

RECEIVED

JAN - 2 2014

NATL MARINE FISHERIES SVS  
SACRAMENTO, CA

BDCP51.

726 Clayton St  
San Francisco, CA 94117  
December 30, 2013

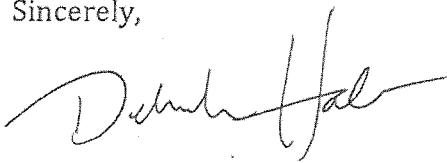
National Marine Fisheries Services  
650 Capitol Mall, Suite 5-100  
Sacramento, CA 95814

Dear Ryan Wuff,

I am 100% opposed to a Delta tunnel. We should not spend \$1, never mind billions, on this environmental disaster. In this day and age, does anyone really believe that we have the ability to control nature?! Think of the risks, think of the negative consequences, and think of what other uses this money could be better put.

Instead we should focus on water conservation, especially that used by agriculture. Water fees for farmers should be increased and they should be encouraged to switch to less water intensive crops. Please work to change whatever water contracts are necessary to correct the current give-away of a valuable public commodity.

Sincerely,

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

Deborah Hall

# **L # BDCP52**

- ☐ Unused
- ✓ Duplicate of L# **66**
- ☐ Out of Scope
- ☐ Other: \_\_\_\_\_

(replace original)

RECEIVED

DEC 13 2013

NATL MARINE FISHERIES SVS  
SACRAMENTO, CA

**JOHN DUTTON**  
LAW OFFICES

1505 Grass Valley Highway  
Auburn, California 95603-2806

(530) 885-1906 Telephone  
(530) 885-6365 Facsimile

**BDCP53.**

December 12, 2013

BDCP Comments/Ryan Wulff  
National Marine Fisheries Service  
650 Capitol Mall, Suite 5-100  
Sacramento, California 95814

Re: Bay Delta Conservation Plan

Dear Mr. Wulff:

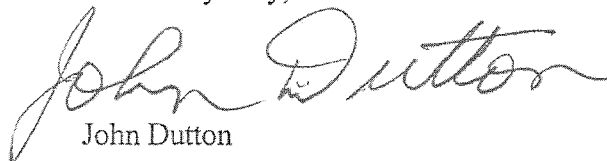
The Bay Delta Conservation Plan will destroy the Delta. It does not take an expert to see that taking huge amounts of water out of the Sacramento River between Clarksburg and Courtland will deprive the Delta of water and allow more salt water intrusion. Salt water intrusion already damaged the lower Delta. This project will accelerate salt water intrusion and damage. Attached is a copy of a letter sent to Governor Brown in that regard.

In addition, the construction of this project will inevitably severely damage the vineyards, orchards, and historic towns of the Delta. It is difficult to see how the Delta can survive the enormous construction required for these tunnels.

The other detrimental impacts of this project include the billions of dollars of cost to the taxpayers, and jeopardizing Northern California water supply. The proponents of this project are willing to destroy the Delta, disregard the cost to taxpayers, and ignore the damage to Northern California water supply to send more of our water to Southern California.

This project should be killed and Southern California given back to Mexico.

Yours very truly,



John Dutton

JD/ma

Enclosure

**JOHN DUTTON**

LAW OFFICES

1505 Grass Valley Highway  
Auburn, California 95603-2806(530) 885-1906 Telephone  
(530) 885-6365 Facsimile

June 27, 2013

Governor Jerry Brown  
State Capitol, Suite 1173  
Sacramento, CA 95814

Dear Governor Brown:

I recently read with great concern about the project to construct huge tunnels through the Delta and drain more water from the Sacramento River. Such a project will destroy the Delta.

Saltwater intrusion is already a huge problem for the Delta. I can recall pheasant hunting on Sherman Island in the 1960s; the area then had great fertile agricultural land. Corn and other crops were growing and healthy. If you drive over Sherman Island now, the land is desolate and virtually useless.

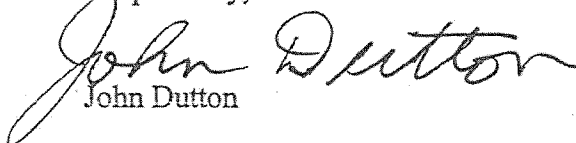
In addition to salt water intrusion, the disruption of the Delta lands and the building of the structures required for the project will change the Delta forever.

Rather than spending billions of dollars on this tunnel project, alternatives should be sought. Desalination plants for the metropolitan coastal areas should be encouraged. Enclosed is a copy of an article that recently appeared in the Wall Street Journal on a desalination plant being built in Carlsbad, California.

The Sacramento River and other sources of water in the Central Valley should be used for agriculture and the communities in the Central Valley.

The Delta should not be destroyed to provide water for Los Angeles and Southern California.

Respectfully,

  
John Dutton

cc: Representative Doug LaMalfa  
Representative Tom McClintock  
State Senator Ted Gaines  
State Senator Jim Nielsen  
Assemblyman Frank Bigelow  
Assemblyman Brian Dahle  
Assemblywoman Beth Gaines



**From:** Dan Christians <dchris3734@aol.com>  
**Sent:** Friday, December 20, 2013 11:10 AM  
**To:** bdcg.comments@noaa.gov  
**Cc:** dchris3734@aol.com  
**Subject:** Request for DVD of BCDP EIR

Please send me a DVD of the recently released EIR to:

Dan Christians  
3295 Lagunita Circle  
Fairfield, CA 94533

Thanks

Sent from my Samsung Galaxy Tab 10.1

**From:** Paul R. <rockyspad@earthlink.net>  
**Sent:** Friday, December 20, 2013 2:13 PM  
**To:** BDCP.comments@noaa.gov  
**Subject:** Request

BDCP

I would like to request copies of the BDCP that came out the 13th and the 9th. DVD.

