have, not just on Stone Lakes NWR, but on the entire route of the massive Project. Additionally, the Association is concerned that while a new diversion point may lessen impacts on aquatic organisms at the pumps, it may do so at an unacceptable cost to habitat and viability of terrestrial species as well as other aquatic species on the Sacramento River. Many of these species were not formerly impacted by the SWP and CVP operations and also are protected under the state and federal endangered species laws.

2. Project Setting.

The environmental setting in the EIR/EIS must include a detailed description of Stone Lakes NWR and other similar resources within the Delta. This description should be made with reference to the Comprehensive Conservation Plan and other available research materials.

3. Project Impacts.

The Association is primarily concerned about the impacts a massive canal and associated facilities would have on the existing and planned uses of Stone Lakes NWR. As explained above, Stone Lakes NWR provides essential habitat to a variety of species. Long term plans described in the Comprehensive Conservation Plan include long-term plans for many improvements to better serve wildlife needs as well as the surrounding communities. (Comprehensive Conservation Plan, pp. 71-92.) Construction of a massive canal on even part of Stone Lakes NWR would interfere with the ability to implement many of these plans, including the ability to effectively manage lands for conservation purposes that are bisected by the canal. The EIR/EIS must fully analyze these conflicts.

The Association has been actively working to address flooding issues at Stone Lakes NWR for several years. The Refuge is within the 100-year floodplain and damaging floods have occurred in the Beach-Stone Lakes basin an average of one out of every three years. Extensive flooding occurred in 14 of the last 40 years. (Comprehensive Conservation Plan, p. 64.) This flooding has been exacerbated by urbanization to the east (Elk Grove) and north (Sacramento) of Stone Lakes NWR. Pursuant to a settlement agreement, the Association is now working collaboratively with the City of Elk Grove to develop a drainage plan for the area that minimizes flooding and pollution of Stone Lakes NWR. There is a concern that construction of a canal and associated facilities would further interfere with the hydrology of the area to create even worse flooding of Stone Lakes NWR. The EIR/EIS must fully analyze these impacts.

Cumulative land use changes and development are also a serious source of concern. Wildlife reliant upon Stone Lakes NWR also depend on and utilize the surrounding lands for foraging and other activities; much of this land is in active agricultural production. Thus, the effects of a massive canal and associated facilities are a concern within and near the Stone Lakes NWR boundary, regardless of whether those lands are actually within the formal boundary. Because Stone Lakes NWR cooperates with agricultural activities in the area to provide habitat benefits, the Association is also concerned about the fragmenting impacts of canal construction on the continued viability of existing agricultural uses. Moreover, construction and operation of the canal would create traffic, noise, air pollution and other disturbances to sensitive wildlife.

Stone Lakes NWR provides important wintering habitat for migratory birds such as the greater sandhill crane. Availability of habitat for these birds in the region has already been severely diminished by urbanization. The further impact caused by location of a large canal in Stone Lakes NWR and other nearby habitat areas must be fully analyzed.

The Association is also tracking a related project that would also bifurcate and disrupt lands within Stone Lakes NWR: the Transmission Agency of Northern California Transmission Project (TANC). One alternative route of the TTP includes massive transmission lines through Stone Lakes NWR. If built, these lines may prevent birds from landing at Stone Lakes NWR. TANC, in combination with the canal and associated facilities, would result in cumulative environmental impacts on sensitive species that must be carefully considered. Moreover, given the need for power along any new conveyance route, these projects may be interrelated and interdependent, making it necessary to review the projects in tandem.

Stone Lakes NWR has been designated as one of the six most threatened refuges in the nation. (See *State of the System: An Annual Report on the Threats to the National Wildlife System*, National Wildlife Refuge Association (2005), at p. 9, available at: <http://refugenet.org/new-pdf-files/BeyondtheBoundaries.pdf>; see also <http://www.fws.gov/stonelakes/ccp.htm>.) This designation was primarily based on impacts from surrounding urbanization. The insertion of significant infrastructure such as the canal and TANC would even further threaten the continuing viability of Stone Lakes NWR. These impacts must be carefully studied and mitigated.

The Association is also concerned that the new northern diversion point, combined with other BDCP components could alter habitat conditions within the Delta in a manner that would negatively impact wildlife that use Stone Lakes

NWR. For example, changes in water quality in the Sacramento River and the Delta waterways may affect the availability of food for species that also rely on Stone Lakes NWR for habitat. Each proposed change to the ecosystem may have ripple effects through the food chain that must be carefully studied to weigh costs and benefits of any proposed changes to the system.

4. Mitigation for Project Impacts

Should the canal and associated facilities be planned for construction in Stone Lakes NWR, a comprehensive mitigation program will be necessary to meet mitigation requirements of CEQA and NEPA. Once a clear Project definition is developed, the Association would work with the BDCP proponents to develop suitable mitigation measures. As a fundamental matter, the BDCP must provide mitigation for impacts to resources at Stone Lakes NWR occur *within Stone Lakes NWR*. Given the significant public investment in Stone Lakes NWR, cumulative threats to Stone Lakes NWR, any resources expended to mitigate for the significant effects of the Project must be aimed at improving habitat conditions within Stone Lakes NWR. Otherwise, the BDCP may seriously interfere with the ability of Stone Lakes NWR to attain its statutory goals, threatening its continued viability as a refuge.

5. Project Alternatives

As noted above, the Association questions the need for the canal component of the BDCP. The cost, complexity and controversy of the canal demand that the environmental document thoroughly and non-peremptorily consider project alternatives. A comprehensive strategy incorporating agricultural and urban water conservation; alternative sources such as desalinization and tertiary-treated wastewater; and storage strategies, including groundwater banking, conjunctive use and additional storage must be described and evaluated as a project alternative to Delta export. Review of the costs associated with these strategies (see “The Economics of Ending Delta Water Exports Versus the Peripheral Canal: Checking the Data of the PPIC” by Dr Jeffrey Michael) suggest that implementing such a strategy would be competitive with the cost of the Peripheral Canal.

The environmental analysis also must consider alternative canal design to reduce impacts on the Stone Lakes National Wildlife Refuge. These alternatives should include: (1) diversions originating south of Hood as identified in the alternative identified by the Public Policy Institute of California in their report: “Beyond the Peripheral Canal: Envisioning Futures for the Sacramento-San Joaquin Delta”, (2) a smaller overall design flow for the canal involving fewer diversion points from the Sacramento River, (3) underground construction of the

canal where it passes through and adjacent to the Stone Lakes NWR, and (4) a combination of all of the above. If the primary purpose of the canal is to protect the Delta fisheries and improve the ecological functioning of the Delta estuary, then more southerly diversions from the Sacramento River should also be considered.

Finally, and for the purpose of creatively thinking outside the box in confronting Delta ecosystem problems, the environmental analysis should consider an alternative that diverts Sacramento Regional Sanitation District's Regional Treatment Plant wastewater flows directly into a canal or pipeline. To the extent that treatment plant discharges are related to the collapse of the salmonid food chain, such an alternative would lessen those impacts as well as reduce the need to divert fresh water directly from the Sacramento River.

The Association and Stone Lakes NWR staff are willing to work directly with DWR and BDCP staff to better define these alternatives.

Conclusion

The Association feels strongly that whatever measures the BDCP ultimately pursues to address the species issues associated with Delta water exports should not degrade Stone Lakes NWR, which is already a threatened resource. Please contact me, or our counsel, Osha Meserve (916-455-7300, osha@semlawyers.com) if you have any questions regarding the information contained in this letter or would like to obtain more information about Stone Lakes NWR for purposes of drafting the EIR/EIS.

Very truly yours,



Liz Zainasheff
President

Senator Lois Wolk, 5th District

Bart McDermott, Refuge Manager, SLNWR, Bart_McDermott@fws.gov

Rob Burness, Watershed Chair, Stone Lakes NWR Association,
rmburness@comcast.net

Don Nottoli, Sacramento County Board of Supervisors, nottolid@saccounty.net

Robin Kulakow, Executive Director, Yolo Basin Foundation,
robin@yolobasin.org

SLNWRA Letterhead

Via email: delores@water.ca.gov

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

Dear Ms. Brown:

This letter provides the comments of the Stone Lakes National Wildlife Refuge Association (Association) on the Notice of Preparation (NOP) for the joint Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) for the Sacramento-San Joaquin Bay Delta Conservation Plan (BDCP). The Association is a nonprofit organization dedicated to preserving and protecting the Stone Lakes National Wildlife Refuge (Stone Lakes NWR), which is located within the legal Delta. Among other activities, the Association has worked to ensure that Stone Lakes NWR is protected from adverse impacts relating to changes in flows and water quality due to surrounding development in coordination with local, state and federal agencies.

The Refuge is the single largest complex of natural wetlands, lakes and riparian areas remaining in the Sacramento-San Joaquin Delta, and provides critical habitat for waterfowl and other migratory birds of international concern, as well as a number of endangered plant and animal species. Stone Lakes NWR and its surrounding agricultural areas are home to several special status species, including the tri-colored blackbird, greater sandhill crane, white-face ibis, long-billed curlew, Swainson's hawk, burrowing owl, giant garter snake and valley elderberry longhorn beetle.

Please consult the "Draft Comprehensive Conservation Plan and Environmental Assessment for the Stone Lakes National Wildlife Refuge", available at http://library.fws.gov/CCPs/stonelakes_draft.pdf for specific information regarding Stone Lakes NWR resources and as a potential resource in developing the content of the EIR/EIS.

Background

In 1972, the U.S. Army Corps of Engineers recommended establishing a national wildlife refuge in the Stone Lakes Basin after completing a flood control study of Morrison Creek, Sacramento County's largest creek system. In 1994,

following six years of study and public meetings, the U.S. Fish & Wildlife Service (“FWS”) established Stone Lakes NWR in Sacramento County, which borders the City of Elk Grove. Stone Lakes NWR is the 505th refuge in the National Wildlife Refuge System and one of the few urban wildlife refuges in the nation. Due primarily to encroaching urban uses, the Refuge has been designated as one of the six most threatened refuges in the nation. (See Exhibit A, *State of the System: An Annual Report on the Threats to the National Wildlife System*, National Wildlife Refuge Association (2005), at p. 9, available at: <http://refugenet.org/new-pdf-files/BeyondtheBoundaries.pdf> see also http://library.fws.gov/CCPs/stonelakes_draft.pdf.) Changes to the manner in which state and federal water projects make water deliveries to exporters of water otherwise destined for the Delta also have the ability to adversely impact the resources of Stone Lakes NWR.

General Comments

The Association requests that the proponents of the BDCP carefully consider impacts of implementing the BDCP on the resources of the Refuge in the EIS/EIR. Specifically, impacts of alternative conservation actions including improved water conveyance infrastructure in the Delta must be considered. It is the Association’s understanding that the dual and isolated conveyance system routes being considered as part of improved conveyance infrastructure would traverse Stone Lakes NWR lands. This could have very significant impacts on the habitat values of the Stone Lakes NWR

The Association has also reviewed a Habitat and Operations Technical Team handout that mentions possible inundation of Stone Lakes Bypass for 45 days or more as a possible long term scenario. The environmental impacts of this or other possible uses of Stones Lakes NWR must be carefully evaluated. Such an evaluation would include consideration of drainage-related impacts already occurring as a result of increasing runoff from the growing City of Elk Grove. While more water can at time create environmental benefits, prolonged flooding can also cause trees to die and cause other impacts.

The significant public investments that made the Refuge possible should be honored by providing the very highest level of protection to the resources of Stone Lakes NWR.

Specific Suggestions

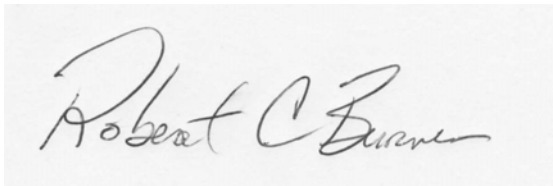
The Association recommends that the EIR/EIS address the following issues:

1. **Establish Appropriate Project Objectives.** A project objective relating specifically to the protection of sensitive publicly owned biological resources within the Delta should be included in the EIS/EIR.
2. **Include a Complete Project Setting.** The environmental setting in the EIR/EIS must include a detailed description of Stone Lakes NWR and other similar resources within the Delta.
3. **Clearly Delineate the Proposed Location of Project Alternatives Involving Conveyance Systems.** The impacts analysis should be based on a specific location for the alternatives involving freshwater conveyance systems. The Association and Stone Lakes NWR staff are available to assist in identifying and/or refining the possible locations for the conveyance system.
4. **Analyze Impacts on Refuge Specifically.** Impacts analysis in the EIR/EIS should examine how each alternative would affect the resources of Stone Lakes NWR. Also, specialized biological expertise should be engaged to assess impacts on Refuge biota.
5. **Include Feasible Alternatives to Minimize or Avoid Significant Impacts of the Project.** To the extent significant impacts to the resources of Stone Lakes NWR are identified feasible mitigation measures and alternatives must be identified and adopted to reduce those impacts.

Conclusion

The Association feels strongly that whatever option the BDCP ultimately pursues to address the species issues associated with Delta water exports not degrade Stone Lakes NWR, which is already a threatened resource. Please contact me if you have any questions regarding the information contained in this letter or would like to obtain more information about Stone Lakes NWR for purposes of drafting the EIR/EIS.

Very truly yours,

A handwritten signature in black ink, reading "Robert C. Burness". The signature is written in a cursive, flowing style. The first name "Robert" is written in a larger, more prominent script, followed by "C." and "Burness". The signature is set against a light gray background.

Robert Burness, Watershed Chair

C: Beatrix Treiterer, Acting Refuge Manager, SLNWR,

Beatrix_Treiterer@fws.gov

Liz Zainasheff, President, Stone Lakes NWR Association, lizz@surewest.net

Don Nottoli, Sacramento County Board of Supervisors, nottolid@saccounty.net

Virginia Mahecek, Valley Mountain Consulting,

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Greg Suba, Laguna Creek Watershed Council, gsuba@surewest.net

Barbara Washburn, Laguna Creek Watershed Council,

BWASHBURN@oehha.ca.gov



May 14, 2009

Via email (BDCPcomments@water.ca.gov) and Certified Mail

Delores Brown
Division of Environmental Services
California Department of Water Resources
901 P. Street, Bonderson BLDG, 4th Fl.
PO Box 942836
Sacramento, CA 95814

Re: Comments on BDCP Notice of Preparation (State Clearinghouse No. 2008032062)

Dear Ms. Brown:

This letter provides the Suisun Resource Conservations District's (SRCD) comments on the Revised Notice of Preparation (NOP) for the Bay Delta Conservation Plan (BDCP). SRCD is a special district created by the California legislature with the primary local responsibility for promoting conservation of the Suisun Marsh through regulation and improvement of water management practices on private lands within the Suisun Marsh. (*See* Public Resources Code § 9962.) As a resource conservation district, SRCD is empowered to coordinate resource management efforts for purposes of watershed restoration and enhancement. (*See* Public Resources Code § 9001(b)(1) and (3).) SRCD is a party to the Revised Suisun Marsh Preservation Agreement (RSMPPA), and is actively engaged, along with DWR and other parties, in preparing the Habitat Management, Preservation, and Restoration Plan for the Suisun Marsh Programmatic Environmental Impact Statement /Environmental Impact Report (Suisun Marsh Plan). By virtue of its regulatory authority in the Suisun Marsh under Public Resources Code section 9962, SRCD is a responsible agency for the BDCP under the California Environmental Quality Act ("CEQA," the provisions of which are found at Public Resources Code sections 21000 et seq.).

The California Department of Water Resources (DWR), which is serving as lead agency for the environmental review of the BDCP, has a long history of cooperation with SRCD to preserve, protect and enhance the Suisun Marsh. DWR is a party to the SMPA and is actively involved in developing the Suisun Marsh Plan. This history is important and relevant to understanding SRCD's comments and concerns regarding the NOP and, more generally, the BDCP process to date. In reviewing the NOP and following various BDCP processes and publications, it appears to SRCD as if much of this history has been forgotten.