If you can forward the documents to my e-mail, that is o.k. Even better, is there a print edition deposited at a library, like Fremont CA?

Mail address is: Paul  
2515 Rampart St.  
Oakland, CA. 94602

Thanks, Paul

---

**From:** Karen Hoare <marsgrl2@gmail.com>  
**Sent:** Saturday, December 21, 2013 3:33 PM  
**To:** BDCP.comments@noaa.gov  
**Subject:** Delta water tunnel project

To whom it may concern,

I am a home owner living just 4 blocks from the delta. When I read about the plan to divert water from the delta from [cleanwater.org](http://cleanwater.org) I was alarmed and disturbed. I feel that water recycling and conservation is more important than indirectly causing our beautiful delta to be drained. The impact on wildlife, especially in this time of drought would be devastating.

I urge you to please reconsider this plan of action. Surely something less harmful to scenery and wildlife can be found.

Thank you,  
Karen Hoare  
657 gingham way  
Oakley CA 94561

**From:** Joan Hasselgren <joanhasselgren@gmail.com>  
**Sent:** Saturday, December 21, 2013 5:17 PM  
**To:** BDCP.comments@noaa.gov  
**Subject:** Why no meetings in San Francisco Bay Area?

San Jose is not SF Bay Area!  
Thanks,  
Joan Hasselgren

--

Life is Love ~ Blessed Be!  
[www.hasselgrengardens.com](http://www.hasselgrengardens.com)

---

**From:** Joan Hasselgren <joanhasselgren@gmail.com>  
**Sent:** Saturday, December 21, 2013 5:21 PM  
**To:** BDCP.Comments@noaa.gov  
**Subject:** Delta Plan

Hello:

I see it is all about Brown's drive to build billion dollar diversions from our Delta.

Isn't there ANYTHING we can do to make this huge mistake stop? The very last thing we need is to divert more fresh water from our SF Bay and Delta!

Brown tried this years ago and now, again, he is determined to send more of our precious water south to Big Ag and the developers.

Can't we sue to stop this insanity?

Thanks,  
Joan Hasselgren

--

Life is Love ~ Blessed Be!

[www.hasselgrengardens.com](http://www.hasselgrengardens.com)

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**From:** LJ Laurent <ljlarent@att.net>  
**Sent:** Monday, December 23, 2013 8:31 AM  
**To:** BDCP.Comments@noaa.gov  
**Subject:** Comment Bay Delta Tunnel nonsense

Comment: today is December 23, 2013, and the water level in Folsom Reservoir -- which is sole water source for millions -- is said to be about 19%. I don't believe this. There are only two pathetic streams running through a huge granite bowl, and no precipitation is expected in the Sierra Mountains and the Central Valley.

For pictorial proof, see the week-old videos posted at <http://www.youtube.com/4sewerdogs> channel.

Destroying the Delta to transport imaginary water is near-insanity.

DESALINIZATION now!!!!

LJ Laurent  
1212 Forrest St.  
Folsom CA 95630

**From:** Alan Jackman <apjackman@gmail.com>  
**Sent:** Monday, December 23, 2013 3:39 PM  
**To:** BDCP.comments@noaa.gov  
**Subject:** question

Where can I find the detailed engineering calculations of the carrying capacity of the proposed tunnels?

Thanks Alan Jackman

---

**From:** Al Neumann <ANeumann@Bauerfoundations.com>  
**Sent:** Tuesday, December 24, 2013 6:11 AM  
**To:** BDCP.comments@noaa.gov  
**Subject:** Bay Delta Conservation Plan Documents

Gentlemen:

We would like to receive a DVD copy of the documents to review.

Please mail to my attention at the address shown below.

Thanks,  
Al Neumann, P.E.  
Director of Business Development  
Ph: +1 727 - 531 - 2577 Ext. 329  
Fax: +1 727 - 530 - 1571  
Cell: +1 727 - 639 - 3593  
[aneumann@bauerfoundations.com](mailto:aneumann@bauerfoundations.com)  
[www.bauerfoundations.com](http://www.bauerfoundations.com)  
[www.bauer.de](http://www.bauer.de)



BAUER Foundation Corp., 13203 Byrd Legg Drive, Odessa, FL 33556

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**From:** Bob Whitley <bwhitley@whitleyburchett.com>  
**Sent:** Friday, December 27, 2013 10:33 AM  
**To:** BDCP.comments@noaa.gov  
**Subject:** BDCP Draft EIR/EIS

Chapter 5 of the Draft EIR/EIS includes a reference to Table 5-7 through 5-9. I scanned through Chapter 5 and didn't find the referenced Tables. Where can I find the referenced Tables?

Regards,

*Bob*

*Bob Whitley*

WHITLEY BURCHETT & Associates

1777 N. California Blvd., Suite 200

Walnut Creek, CA 94596

Ph: 925.945.6850

Fax: 925.945.7415

**From:** Andrew Klonecke <klonecke@hotmail.com>  
**Sent:** Saturday, December 28, 2013 8:00 AM  
**To:** BDCP.comments@noaa.gov  
**Subject:** request dvd of documents of BDCP

Hello, Please send a copy to Klonecke 9840 country pk ct roseville ca 95661. thank you

**From:** bholt1942@gmail.com  
**Sent:** Saturday, December 28, 2013 7:20 PM  
**To:** BDCP.comments@noaa.gov  
**Subject:** Draft EIR/EIS- Request for a copy of the disc

I would appreciate a copy of the DVD if it is available without charge. My mailing address is:

Buford Holt  
2223 Skyline Drive  
Redding, CA 96001

**From:** Gayle Vaughan <vonwind@yahoo.com>  
**Sent:** Sunday, December 29, 2013 11:30 AM  
**To:** BDCP.comments@noaa.gov  
**Subject:** Bdcg DVD

Would you please send me a DVD of the current BDCP draft and EIR/EIS ASAP ? It's too large for my computer to download directly. Thanks, Gayle Vaughan

Sent from my iPad

---

**From:** Allen, Jaclyn <jaclyn.allen@urs.com> on behalf of BDCP <BDCP@urs.com>  
**Sent:** Monday, December 30, 2013 9:13 AM  
**To:** BDCP.Comments@noaa.gov  
**Subject:** FW: Draft BDCP and Associated Draft BDCP EIR/EIS Public Review and Comment Pe...  
**Attachments:** Draft on proposed modification BDCP-Clyox Inc.ppt

---

**From:** CLYOX@aol.com [mailto:CLYOX@aol.com]  
**Sent:** Saturday, December 28, 2013 3:49 PM  
**To:** [info@baydeltaconservationplan.com](mailto:info@baydeltaconservationplan.com)  
**Cc:** CLYOX@aol.com  
**Subject:** Re: Draft BDCP and Associated Draft BDCP EIR/EIS Public Review and Comment Pe...

See Attached: Provisions for an optimal BDCP provided by Clyox Company LLC;

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# Clyox Company LLC BDCP Environmental Plan(s)

Overview and Project Application

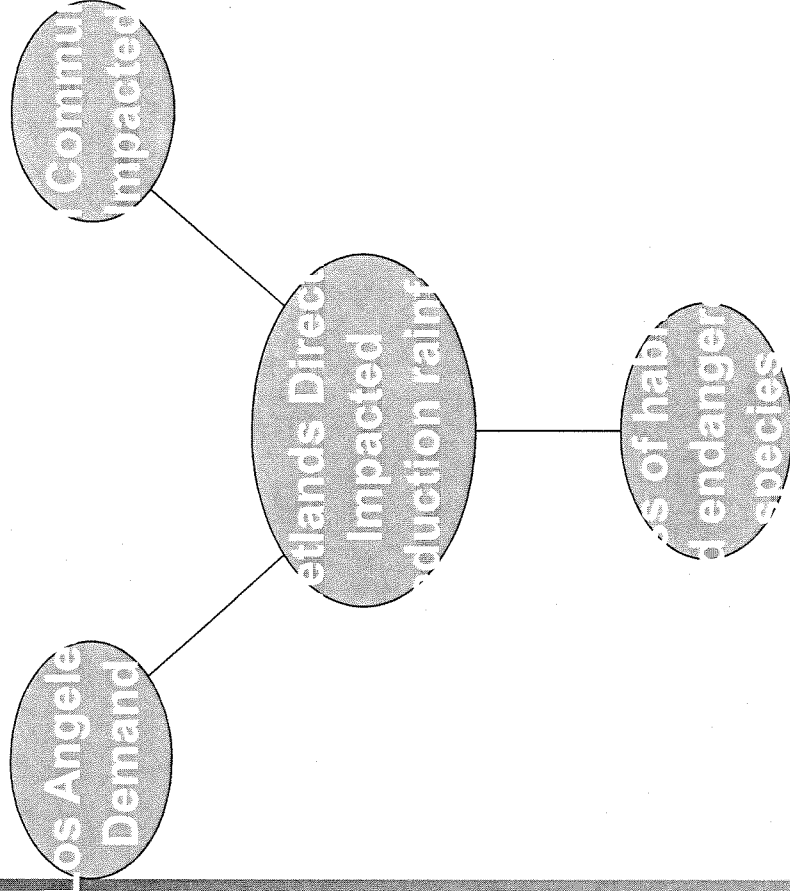
By

Clyde A. Livingston  
December 28, 2013

## Objective

- Provide assistance for preservation of endangered aquatic species (NEPA)
- Provide assistance to improve and maintain water quality for wet lands and urban communities (CEQA)