Directors

Timothy Egan, President
Terry Connolly
Arnold Lenk
Tony Vaccarella
Jim Waters

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Kelli Perez
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Biologist, Program Coordinator
Jeremy Todoroff
Water Manager/Biologist
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CONSERVATION DISTRICT
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(707) 425-9302
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SRCD@SuisunRCD.org

Long before the BDCP process began, or CalFed before it, SRCD was protecting the environment of the Suisun Marsh. For decades, SRCD, Solano County and the San Francisco Bay Conservation and Development Commission (BCDC) worked together on this mission. In the 1970's, legislation was enacted to protect the Suisun Marsh. (See Public Resources Code sections 29000 et seq.). This legislation, called the Suisun Marsh Preservation Act, found that the approximately 55,000 acres of managed wetlands in the Marsh comprises almost 10% of the remaining natural wetlands in California. (Public Resource Code, § 29002.) These wetlands provide wintering habitat for migrating waterfowl, and are particularly important during years of drought because such habitats become scarce in the Central Valley. The Suisun Marsh is also habitat for many protected or rare species, such as peregrine falcons, white-tailed kite, golden eagle, California clapper rail, black rail, salt-marsh harvest mouse and Suisun shrew. The Suisun Marsh Preservation Act makes clear that these habitats are dependent upon maintaining adequate water quality, but that water quality in the Suisun Marsh is lowered by “[n]umerous upstream storage facilities, together with diversions of water from the delta and tributary streams of the delta....” (Public Resource Code, § 29010(a)(3).)

Following Water Rights Decision 1485, which established salinity water quality objectives in the Suisun Marsh, SRCD began a long relationship with DWR, the United States Bureau of Reclamation (USBR) and the California Department of Fish & Game (DFG) focused on addressing the impacts to Suisun Marsh water salinities from the DWR and USBR water projects. In 1987, these parties entered the Suisun Marsh Preservation Agreement (SMPA). The SMPA has been amended several times since then, with the most recent amendment occurring in 2006. The RSMIPA contains several contractual commitments on the part of DWR and the USBR related to Suisun Marsh water quality. As set forth below, SRCD seeks assurance from DWR that the BDCP will not conflict with DWR's obligations under the SMPA.

Most recently, the SMPA parties have been working on the Suisun Marsh Plan. Like the BDCP, the Suisun Marsh Plan is a habitat conservation plan under the federal and state endangered species acts. The Suisun Marsh Plan project area is the primary and secondary Suisun Marsh, as defined in Public Resources Code section 29101.

This cursory summary of the broad efforts to protect the environment of the Suisun Marsh is provided because SRCD is becoming increasingly concerned that the BDCP process is heading in a direction that will benefit Delta water exporters at the expense of the Suisun Marsh environment. SRCD is concerned about enormous estimates being discussed of how many acres within the Suisun Marsh may be converted from managed wetlands to tidal marsh. Doing so would alter, most likely permanently, the waterfowl habitat that is declared so important by the Legislature in the Suisun Marsh Preservation Act, and would be totally inconsistent with more than thirty years of Suisun Marsh preservation efforts.

SRCD is also concerned about long-term impacts to water quality associated with the BDCP. Although not clearly or directly discussed in the NOP, it is believed that the primary purpose of the BDCP is to address environmental impacts caused by current export practices and the construction of a new peripheral canal. SRCD understands the challenges facing the water exporters and wants to cooperate in solving those issues.

SRCD will not, however, support a BDCP that degrades Suisun Marsh water quality in any significant manner.

As set forth in more detail below, the NOP fails to satisfy the most basic requirements of CEQA. The three key elements of a NOP are: (1) a description of the project; (2) identifying the location of the project; and (3) identifying the project's probable environmental effects. (14 C.C.R., § 15082(a)(1).) The NOP fails to meet CEQA's standards in all three areas, and SRCD requests that DWR consider all comments submitted hereon and prepare a new NOP.

Specific Comments/Questions.

SRCD respectfully requests that DWR respond in writing to each comment or question posed below.

1. The NOP fails to adequately identify the project. On page 2, the NOP states that the BDCP is to address "covered activities." A list of 9 "covered activities" is provided on page 4 of the NOP, but this list is so cursory that it does not provide SRCD or a reasonable reader of the NOP with an understanding of what projects are actually "covered activities." For instance, item 1 of the list on page 9 is "existing Delta conveyance elements and operations of the CVP and SWP." What does this mean? The NOP should describe what are the existing Delta conveyance elements and operations, and why those elements/operations require preparation of a habitat conservation plan.

Item 2 is "New Delta conveyance facilities," which the NOP claims are described in the November 2007 Points of Agreement. The new conveyance facilities description found in that document reads:

The Steering Committee agrees that the most promising approach for achieving the BDCP conservation and water supply goals involves a conveyance system with new points of diversion, the ultimate acceptability of which will turn on important design, operational and institutional arrangements that the Steering Committee will develop and evaluate through the planning process. The main new physical feature of this conveyance system includes the construction and operation of a new point (or points) of diversion in the north Delta on the Sacramento River and an isolated conveyance facility around the Delta. Modifications to existing south Delta facilities to reduce entrainment and otherwise improve the State Water Project's (SWP) and Central Valley Project's (CVP) ability to convey water through the Delta while contributing to near and long-term conservation and water supply goals will also be evaluated. This approach may provide enhanced operational flexibility and greater opportunities for habitat improvements and fishery protection. During the BDCP process, the Steering Committee will evaluate the ability of a full range of design and operational scenarios to achieve BDCP conservation and planning objectives over the near and long term, from full reliance on the new facilities to use of the new facilities in conjunction with existing facilities.

This one-paragraph description of what is commonly called the "Peripheral Canal"

is too vague to allow educated comment on how to scope the project. In particular, there should be information regarding the possible changes in operation of the state and federal water projects that may occur in relation to the Peripheral Canal (e.g. how much water may be diverted in the North Delta; when may diversions occur; what impacts will these diversions have on downstream water users and water quality, etc.)

2. The NOP fails to adequately identify the location of the project. The “Project Area” description on page 6 states that the BDCP will occur in the Statutory Delta, as well as Suisun Marsh, Suisun Bay, “and areas upstream of the Delta.” Figure 1 is a map labeled “Legal Delta Boundary,” and which delineates the area that is statutorily defined as the Delta. This map fails to delineate, however, the Suisun Marsh or “areas upstream of the Delta.” A revised map that clearly shows the project area should be included in the revised NOP.

3. The NOP fails to provide a reasonable description of the project’s probable environmental effects. The fact that a primary objective of the BDCP is to address existing CVP and SWP operations means that it should be reasonably straightforward to at least explain the environmental effects from operation of those projects. Recent court proceedings should provide a good basis from which to identify environmental impacts from the CVP and SWP.

Of particular concern to SRCD are the vaguely discussed plans to convert tens of thousands of acres of managed wetlands to tidal marsh. These types of conversions, while benefitting certain species, are detrimental to others. The Suisun Marsh is an area where tidal restoration is contemplated. The NOP fails to reasonably describe where and in what acreages tidal restoration will occur, or to discuss probable environmental effects associated with such tidal restoration.

4. The NOP fails to reasonably discuss possible impacts to downstream water rights holders associated with the BDCP. Again, if part of the BDCP project is to change the point where the SWP and CVP divert water from the south Delta to the north Delta, then the NOP should address how this will affect downstream water rights holders – including specifically those water users in the Suisun Marsh.

5. Of equal interest is how the change in point of diversion will affect downstream water quality? Will the BDCP project increase salinities in the Suisun Marsh?

6. Will tidal restoration efforts in the Suisun Marsh increase salinity in remaining managed wetlands?

7. The NOP indicates that the BDCP is focused on habitat and conservation measures aimed at restoring certain fish populations. Yet, the project area shown on Figure 1 appears limited to the Delta and Suisun Marsh areas. Why have other areas, such as upstream in the Central Valley river systems, been excluded from the BDCP’s fish restoration efforts?

8. What impact will the Suisun Marsh tidal restoration efforts have on remaining interior levees of the managed wetlands? In other words, if exterior levees are breached to effect tidal restoration, what impacts will occur to the interior levees that will

then be subject to direct tidal action? Will BDCP be paying for and performing upgrades to affected levees?

9. How will the BDCP relate to the SMPA and the Suisun Marsh Plan? Will they be consistent?

Alternatives/Mitigation Measures.