# Issues of Concern Effecting Endanger Species

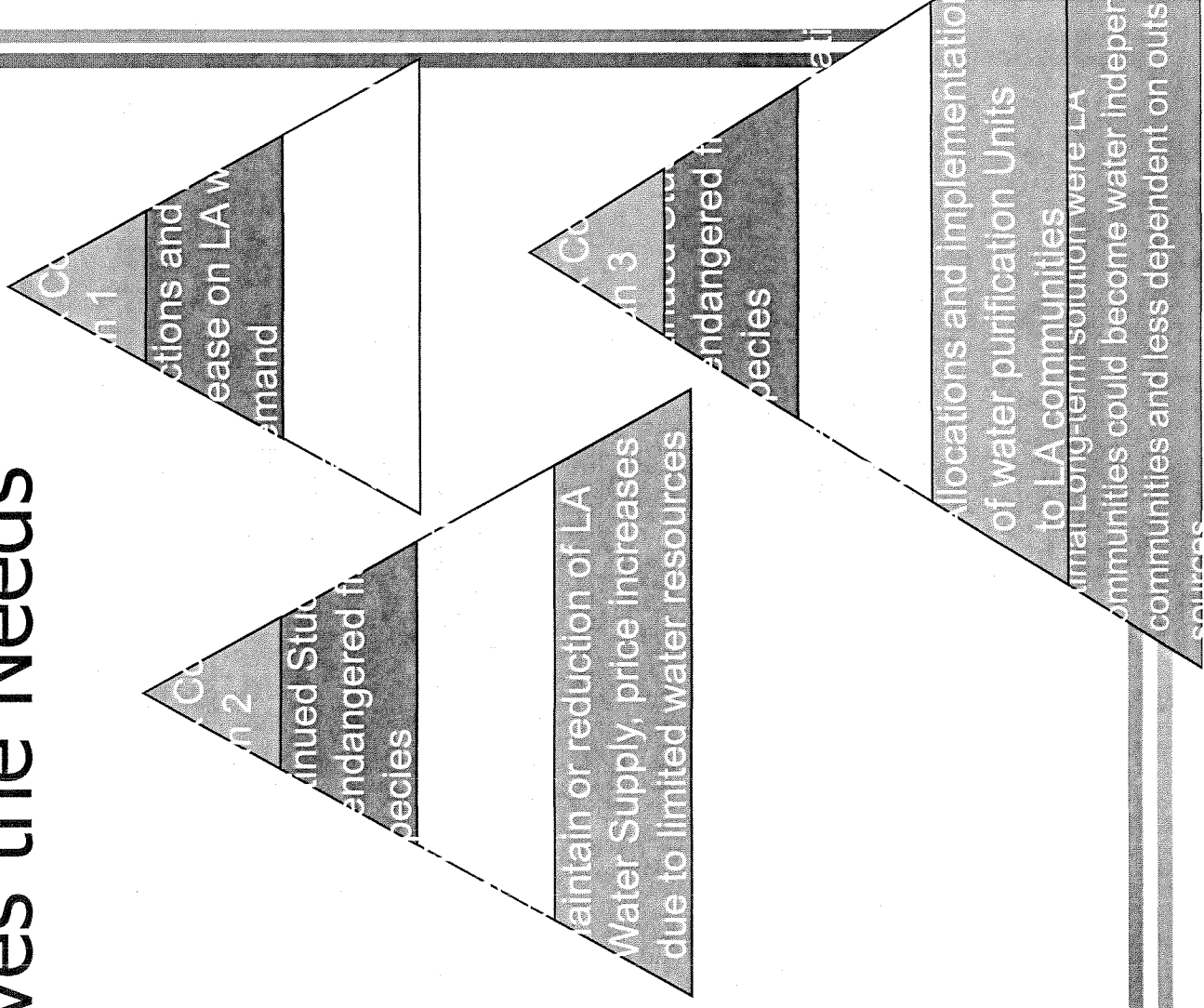


- LA demand, Continued loss of specific water resources needed to maintain balance in water quality of Stone Lake and surrounding urban community
- Continued demand, loss in water resources, explanation for loss of rainfall in the central valley
- Impact on endangered aquatic inhabitation including Delta Herring of Smelt and Salmon runs
- Proposed Dredging wetlands or water resources in Alameda County Byron Tract



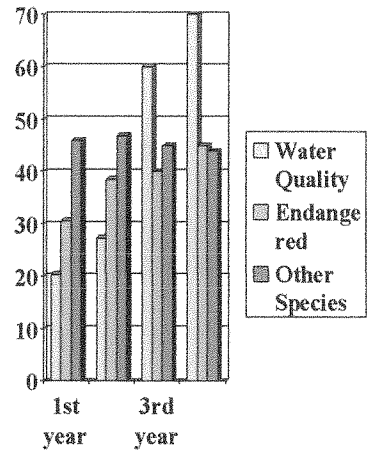
# Meeting Alternatives the Needs

Water Transfer  
Stations, Relay Station,  
and Pumping Station  
Water Purification Units  
Continued data  
collection and  
monitoring of  
endangered fish species  
(Continued Studies)



## Expected Environmental Analysis

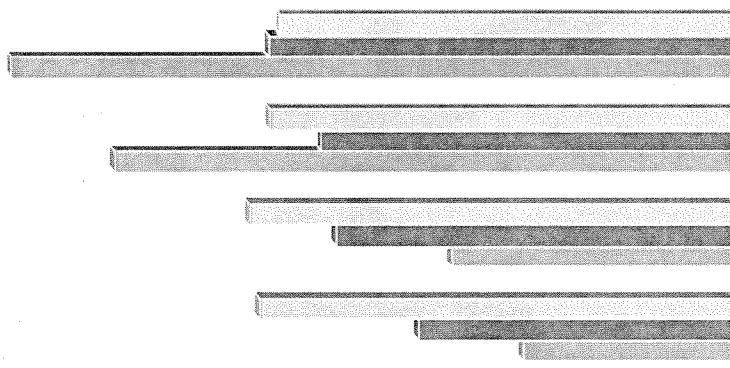
- Ideally we want to achieve an increase of environmental quality without increasing costs to communities or environmental cost
- Las Vegas City has implemented a similar water reclamation system