As a responsible agency, SRCD is required to comment on project alternatives and potential mitigation measures. The NOP is currently too vague, however, to allow meaningful comment on such matters. For instance, the NOP contains no direct information regarding the project impacts to the Suisun Marsh, nor enough indirect information regarding the project's parameters and impacts for SRCD to reasonably infer impacts to the Suisun Marsh. For this reason, many of SRCD's concerns are phrased in the form of questions, above. Answers to these questions would assist SRCD in providing meaningful comment on a revised NOP.

SRCD requests that all project alternatives be consistent with the Suisun Marsh Preservation Act, RSMFA, Suisun Marsh Plan, and regulations of BCDC and Solano County, including the Suisun Marsh Local Plan of Protection. Again, SRCD and DWR have worked together on these Suisun Marsh conservation efforts for decades, and this work should not be reversed because of the impacts of water export operations. DWR and SRCD, along with the USBR, BCDC, Solano County and DFG have cooperatively developed a Suisun Marsh conservation strategy that balances the needs of species. The vague tidal restoration figures being released to the public, such as those found in the May 8, 2009 Habitat Restoration and Enhancement Recommendations, Handout #3, suggest that BDCP may attempt to convert tens of thousands of acres of Suisun Marsh managed wetlands into tidal marsh. This would be an unbalanced habitat conservation strategy, and one that would run afoul of all the plans and legal authorities cited above.

SRCD is ready and willing to answer any questions from DWR or respond to specific comments related to the Suisun Marsh. In particular, it may be helpful for SRCD staff to meet with DWR staff to review the history of Suisun Marsh conservation efforts and, in particular, to discuss how BDCP relates to the SMPA and Suisun Marsh Plan, and to confirm that BDCP tidal restoration efforts will parallel those proposed for the Suisun Marsh Plan.

Please do not hesitate to call SRCD at the number listed above.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven Chappell", written in a cursive style.

Steven Chappell, Executive Director

Clarksburg

BDCP

BAY DELTA CONSERVATION PLAN

ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT

— Comment Card —

Please Print

Name: LEO WINTERNITZ Organization: THE NATURE CONSERVANCY

Telephone: 916-449-2850 EXT. 4105 e-mail: LWINTERNITZ@TNC.ORG

Address: 2015 J ST. STE. 103

City: SACRAMENTO State: CA Zip: 95811

☒ Yes, I would like to be added to your e-mail list.

Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 14, 2009.

THE NATURE CONSERVANCY owns about 10,000 acres
in the Delta at Staten Island and McCormick
Williamson Tract. Staten Island is managed
for wildlife habitat, particularly for Sandhill Cranes
and other avian species.

THE EIR/EIS should address both the short
term (construction) and long term (operations)
impacts on TNC lands associated with the
peripheral canals. Attention should be paid to
disturbance during construction, and hydrology,
water quality and related impacts during operation.

Any potential benefits to these lands should be
identified as well. TNC is willing to work with project

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:

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

You may also e-mail your comments to BDCPcomments@water.ca.gov. **Comments must be received by May 14, 2009.**

Proponents to identify potential mitigation and other
aspects that might be beneficial to both parties.



P.O. BOX 307 • CLARKSBURG, CA 95612 • (916) 744-1456

My question for the BDCP meeting in
Clarksburg on March 26, 2009

With all this concern that you folks
here tonight have expressed about saving
all these species that you're so concerned
about, how does pumping water out of the
Delta improve the habitat?

I submit that survival of these species is
a much lower priority than taking our water
and sending it down south to the bay area.
In your minds, concern about species is
secondary if even that. Your biggest focus
is on taking fresh water from the Delta
and sending it to cities built in the L.A.
area and other coastal communities,

"Please address this directly in for final EIR/EIS."

Ken Wilson
President / Wilson Farms

Kathy Hunn

From: Kenneth Wilson [Kenneth@wilsonvineyards.com]
Sent: Monday, April 20, 2009 5:31 PM
To: phunn@frontiernet.net
Subject: BDCP response

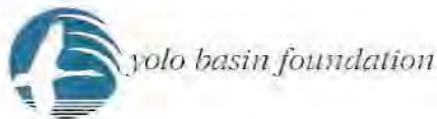
After listening to the BDCP panel' supposed concern about the fish and their dropping numbers, I asked:

So how does pumping fresh water out of the Delta to send down south help the fish? I commented that I felt that their concern was bogus and that their main concern was shipping water down south so that the folks down there could fill their swimming pools.

Please address this directly in your final EIR/EIS.

Ken Wilson
President/Wilson Farms
P.O.Box 307
Clarksburg, Ca. 95612

4/21/2009



March 18, 2009

Karen Scarborough
Chair, Bay Delta Conservation Plan Steering Committee
Resources Agency
1416 Ninth Street
Sacramento, CA 95814

Dear Ms. Scarborough:

The Yolo Basin Foundation has been monitoring the development of the Bay Delta Conservation Plan and would like to take the opportunity of the EIR/EIS Scoping process to submit comments for the public record. Attached to this letter is a position paper prepared by Yolo Basin Foundation regarding the BDCP and also the "Yolo Bypass Conceptual Aquatic Restoration Opportunities," a plan approved by the Yolo Bypass interagency Working Group in September 2006.

The Yolo Basin Foundation is a nonprofit community-based organization founded in 1990 and is dedicated to the appreciation and stewardship of wetlands and wildlife through education and innovative partnerships. It is universally credited with facilitating the creation of the Yolo Bypass Wildlife Area. The Foundation and California Department of Fish and Game are nationally recognized for their success in unifying agriculture, wildlife habitat, and flood protection in their partnerships and educational programs.

The Yolo Basin Foundation Board of Directors represents the diversity of wetlands related interests including agriculture, education, hunting, business, research, and conservation. We look forward to working with the BDCP Steering Committee as the plan progresses.

Sincerely,

A handwritten signature in blue ink that reads "Robin Kulakow".

Robin Kulakow
Executive Director

Yolo Basin Foundation Position on: BDCP Habitat Conservation Measure— Modification of Fremont Weir

The Yolo Bypass consists of an outstanding mix of agriculture and terrestrial and wetland habitats. It is the location of the Department of Fish and Game's 16,000-acre Yolo Bypass Wildlife Area, which utilizes agriculture to help provide wildlife habitat for thousands of animals in a way that is compatible with the flood control function of the Bypass. It is home to many threatened and endangered species and provides a wildlife viewing, environmental education, and waterfowl hunting destination, as well as simply a peaceful place to enjoy open space, all within sight of the State Capitol.

The Yolo Bypass Wildlife Area depends on agricultural leases to pay a significant portion its operations and maintenance costs. Rice is the principal crop grown in the Wildlife Area and is the most valuable crop grown in the Yolo Bypass. Other crops include corn, tomatoes, and forage crops, as well as cattle ranching, both in the Wildlife Area and the greater Bypass. Farming in the Yolo Bypass is challenging, and farmers need to be working in their fields by mid-March. It is the activity of farming that keeps Bypass vegetation under control, thus allowing flood waters to pass through quickly and unobstructed.

The Fremont Weir at the north end of the Bypass functions as a flood relief valve that protects the heavily populated Sacramento metropolitan area when the Sacramento River reaches flood stage at 33.5 feet. Flood control is the overarching function of the Yolo Bypass and carries flood waters past Sacramento on average once every three years.

Habitat Conservation Measures as currently described in the Bay Delta Conservation Plan will have adverse impacts on the Yolo Bypass Wildlife Area. Specifically, the proposed Floodplain Habitat Restoration Conservation Measure (FLOO1.1): "Modify the Fremont Weir and the Yolo Bypass to provide for a higher frequency and duration of inundation." The stated goal is create an operable gate to sustain flood flows into the Bypass for 30-45 days between December 1 and May 15 to create flood plain habitat for Chinook salmon and Sacramento splittail.

This measure would have serious impacts to current land use in the Yolo Bypass Wildlife Area by:

- compromising the floodway function of the Yolo Bypass,
- effectively eliminating the current agricultural activities in the Wildlife Area and thus seriously impacting its income stream, and
- making the Wildlife Area unusable for the thousands of school children who annually participate in the Yolo Basin Foundation's *Discover the Flyway* school program.

The development of this BDCP does create an opportunity to look for alternatives that avoid the impacts described above while achieving realistic fisheries goals. The Lower Yolo Bypass Planning Forum BDCP Conservation Measures Committee, co-sponsored by Yolo Basin Foundation and the Delta Protection Commission provides a valuable stakeholder forum in which to develop ecosystem-based alternatives to improve fish habitat while protecting existing uses.