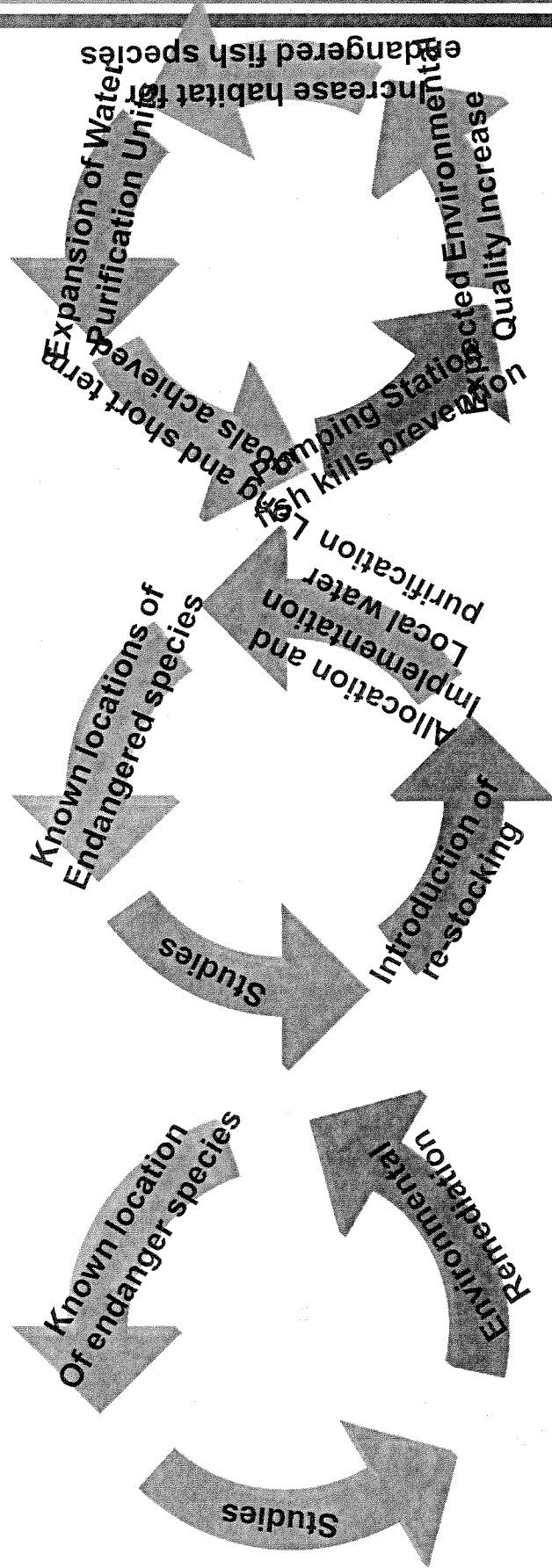
Since the population of other fish species may not increase due to current catch rates and normal predation we believe the target populations of herring smelt and salmon will increase due to standard regulatory restrictions monitoring and Clyox Company LLC, Environmental Plans .

# Expected Environmental Analysis

- Ideally we want to achieve an increase of environmental quality without increasing costs to communities or environmental cost
- Las Vegas City has implemented a similar water reclamation system



# Our Strengths: Alternatives and variation of costs for each Plan



## Key Benefits

- As Provided Clyox Company LLC, 620 Misty Meadow Street, Stockton CA 95210 (209 688-6824) we are pleased to reveal some expected benefits, improved Pubic Health, local sales new jobs in targeted communities, population increase of target species, improved water quality and quantities, reduction of local water and Utility rates due expected LA offset and less consumption via zero water waste, and more...

## Next Steps

- Complete Break Down: Plan 1, Plan 2, and Plan 3

- Respectfully Submitted to:
- Ryan Wulff
- Nation Marine Fisheries Service
- 650 Capitol Mall, suite 5-100
- Sacramento, CA 95814
- 866-924-9955

---

**From:** Duncan, Lia@CNRA <Lia.Duncan@resources.ca.gov>  
**Sent:** Thursday, January 02, 2014 1:34 PM  
**To:** bdcg.comments@noaa.gov  
**Subject:** BDCP Disk Request

Good afternoon,

Carlie Jackson referred me to you and said if I received a request for a BDCP CD to forward them to you. I received a call from someone requesting a copy of the BDCP CD. Can you please send a copy of the CD to the following:

Barbara Vlamis  
AquAlliance  
P.O. Box 4024  
Chico, CA 95927

Please let me know if you need any additional information. Thank you!

Lia Duncan  
Executive Assistant  
**California Natural Resources Agency**  
1416 Ninth Street, Suite 1311  
Sacramento, CA 95814  
Telephone: 916-653-5481  
[Lia.Duncan@resources.ca.gov](mailto:Lia.Duncan@resources.ca.gov)

---

**From:** Gpupdates <Gpupdates@earthlink.net>  
**Sent:** Thursday, January 02, 2014 2:25 PM  
**To:** BDCP.comments@noaa.gov  
**Subject:** Requesting a DVD of BDCP

Hi,

I'm interested in getting a complete copy of the BDCP plan, appendices and EIR.

Please let me know where I may be able to obtain this DVD from you.

Thanks,  
Trish



---

**From:** Werner, Michael@DWR <Michael.Werner@water.ca.gov>  
**Sent:** Thursday, January 02, 2014 3:53 PM  
**To:** BDCP.comments@noaa.gov  
**Subject:** Website Calendar Error: January 30 Meeting in Sacramento

The website calendar incorrectly shows the meeting as being in Walnut Grove.

[http://baydeltaconservationplan.com/Calendar/ViewEvent/13-12-09/3-7 pm Sacramento Public Meeting.aspx?ReturnURL=%2fCalendar%2fCalendar.aspx](http://baydeltaconservationplan.com/Calendar/ViewEvent/13-12-09/3-7pmSacramentoPublicMeeting.aspx?ReturnURL=%2fCalendar%2fCalendar.aspx)

This is what you see:

### **3 -7 pm: Sacramento Public Meeting**

From: January 30, 2014

To: January 30, 2014

Jean Harvie Community Center  
14273 River Road, Walnut Grove, CA 95690

For more information, visit the [public meeting page](#), or download the [How to Comment fact sheet](#).