In considering possible alternatives, Yolo Basin Foundation asks that the Committee incorporate the five actions that are described in “Yolo Bypass Conceptual Aquatic Restoration Opportunities” approved by the Yolo Bypass Interagency Working Group in 2006. See attached document.

Any alternative under consideration for the Bypass should protect the Yolo Bypass Wildlife Area as managed under the Yolo Bypass Wildlife Area Land Management Plan adopted by California Department of Fish and Game in June 2008, including:

- protection of the floodway function of the Yolo Bypass as mandated in agreements between the Department of Fish and Game and the US Army Corps of Engineers and MOUs with other agencies,
- implementation of wildlife and botanical surveys to specifically document areas that have not yet been surveyed, e.g. Giant Garter Snake and vernal pool habitats, and
- preservation of agriculture at the Wildlife Area.

The Yolo Basin Foundation has twenty years of experience in maintaining the partnerships needed to successfully improve fish and wildlife habitat in the Wildlife Area and the larger Yolo Bypass. The Foundation believes that a certain scale of spring inundation of the Yolo Bypass is possible without sacrificing all that is being accomplished at the Yolo Bypass Wildlife Area. Foundation staff and board members look forward to working with BDCP Steering Committee members and staff to address the goals of the BDCP in the Yolo Bypass.

Yolo Bypass Interagency Working Group

California Department of Fish and Game
California Department of Water Resources
National Marine Fisheries Service
US Fish and Wildlife Service

September 2006

Yolo Bypass Conceptual Aquatic Restoration Opportunities: Keeping Yolo Bypass Users Whole While Improving Aquatic Conditions

The following describes potential northern Yolo Bypass (above Little Holland Tract) aquatic restoration opportunities. The CALFED Ecosystem Restoration Program Implementing Agencies (CDFG, USFWS, NMFS) in cooperation with the DWR, are evaluating the feasibility of implementing the following opportunities. These opportunities were developed through consultations with participating agencies of the Yolo Bypass Interagency Working Group (YBIWG).

The YBIWG acknowledges key issues, interests, and concerns raised during previous discussions with stakeholders and evaluates potential restoration opportunities with these issues in mind. The YBIWG intends to keep all users and interests whole.

The mission of the YBIWG is to improve conditions for native fish species (particularly State and federal Threatened and Endangered fish species and species of special concern) in the Yolo Bypass, thereby enhancing populations and recovery efforts while maintaining or improving existing conditions for land management.

This document focuses, at a conceptual level, on the sequential development of potential restoration opportunities in the northern Yolo Bypass. The set of potential restoration opportunities is provided to foster discussion among public entities and stakeholders interested in the northern Yolo Bypass. YBIWG Stakeholder Outreach will involve: presenting conceptual restoration opportunities, seeking stakeholder input to guide further actions, and, in concert with stakeholders, developing an appropriate restoration plan that maintains or improves conditions in the Yolo Bypass for native fish and bypass users.

The YBIWG has identified the following potential restoration opportunities for further evaluation:

- **Putah Creek** – Lower Putah Creek stream realignment and floodplain restoration for fish passage improvement and multi-species habitat development on existing public lands.

- **Lisbon Weir** – Modify or replace the weir to improve the agriculture and habitat water control structure for fish, wildlife, and agriculture; reduce maintenance.
- **Additional multi-species habitat development** – Provide for controlled localized seasonal inundation on more frequent intervals; identify areas of opportunity only on: the Wildlife Area; other existing public lands; and private lands where cooperative agreements with willing land owners provide mutual benefits.
- **Tule Canal connectivity** – Identify passage impediments (e.g. road crossings and impoundments); work with land owners to develop the best options for improving fish passage and ensuring water diversion capability.
- **Multi-species fish passage structure**– Investigate the redesign of the existing fish ladder; evaluate the feasibility of constructing a new fish passage structure, operated to ensure: continued maintenance of flood capacity; no substantial changes in timing, volume, and/or duration of flow; and minimal disturbance to existing land use and agricultural practices.

Biological monitoring will be implemented as necessary and may be used to guide future actions and adaptive management.

Multi-species restoration opportunities discussed here are presented in a sequential order of completion. For the full value of the proposed restoration opportunities in the Yolo Bypass to be realized, the following ordered scheme should occur.

Step 1 - Putah Creek

Evaluate and develop a plan for the realignment and restoration of lower Putah Creek. The area proposed for restoration is within existing public lands. The realignment has the potential to create 130 to 300 acres of shallow water habitat. Benefits would include improved salmonid immigration and emigration to and from Putah Creek, an increase in avian (shorebird and waterfowl) habitat, increased aquatic and riparian habitat for other native species, as well as a significant enhancement to existing fish habitat in and around Putah Creek.

Goals:

- Improve passage, rearing, and emigration of adult and juvenile salmon and steelhead in Putah Creek.
- Provide diverse aquatic and riparian habitats for shorebirds, ground nesting birds, waterfowl, plants, invertebrates, plankton, and spawning and rearing of native fish species.

Step 2 – Lisbon Weir

Modify or replace Lisbon Weir to provide better fisheries management opportunities in Putah Creek and the Toe Drain, while improving the reliability of

agricultural diversions and reducing maintenance requirements. A conceptual example of the synergistic benefits of these proposed restoration actions is the idea that improving Lisbon Weir's reliability for agricultural diversions could increase flexibility in water distribution, thereby allowing for greater attraction flows to be released down the realigned Putah Creek.

Goals:

- Improve irrigation water distribution system to benefit fish and wildlife, and agriculture.
- Improve likelihood of adult fall-run Chinook immigration to Putah Creek
- Reduce delay and possible stranding of adult steelhead, Chinook salmon and sturgeon, when passable conditions to the Sacramento River exist.
- Reduce delay of juvenile salmonid emigration within the Toe Drain.

Step 3 – Additional multi-species habitat development

Expand existing shallow water habitat for various species including juvenile native fish. Additional multi-species habitat could be developed through the excavation of a low shelf along a limited portion of the Toe Drain and through small scale setback levees, or by other unidentified means. Restoration opportunities for the development of additional seasonal shallow water habitat, where opportunities exist, may occur on:

1. Undeveloped lands within the Yolo Bypass Wildlife Area.
2. Other undeveloped public lands within the Yolo Bypass.
3. Private lands where cooperative agreements between the implementing agencies and the landowners provides mutual benefits.

Goals:

- Increase rearing habitat available to juvenile steelhead, Chinook salmon, and splittail.
- Increase shallow water habitat availability for multiple species (fish, wildlife, plankton, and others).

Step 4 – Tule Canal Connectivity

Identify areas of stranding adjacent to the Fremont Weir. Evaluate the feasibility of improving connectivity between the Fremont Weir, the Fremont Weir scour ponds, and the Toe Drain to reduce stranding of adult and juvenile fish. Identify seasonal road crossings and agricultural impoundments in the northern Yolo Bypass that impact wetted habitat connectivity, immigration, and emigration of fish species utilizing the Yolo Bypass. Develop conceptual approaches for the modification of crossings and impoundments to improve fish passage while ensuring continued water diversion capability.

Goals:

- Reduce delay and stranding of adult steelhead, Chinook salmon, and sturgeon immigrating within the Yolo Bypass
- Reduce delay and overall losses of juvenile Chinook salmon and steelhead emigrating within the Yolo Bypass.

Step 5 – Multi-species fish passage

Evaluate the feasibility and appropriateness of providing fish passage improvements in and along the Fremont Weir. Appropriate operational constraints would guide plan development and would ensure:

1. Continued maintenance of flood conveyance capacity.
2. No substantial changes in timing, volume, and/or duration flow.
3. Minimal disturbance to existing land use and agricultural practices.

Restoration opportunities may include the addition of a new, controlled multi-species fish passage structure at the eastern edge of the Fremont Weir. Additionally, restoration opportunities may include improvements along the existing weir face and apron to facilitate sturgeon passage along the length of Fremont Weir without introducing any additional flows. Conceptual designs for this option could include rock ramps that would provide a gradual slope up the face of the weir. In addition to the installation of new fish passage structures, the existing fish ladder will be analyzed to determine if modifications could allow for a greater range of fish species passage.

Goals:





- When present in the northern Yolo Bypass, improve immigration and emigration (reduce delay and stranding) of adult and juvenile fish (steelhead, Chinook salmon, and sturgeon).

The intent of the YBIWG is to keep all users and interests whole. The YBIWG identified potential restoration opportunities with consideration to the following areas of concern:

- Agricultural operations and lifestyle
- Flood control
- Educational activities
- Public and private waterfowl management operations and lifestyle
- Water quality
- Wildlife Area infrastructure investments
- Wildlife management operations
- Recreation
- Vector control
- Benefits to fish

The YBIWG is open to considering additional areas of concern that may be identified through additional stakeholder outreach. Conceptual restoration opportunities were developed to keep all users and interests whole. To this end, restoration opportunities that significantly changed the timing and/or duration of flow, or that resulted in substantial new regulation of the Yolo Bypass, were eliminated from further consideration.

bdcpccomments

From: Robin Kulakow [robin@yolobasin.org] **Sent:** Wed 5/13/2009 4:25 PM
To: bdcpccomments
Cc: lois.wolk@sen.ca.gov; Mariko Yamada; Jim Provenza
Subject: Comments for BDCP EIR/EIS
Attachments:  YBF Position on Fremont Weir 4-8-09 .pdf(142KB)  ATT127801.txt(180B)  DE Op-Ed 4-26-09.pdf
(113KB)  ATT127801.txt(187B)

Hello: I would like to enter the attached documents into the public record as comments from the Yolo Basin Foundation. These documents are in addition to our comments submitted at the Davis Public Scoping meeting:

The first document is a statement of the position of the Yolo Basin Foundation. Please address the adverse impacts and suggested actions listed in this document in the EIR/EIS.

<<YBF Position on Fremont Weir 4-8-09 .pdf>> <<ATT127801.txt>> <<DE Op-Ed 4-26-09.pdf>>
<<ATT127801.txt>>



Yolo Basin Foundation Proposal to Create a Yolo Bypass Conservation Measure for the Bay Delta Conservation Plan

The Yolo Bypass consists of a diverse mix of agriculture and wetland habitats in the North Delta. It is the location of the Department of Fish and Game's 16,000-acre Yolo Bypass Wildlife Area, which utilizes agriculture to help provide wildlife habitat for thousands of animals in a way that is compatible with the flood control function of the Bypass. It is home to many threatened and endangered species and provides a wildlife viewing, environmental education, and waterfowl hunting destination, as well as simply a peaceful place to enjoy open space, all within sight of the State Capitol.

Yolo Basin Foundation believes that a key Habitat Conservation Measure as currently described in the Bay Delta Conservation Plan will have adverse impacts on this outstanding regional treasure.

The proposed measure is Floodplain Habitat Restoration Conservation Measure (FLOO1.1): "Modify the Fremont Weir and the Yolo Bypass to provide for a higher frequency and duration of inundation." The stated goal is to create an operable gate to sustain flood flows into the Bypass for 30-45 days between December 1 and May 15 to create flood plain habitat for Chinook salmon and Sacramento splittail.

This measure would seriously affect the ability of Fish and Game personnel to manage the Wildlife Area in accordance with the Yolo Bypass Wildlife Area Land Management Plan adopted in 2008 and other foundational agreements, including the US Army Corps of Engineers Operation and Maintenance Manual and MOUs signed by flood control and wildlife agencies in 1994. It would:

- effectively eliminate the current agricultural activities in the Wildlife Area which provide thousands of acres of wintering waterfowl habitat while generating an important income stream for the management of the Wildlife Area;
- curtail all public use on the Wildlife Area when the Fremont Weir is spilling, including the elimination of access for the thousands of school children in the spring who annually participate in the Yolo Basin Foundation's *Discover the Flyway* school program; and
- prevent the wetland management practices that maintain the Wildlife Area in a flood neutral state.

The development of this BDCP does create an opportunity to look for alternatives that avoid the effects described above while achieving realistic fisheries goals. The Yolo Basin Foundation proposes an alternative that would create a Yolo Bypass Conservation measure in place of the proposed Fremont Weir modification. This new measure would incorporate the five actions that are described in "Yolo Bypass Conceptual Aquatic Restoration Opportunities" approved by the Yolo Bypass Interagency Working Group in 2006.

Known as the "Five Step Proposal," the actions are:

- **Putah Creek**—Implement Lower Putah Creek stream realignment and floodplain restoration for fish passage improvement and multi-species habitat development on existing public lands.
- **Lisbon Weir**—Modify or replace the weir to improve the agriculture and habitat water control structure for fish, wildlife, and agriculture.
- **Additional Multi-species Habitat Development**—Provide for controlled, localized seasonal inundation on more frequent intervals; identify areas of opportunity only on: the Yolo Wildlife Area, other existing public lands, and private lands where cooperative agreements with willing landowners provide mutual benefits.
- **Tule Canal Connectivity**—Identify passage impediments (e.g. road crossings and impoundments), work with landowners to develop the best options for improving fish passage and insuring water diversion capability.
- **Multi-species Fish Passage Structure on the Fremont Weir**—Investigate the redesign of the existing fish ladder, evaluate the feasibility of constructing a new fish passage structure operated to insure continued maintenance of flood capacity, no substantial changes in timing, volume, and/or duration of flow and minimal disturbance to existing land use and agricultural practices.

These actions were developed in a formal collaboration with CA Department of Fish and Game, US Fish and Wildlife Service, CA Department of Water Resources, and National Marine Fisheries Service with the co-equal goals of improving aquatic habitat and keeping Yolo Bypass users whole. These five actions are included in the Yolo Bypass Wildlife Area Land Management Plan. They are also part of the Bypass-wide package of actions that make up the Yolo Bypass Integrated Project within the Yolo County Integrated Regional Water Management Plan. This plan was crafted by a long standing group of stakeholders representing the Yolo Bypass.

Since the Five Step Proposal focuses on Putah Creek and Yolo Bypass infrastructure, an action to increase the frequency and duration of spring flooding from the Sacramento River could also be included. This approach would more directly benefit Sacramento River salmon.

Finally, any change in inundation patterns in the Yolo Bypass would have to protect the Yolo Bypass Wildlife Area and be developed in conjunction with the Central Valley Flood Protection Board.

The Lower Yolo Bypass Planning Forum, a formal collaboration co-sponsored by Yolo Basin Foundation and the Delta Protection Commission, provides a means for stakeholders to develop an ecosystem-based set of actions to improve fish habitat while protecting existing uses. We encourage the BDCP Steering Committee to collaborate with this group.

The Yolo Basin Foundation has twenty years of experience in maintaining the partnerships needed to successfully improve fish and wildlife habitat in the Wildlife Area, and the larger Yolo Bypass. Foundation staff and board members look forward to working with BDCP Steering Committee members and staff to address the goals of the BDCP in the Yolo Bypass.

The second document is an op-ed that appeared in the Davis Enterprise that also addresses our concerns.

Yolo Basin Foundation Op-Ed Regarding the Bay Delta Conservation Plan
*(This opinion piece appeared in the Davis Enterprise on 4/26/09 as
“Spring Flooding Imperils Bypass.”)*

Don't throw the baby out with the bathwater! A measure contained in the Bay Delta Conservation Plan (BDCP) would do just that if it isn't modified.

The Sacramento-San Joaquin Delta ecosystem is in trouble. Governor Schwarzenegger has assembled an army of agency leaders, staff and consultants with the goal of solving the Delta ecosystem crisis and providing guaranteed water to Southern California people and farms before he leaves office. “Delta Vision,” published in November 2008, is the outcome of their effort, and the BDCP is a complex multi-party plan to carry out the goals of “Delta Vision” within the context of the state and federal endangered species acts.

A model for solving the Delta's problems exists here in Yolo County--the 16,000-acre Yolo Bypass Wildlife Area, and the partnerships it was founded on. Instead of incorporating this successful model, policy makers are on their way to undoing 20 years of community effort to create and manage this amazing public resource.