[Return to Calendar](#)

Michael Werner, Chief  
Power Planning and Contract Management  
State Water Project Power and Risk Office  
California Department of Water Resources  
(916) 574-0620

**From:** Mary Paasch <Mary.M.Paasch@mwhglobal.com>  
**Sent:** Friday, January 03, 2014 10:32 AM  
**To:** BDCP.comments@noaa.gov  
**Subject:** Draft BDCP and Draft EIS/EIR

Is the Draft BDCP and Draft EIS/EIR available in DVD or CD format? If so, can I be mailed a copy at the following address:

Mary Paasch  
7 Carvel Place  
Sacramento, CA 95835

Warm Regards,

Mary Paasch

---

**From:** Scheuring Chris <cscheuring@CFBF.com>  
**Sent:** Friday, January 03, 2014 11:47 AM  
**To:** 'BDCP.comments@noaa.gov'  
**Cc:** Chasteen Dianne K.  
**Subject:** Hardcopies - Glossies

Good morning,

Can I get a copy of at least the executive summary documents in hardcopy? Our president received a glossy copy and we'd like to have the same here in the legal department, since I advise him on the BDCP.

Chris Scheuring  
Legal Services Division  
California Farm Bureau Federation  
2300 River Plaza Drive, Sacramento, CA 95833  
Tel. (916) 561-5660; Fax (916) 561-5691

---

**From:** Jessica Law <jessica@jbenvirocomm.com>  
**Sent:** Friday, January 03, 2014 2:58 PM  
**To:** Osborn, Michelle  
**Cc:** Lyster, Stefanie; bdcg comments - NOAA Service Account  
**Subject:** Mail copies of postcards

Please mail one copy of the BDCP notification post card to:

Dennis Kennedy  
SCVWD Board of Directors  
5750 Almden Expressway  
San Jose, CA 95118

Barbara Keegan  
SCVWD Board of Directors  
5750 Almden Expressway  
San Jose, CA 95118

Richard Santos  
SCVWD Board of Directors  
5750 Almden Expressway  
San Jose, CA 95118

Linda LeZotte  
SCVWD Board of Directors  
5750 Almden Expressway  
San Jose, CA 95118

Nai Hsueh  
SCVWD Board of Directors  
5750 Almden Expressway  
San Jose, CA 95118

Tony Estremera  
SCVWD Board of Directors  
5750 Almden Expressway  
San Jose, CA 95118

Brian Schmidt  
SCVWD Board of Directors  
5750 Almden Expressway  
San Jose, CA 95118

Teresa Alvarado  
5750 Almden Expressway  
San Jose, CA 95118

Thanks,

--

Jessica Law, AICP  
BDCP Public Outreach Project Manager

JB Environmental Communications  
[Jessica@jbenvirocomm.com](mailto:Jessica@jbenvirocomm.com)  
916-799-9125

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**From:** Chris Austin <chrisellyn@earthlink.net>  
**Sent:** Sunday, January 05, 2014 3:31 AM  
**To:** BDCP.comments@noaa.gov  
**Subject:** More errata

Hello,

On the Table of Contents, pg 36,

- Lines 8 and 9: Figure 3.2-14 is the Decision Matrix and Fig 3.2-15 is the Existing Conservation Lands, as they are labeled in the document.
- Same page fails to list Fig 3.2-16, Landscape Linkages that appears in the document.
- Line 14, Fig 3.3.3 is really Annual Residual Values for Longfin smelt, which is not listed here. This puts the next four figures off by 1 in the Table of Contents, ie Line 14 is really Fig 3.3-4, Line 16 is really Fig 3.3-5 and similarly through Line 19.

Also, Figures 4-6 Schematic of the Intake Structure through Figure 4-11 are included in the chapter but not listed on the Table of Contents.

On Table of Contents, page 38, Figure 5.2.6 General Procedure for Integration of BDCP Effects on Covered Species does not appear in the document. Line 5 Fig 5.2-7 appears in the document as 5.2-6, and Line 6, Fig 5.2-8 Process for Calculating Extent appears as 5.2-7.

Table of Contents, page 29, lines 24 and 25: I could not find Figure 8-1 or Figure 8-2 in the document.

Regards,

Chris Austin aka Maven  
[www.MavensNotebook.com](http://www.MavensNotebook.com)

**From:** Julianne Phillips <jphillips@sjfb.org>  
**Sent:** Monday, January 06, 2014 3:40 PM  
**To:** BDCP.comments@noaa.gov  
**Subject:** BDCP EIR/EIS copy request

The San Joaquin Farm Bureau Federation respectfully requests a hard copy of the BDCP EIR/EIS.

It may be sent to

San Joaquin Farm Bureau Federation

c/o Julianne Phillips

3290 N. Ad Art Road

Stockton, CA 95215

Sincerely,

Julianne Phillips

Program Director

San Joaquin Farm Bureau Federation

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**From:** Chris Austin <chrisellyn@earthlink.net>  
**Sent:** Monday, January 06, 2014 5:18 PM  
**To:** BDCP.comments@noaa.gov  
**Subject:** Technical problems with a few of the EIR/EIS pdfs

Hello,

I have been working on the documents, and I have encountered a problem where I can't extract anything from the EIR/EIS Chapters 3, 5, and 6. I have been able to extract as needed from Chapters 7 on up (as well as all of the BDCP Plan documents) but there seems to be some problem with these three. (Did not check chapters 1, 2, and 4, which may also be similarly affected.) Error message says "invalid parameter." The documents have no security settings that would prevent extractions (and the message for that is different).