The Yolo Bypass Wildlife Area, owned and operated by the CA Department of Fish and Game, exemplifies the power of diverse interests working together, and its success is possible because of widespread community and agency support that is based on a long running grassroots effort. It exists within the flood control function of the Bypass; it contributes to the agricultural economy of Yolo County; and it is an open space jewel for the regional community, all while providing a healthy, diverse wetlands ecosystem. The fact that the Yolo Bypass Wildlife Area is located adjacent to the State Capitol means it is accessible to a large metropolitan population, and its impact on building a community environmental ethic should not be underestimated.

The BDCP proposes to construct a notch in the Fremont Weir in order to prolong spring flooding, fundamentally changing how the Bypass works. The Fremont Weir currently diverts up to 500,000 cubic feet per second of water into the Yolo Bypass when the Sacramento River reaches flood stage. The proposed modification would be used to flood the Bypass for a 45 day period between January and May in most years.

This proposal is based on studies that compared the health of young ocean-going salmon that were carried by floodwaters into the Bypass with similar smolts caught in the Sacramento River. The fish that migrated via the Bypass showed signs of being healthier than those that migrated through the channelized Sacramento River. It is hypothesized that the difference is based on time spent in the shallow waters of the Yolo Bypass floodplain.

While this proposed measure may improve the survival chances for some young salmon in a few more years than currently happens, it is only one among many actions that need to be completed to improve salmon survival throughout their life cycle to the ocean and back. The Yolo Bypass Wildlife Area Land Management Plan contains five other actions to improve conditions for salmon and other native fish without notching the Fremont Weir. A copy of the plan can be found on the Yolo Basin Foundation's website: www.yolobasin.org.

Increased frequency and duration of spring flooding will have a serious impact on agriculture and habitat management in the Yolo Bypass, tipping the balance toward inviability. The extensive rice growing operations in the Bypass provide millions of dollars of income that contributes to the vibrant Yolo County agriculture economy as well as valuable habitat for water birds. The Yolo County Agriculture Commission estimates that the combination of rice and other crops plus ranching in the Yolo Bypass creates about \$44 million in direct farm income annually.

Rice farmers need to start preparing the ground and planting rice starting in March. There are already years in which spring flooding prevents this field work and the rice acreage decreases significantly. Increased spring flooding makes nearly every year a bad year for Bypass farmers and the habitat benefits they provide.

Agriculture, including ranching, is fully integrated into the management of the Wildlife Area. With the involvement of the Dixon Resource Conservation District, agricultural activities help Fish and Game fulfill their habitat goals while generating important income for the operation of the Wildlife Area. This income is what makes it possible for the Wildlife Area to be open to the public and managed in a way that creates and sustains diverse habitat.

Spring flooding is problematic in other ways. Floodwaters that linger into spring encourage the growth of tules, cattails, and willows which left unmanaged will slow down the movement of floodwaters. This proliferation of emergent vegetation reduces the ability of the Yolo Bypass to move floodwaters away from urban areas as designed. Late spring flooding also adversely affects the success of ground nesting birds because the growth of grasses that provide cover is delayed.

Yolo Basin Foundation, the nonprofit associated with the Wildlife Area, is working to deliver the message to the members of the BDCP Steering Committee that there are other measures available to improve aquatic habitat for fish while sustaining the existing high quality mosaic of farm fields and wetlands. We are encouraging them to work with us to develop a set of actions that builds upon the success of the Yolo Bypass Wildlife Area and honors current management underway on public and private lands throughout the Yolo Bypass.

We also urge the citizens of Yolo County to weigh in on the BDCP effort by expressing support for the protection of the Yolo Bypass Wildlife Area and the values it represents. The BDCP EIR/EIS scoping process is open for public comment until May 14th. For information on how to submit comments go to <http://www.resources.ca.gov/bdcp/>.

Robin Kulakow
Ann Brice
Yolo Basin Foundation

Thank you for the opportunity to comment.

Robin Kulakow
Executive Director
Yolo Basin Foundation
(530)-756-7248

bdcpccomments



From: Robin Kulakow [robin@yolobasin.org]

Sent: Fri 5/15/2009 1:34 PM

To: bdcpccomments

Cc:

Subject: Yolo Bypass

Attachments:  Impacts of proposed Fremont Weir modification 4-09.pdf(164KB)  ATT134336.htm(377B)

I would like to add to the comments and letters submitted by Yolo Basin Foundation, the following documents that specifically address concerns about the proposed modification to the Fremont Weir. The documents are the Yolo Bypass Management Strategy and the Yolo Bypass Wildlife Area Land Management Plan (a CEQA document). Please add these to the public record as well. Please especially note the planning influences section of the Yolo Bypass Wildlife Area Land Management Plan. These documents are posted on our website, www.yolobasin.org. I will also send you CDs with the documents.

Additionally I am attaching the link to the minutes of the Yolo Bypass Working Group. There are extensive stakeholder comments and questions regarding the proposed measure going back to 1999. There is reference to concerns about CALFED's proposal to increase the frequency and duration of spring flooding at the very first meeting, Nov. 1999. See page 8 for specific reference to the concerns although, the whole discussion centered around the impacts of frequency and duration of spring flooding. If you wish I can also send you a CD with the minutes as well.

I have also attached a document listing impacts to the Yolo Bypass Wildlife Area.

Thank you,

Robin Kulakow
Executive Director

Yolo Bypass Management Strategy
http://www.yolobasin.org/bypass_strategy.cfm

Yolo Bypass Land Management Plan
<http://www.yolobasin.org/management.cfm>

Yolo Bypass Working Group minutes
http://www.yolobasin.org/bypass_group.cfm



BDCP Habitat Conservation Measure (FLOO1.1): Modification of Fremont Weir and Spring Inundation of the Yolo Bypass

The Yolo Bypass Wildlife Area is a unique resource that provides substantial environmental, social, and economic benefits to the people of California. The 16,000 acres consists of an outstanding mix of terrestrial and wetland habitats that is home to many threatened and endangered species. It is the most popular wildlife viewing, environmental education, and waterfowl hunting destination in the Sacramento Delta.

Habitat Conservation Measures described in the Bay Delta Conservation Plan will have adverse impacts on the Yolo Bypass Wildlife Area. Specifically, the proposed Floodplain Habitat Restoration Conservation Measure (FLOO1.1): “Modify the Fremont Weir and the Yolo Bypass to provide for a higher frequency and duration of inundation,” must be evaluated for compatibility with existing public use programs, agricultural and wetland operations, and legal obligations under state, federal and international law.

The immediate **adverse impacts** of more frequent inundation of the Yolo Bypass include but are not limited to:

- **Public Use (All public use activities cease when the Bypass floods.)**
 - School Program: Approximately 4,000 students annually visit the Wildlife Area annually as part of the “Discover the Flyway” program. The program attracts students from over 100 schools in 5 counties.
 - Hunting Activity: Over 4,000 hunters utilize the area from throughout northern California. Hunter dollars provide the largest component of the operating budget at Yolo.
 - Wildlife Viewing: It is estimated that 30,000 people a year visit the Wildlife Area to view the large variety and number of birds, which peak in the winter and spring months.
- **Agriculture**
 - Agricultural Activities: There will be an inability to plant fields until they have dried out enough to begin ground tillage. Delaying this initiation of farming activity severely limits what can be grown here. White rice production will be severely impacted.
 - Forage value of uplands: Prolonged flooding results in the introduction of unwanted plant species, such as cocklebur, in the uplands. This will lead to a reduction in grazing lease fees and subsequent reduction in operating funds.
- **Wildlife**
 - Spring Nesting: This activity will be nearly eliminated. Ground nesting birds such as waterfowl, harriers, kites and shorebirds are especially vulnerable to spring flooding.
 - Rodent Presence: Fewer rodents, due to flooding, results in a reduction in food for wintering raptors.
 - Threatened and Endangered Terrestrial and Wetland Species: There will be adverse impacts to numerous protected species.

Adverse Impacts (continued)

- **Vector Control**
 - Best Management Practices: Established BMPs for wetland management under controlled conditions will not apply, resulting in increased mosquito production. The BMPs are the basis for our working relationship with Sacramento Yolo Mosquito and Vector Control District.
- **Flood Control**
 - Agreed upon vegetation densities will not be manageable with increased spring flooding, which encourages uncontrolled growth of tules, cattails and willows. This will make the Wildlife Area non compliant with the flood control function of the Yolo Bypass.
- **Methylmercury**
 - Best Management Practices: Current BMPs developed as part of a Total Maximum Daily Load for the Delta, will reduce the creation of methylmercury in wetlands that is subsequently transported to the Delta. These BMPs will not be applicable with increased flooding. The result could be a net increase in the levels of methylmercury being transported to the Delta.