Please help!

Thanks,

Regards,

Chris Austin  
[www.MavensNotebook.com](http://www.MavensNotebook.com)



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**From:** Craig Johns <cjohns@calrestrats.com>  
**Sent:** Wednesday, January 08, 2014 11:57 AM  
**To:** BDCP.comments@noaa.gov  
**Subject:** Selenium Management AMM27

**Importance:** High

Hello:

In Chapter 8 of the DEIS/EIR, reference is made to a document called, "Selenium Management AMM27" (page 8-769, lines 16-17), but in searching the entire BDCP website, I'm unable to find that document. Could you please either provide that document to me via email, or direct me to the location on your website where I can obtain it.

Thank you,

**Craig Johns**  
**California Resource Strategies, Inc.**  
**1115 – 11<sup>th</sup> Street, Suite 100**  
**Sacramento, CA 95814**  
(office) 916.498-3326  
(cell) 916.718-5490  
(fax) 916.782-2788

---

**From:** Carol Doyle <caroldo@csufresno.edu>  
**Sent:** Thursday, January 09, 2014 9:18 AM  
**To:** BDCP.comments@noaa.gov  
**Subject:** request for Bay Delta Conservation Plan documents

Hello,

Fresno State's Madden Library would like to request copies of the Draft Bay Delta Conservation Plan (BDCP) and associated Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) to make available to the public.

The dvds can be sent to:

Carol Doyle  
Henry Madden Library  
5200 N. Barton, M/S ML34  
Fresno CA 93740-8014

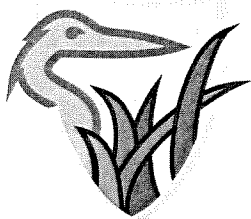
thank you, --Carol

---

Carol Doyle  
Librarian for Agricultural Sciences & Technology;  
Biology, Chemistry, Earth & Environmental Sciences;  
Maps & Government Information  
[carol\\_doyle@csufresno.edu](mailto:carol_doyle@csufresno.edu)  
559 278-3033

**From:** Robyn DiFalco <robynd@becprotects.org>  
**Sent:** Friday, January 10, 2014 11:59 AM  
**To:** BDCP.comments@noaa.gov; Samuel.Rauch@NOAA.gov; mlconnor@usbr.gov; Gary\_Frazer@FWS.gov; McCarthy.Gina@EPA.gov; Will.Stelle@noaa.gov; secretary@resources.ca.gov  
 Carol Perkins  
 BDCP Comment Letter Requesting Extension  
 BDCP\_BOR ext ltr BEC 1-10-14.pdf

## Butte Environmental Council



116 W. Second Street, Suite 3  
 Chico, CA 95928  
 (530) 891-6424  
 (530) 891-6426 FAX  
[www.becnet.org](http://www.becnet.org)

### Activities and Events

Environmental Advocacy  
 Environmental Education  
 Groundwater Protection  
 Endangered Species Faire  
 Bidwell Park Cleanups  
 Chico Area Creek Cleanups  
 Wetlands Preservation

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Steve Handy  
 Mark Herrera  
 John Howlett  
 Kevin Killion  
 Melody Leppard  
 Skye Li  
 Luann Manss  
 Grace Marvin  
 John Scott  
 Sharon Wallace

### Staff

Robyn DiFalco  
 Executive Director  
 Justina Johnson  
 Office Manager  
 Julia Murphy  
 Communications/Project Assistant  
 Carol Perkins  
 Advocacy Consultant  
 Nani Teves  
 Advocacy Consultant  
 Tanya Parish  
 RARE Coordinator

January 10, 2014 (via email)

Samuel D. Rauch  
 Administrator for Fisheries  
 NOAA Fisheries Service  
[Samuel.Rauch@NOAA.gov](mailto:Samuel.Rauch@NOAA.gov)

Gary Frazer  
 Assistant Director  
 Endangered Species  
 U.S. Fish and Wildlife Service  
[Gary\\_Frazer@FWS.gov](mailto:Gary_Frazer@FWS.gov)

William W. Stelle, Jr.  
 Acting Regional Administrator  
 NOAA Fisheries Service  
[Will.Stelle@noaa.gov](mailto:Will.Stelle@noaa.gov)

Michael L. Connor  
 Deputy Secretary  
 U.S. Bureau of Reclamation  
[mlconnor@usbr.gov](mailto:mlconnor@usbr.gov)

John Laird  
 Secretary  
 California Resources Agency  
[secretary@resources.ca.gov](mailto:secretary@resources.ca.gov)

Gina McCarthy  
 Administrator  
 U.S. Environmental Protection Agency  
[McCarthy.Gina@EPA.gov](mailto:McCarthy.Gina@EPA.gov)

**Subject: BDCP Public Review and Comment Period Time Extension Request**

The undersigned request an extension to the existing 120-day review period for the BDCP documentation. The California Environmental Water Caucus has determined that there are 40,214 pages of the released documents included in the BDCP Draft Plan and EIR/EIS. Based on the preponderance of documentation necessary for an adequate review of the plan, we request that you extend the public review and comment period a minimum of 120 additional days.

Considering the dictated 120-day review period, the public has been tasked to review 473 pages of technical and scientific material per day given the 85 working days available during the public review and comment period. The BDCP web site provides instructions that: "Comments should identify the specific part of the document at issue and should include supporting evidence and facts." Additional time is necessary to appropriately understand, research, and prepare such comments.