Existing Obligations Impacted by FLOO1.1:

- Agreements signed by DFG to manage habitat that is compatible with flood control: Project Modification Report, USACOE and DFG 1992; Other MOUs signed in 1994.
- Legal requirements of federal and state easement programs including federal Wetland Reserve Program, Presley Program and others on both public and private lands require a set management regime.
- Use of NAWCA funds to restore wetlands obligated DFG to manage the constructed wetlands for the benefit of migratory waterfowl and shorebirds in perpetuity.
- Increased spring inundation compromises the long established goals of the Central Valley Joint Venture and violates the DFG's commitment to manage these wetlands for waterfowl and shorebirds.
- Increased spring inundation affects the International Waterfowl Management Plan, an international treaty aimed at protecting migratory waterfowl populations.
- The Wildlife Area provides important habitat for several listed species, including Giant Garter Snake, Snowy Plover, Conservancy Fairy Shrimp, and Ferris' Alkali Milk Vetch.

BDCP

BAY DELTA CONSERVATION PLAN

ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT

— Comment Card —

Please Print _____

Name: Robin Kulakow & Ann Brice Organization: Yolo Basin Foundation

Telephone: 530-756-7248, 758-0530 e-mail: robin@yolobasin.org

Address: PO Box 943 dbrice@yoloobasin.org

City: DAVIS State: CA Zip: 95617

☒ Yes, I would like to be added to your e-mail list. *We are on the steering committee list.*

Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 14, 2009.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:
Ms. Delores Brown, Chief, Office of Environmental Compliance, Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236.
You may also e-mail your comments to BDCPcomments@water.ca.gov. Comments must be received by May 14, 2009.



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EXECUTIVE
DIRECTOR

Judy Boshoven

April 16, 2009

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

Dear Ms. Brown,

The Yolo Land Trust (YLT) has reviewed the online scoping materials for the environmental review under NEPA and CEQA presented by the Bay Delta Conservation Plan (BDCP).

From the maps presented, it appears that the western route for the project would traverse properties owned by Linda Elliot in the area between West Sacramento and Clarksburg and the Sacramento River and the Deepwater Ship Channel in Yolo County for which YLT holds conservation easements.

This letter is to inform the BDCP that YLT intends to vehemently uphold the terms of the conservation easements that are potentially affected by the BDCP and recommends that these impacts be specifically addressed in the NEPA and CEQA documents.

Sincerely,

Judy Boshoven
Executive Director

Copies to:
Linda Elliot
Yolo County Board of Supervisors
Yolo County Planning Department



Yolo Habitat/Natural Community Conservation Plan Joint Powers Agency

YOLO NATURAL HERITAGE PROGRAM

~ Partnering for conservation ~

March 20, 2009

Secretary Mike Chrisman
Undersecretary Karen Scarborough
California Natural Resources Agency
Bay Delta Conservation Plan Steering Committee members
1416 9th Street, Suite 1311
Sacramento, CA 95814

Member Agencies:

County of Yolo

City of Davis

City of Winters

City of West Sacramento

City of Woodland

*University of California,
Davis*

Secretary Chrisman, Undersecretary Scarborough, and Committee members:

Yolo County, its incorporated cities, and the University of California at Davis (jointly the "Yolo Habitat JPA") are developing a county-wide, multi-species HCP/NCCP known as the Yolo Natural Heritage Program (YNHP). Substantial public and private investment has been made to date on this effort and we anticipate plan approval in the spring of 2010. The Yolo Natural Heritage Program is expected to provide regulatory and conservation benefits for more than 65 special status and at risk species that inhabit five natural communities in Yolo County. Eight other landscape level conservation efforts are in various stages of completion between Lake Tahoe and San Francisco Bay. Yolo County, located midway between Tahoe and San Francisco, is strategically important to the completion of this meaningful habitat corridor in Northern California.

The JPA commends the state and its partners on the decision to engage in serious discussions regarding the health of the Sacramento-San Joaquin Delta through development of the Bay Delta Conservation Plan. We have been advised by staff to the Bay Delta Conservation Plan that the most reliable way to convey information to the BDCP process is in writing. This letter serves two purposes: to provide the JPA's comments and concerns to date relative to the developing BDCP, and to request that the BDCP and the JPA establish a formal coordinating structure where opportunities and conflicts can be addressed efficiently and to our mutual benefit. The JPA is ready to engage in this effort and looks forward to discussing how we move forward productively.

The BDCP and YNHP share an approximately 90,920 acre planning overlap area that provides functional habitat for several species of interest to both planning efforts. These include giant garter snake, Swainson's hawk, and valley elderberry longhorn beetle, as well as grasslands and seasonal wetland communities. The habitat values within the overlap area are critical to the viability of several at risk species, including near endemic plants that could be impacted by BDCP-related habitat conversions unless careful analysis is undertaken early in the planning process. The overlap

planning area also supports habitat friendly agriculture and the Vic Fazio Wildlife Area, two highly valued assets that we believe should be preserved.

While we expect that our mutual interests will continue to evolve, at this time the JPA offers the following specific comments:

Habitat

To ensure compatibility between the two plans we recommend that BDCP conservation objectives be coordinated early with the YNHP where we share common species needs. The YNHP has assembled a robust data set and is ready to engage in this discussion. Unavoidable habitat conversions resulting from BDCP actions must be fully mitigated. This includes mitigation for impacts to terrestrial species as well as for the loss of agricultural resources. BDCP and YNHP should each apply standardized mitigation ratios in the overlap area to ensure that equitable outcomes and benefits are realized. BDCP and YNHP implementing strategies should be coordinated as both planning efforts continue to evolve so that neither plan overshadows the other. We request that BDCP support our efforts to retain vegetated levees within the YNHP planning area boundary. The JPA supports the continued viability of the Vic Fazio Wildlife Area and requests that BDCP avoid impacts to this important habitat resource.

Agriculture

The production of rice within and outside of the Yolo Bypass is essential to the successful implementation of the YNHP because it provides habitat benefits to several YNHP species, including giant garter snake. We are concerned that BDCP proposals to inundate the Yolo Bypass for the benefit of fish species will compromise future production of rice in the Bypass, and by extension throughout the county. We ask that BDCP carefully evaluate proposals in the Bypass and where practical avoid sensitive biological resources and agricultural operations that provide species benefits. BDCP must provide regulatory assurances for landowners adjacent to BDCP habitat project areas. County revenue losses and increased public cost burdens associated with BDCP actions must be fully accounted for and mitigated.

Permitting

The JPA requests that the following projects be added to the BDCP covered activities list. These projects are proximate to Delta waters and would benefit from regulatory permitting anticipated in the BDCP that cannot be achieved in the YNHP. We can provide detailed information on the scope of these activities upon request.

Davis/Woodland/UCD surface water project

Davis/Woodland wastewater discharge project

Port of Sacramento

Restoration and habitat enhancements undertaken in the YNHP that have the potential to impact BDCP target species

We realize that BDCP is on an accelerated timeline and are willing to marshal resources to ensure that our proposal does not impede BDCP progress. Because the YNHP and BDCP are expected to produce final plan documents within the same time frame we trust that our request will be considered expeditiously.

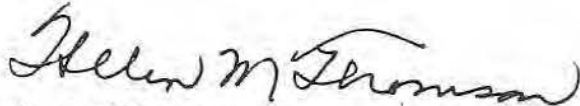
Secretary Chrisman

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Please contact me or Maria Wong, JPA Executive Director, with any questions you have. I look forward to scheduling our first meeting at the earliest opportunity.

Cordially,

A handwritten signature in cursive script, reading "Helen M. Thomson".

Helen M. Thomson

Chairwoman, Yolo County HCP/NCCP Joint Powers Agency

cc: Senator Lois Wolk
Assemblymember Mariko Yamada
Mayor Cabaldon, City of West Sacramento
Mayor Davies, City of Woodland
Mayor Asmundson, City of Davis
Mayor Martin, City of Winters
Chair McGowan, Yolo County Board of Supervisors
Chancellor Vanderhoef, University of California, Davis