NEPA regulation 40 CFR 1502.7 declares that the text of an EIS for "proposals of unusual scope or complexity shall normally be less than 300 pages." It is impossible for organizations interested in thoughtfully responding to these BDCP documents to be staffed for a thorough NEPA/CEQA review based on the unreasonable size of the released documentation. Moreover, individual members of the public attempting to comprehend and comment on the BDCP documents would be overwhelmed. It is worthwhile noting that these documents represent 20% more pages than the 32 volumes of the last printed edition of the Encyclopedia Britannica.

We respectfully request that the public review and comment period be extended for an additional 120 days, until August 15, 2014, based on the size of the actual documents released December 13. Without this minimum additional time, the public's essential role in the NEPA process – commenting on the agencies' findings contained in the BDCP's environmental review documents – will be severely constrained.

Signed,



Robyn DiFalco, Executive Director



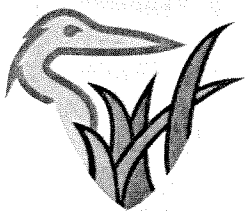
Carol Perkins, BEC Water Policy Analyst

*Robyn DiFalco*

Executive Director, Butte Environmental Council  
116 W. 2nd St, Ste 3, Chico, CA 95928  
530-891-6424  
[www.becnet.org](http://www.becnet.org)

*An organization succeeds not because it is large or long established, but because there are people who live it, sleep it, dream it, and build future plans for it.*

# Butte Environmental Council



116 W. Second Street, Suite 3  
Chico, CA 95928  
(530) 891-6424  
(530) 891-6426 FAX  
[www.becnet.org](http://www.becnet.org)

## Activities and Events

Environmental Advocacy  
Environmental Education  
Groundwater Protection  
Endangered Species Faire  
Bidwell Park Cleanups  
Chico Area Creek Cleanups  
Wetlands Preservation

## Board of Directors

Mark Stemen, Chair  
Michael McGinnis, Treasurer  
Amanda Freeman, Secretary

Steve Handy  
Mark Herrera  
John Howlett  
Kevin Killion  
Melody Leppard  
Skye Li

Luann Manss  
Grace Marvin  
John Scott  
Sharon Wallace

## Staff

Robyn DiFalco  
Executive Director  
Justina Johnson  
Office Manager  
Julia Murphy  
Communications/Project Assistant  
Carol Perkins  
Advocacy Consultant  
Nani Teves  
Advocacy Consultant  
Tanya Parish  
RARE Coordinator

January 10, 2014 (via email)

BDCP78

Samuel D. Rauch  
Administrator for Fisheries  
NOAA Fisheries Service  
[Samuel.Rauch@NOAA.gov](mailto:Samuel.Rauch@NOAA.gov)

Gary Frazer  
Assistant Director  
Endangered Species  
U.S. Fish and Wildlife Service  
[Gary\\_Frazer@FWS.gov](mailto:Gary_Frazer@FWS.gov)

William W. Stelle, Jr.  
Acting Regional Administrator  
NOAA Fisheries Service  
[Will.Stelle@noaa.gov](mailto:Will.Stelle@noaa.gov)

Michael L. Connor  
Deputy Secretary  
U.S. Bureau of Reclamation  
[mlconnor@usbr.gov](mailto:mlconnor@usbr.gov)

John Laird  
Secretary  
California Resources Agency  
[secretary@resources.ca.gov](mailto:secretary@resources.ca.gov)

Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
[McCarthy.Gina@EPA.gov](mailto:McCarthy.Gina@EPA.gov)

### Subject: BDCP Public Review and Comment Period Time Extension Request

The undersigned request an extension to the existing 120-day review period for the BDCP documentation. The California Environmental Water Caucus has determined that there are 40,214 pages of the released documents included in the BDCP Draft Plan and EIR/EIS. Based on the preponderance of documentation necessary for an adequate review of the plan, we request that you extend the public review and comment period a minimum of 120 additional days.

Considering the dictated 120-day review period, the public has been tasked to review 473 pages of technical and scientific material per day given the 85 working days available during the public review and comment period. The BDCP web site provides instructions that: "Comments should identify the specific part of the document at issue and should include supporting evidence and facts." Additional time is necessary to appropriately understand, research, and prepare such comments.

NEPA regulation 40 CFR 1502.7 declares that the text of an EIS for "proposals of unusual scope or complexity shall normally be less than 300 pages." It is impossible for organizations interested in thoughtfully responding to these BDCP documents to be staffed for a thorough NEPA/CEQA review based on the unreasonable size of the released documentation. Moreover, individual members of the public attempting to comprehend and comment on the BDCP documents would be overwhelmed. It is worthwhile noting that these documents represent 20% more pages than the 32 volumes of the last printed edition of the Encyclopedia Britannica.

We respectfully request that the public review and comment period be extended for an additional 120 days, until August 15, 2014, based on the size of the actual documents released December 13. Without this minimum additional time, the public's essential role in the NEPA process – commenting on the agencies' findings contained in the BDCP's environmental review documents – will be severely constrained.

Signed,

Robyn DiFalco, Executive Director

Carol Perkins, BEC Water Policy Analyst

**From:** Ryan Wulff - NOAA Federal <ryan.wulff@noaa.gov>  
**Sent:** Friday, January 10, 2014 12:33 PM  
**To:** bdcp comments - NOAA Service Account  
**Subject:** Fwd: Request for Time Extension on BDCP Comments  
**Attachments:** Time Extension Request December\_Earth Law Center\_.pdf

Please log this request for extension of the comment period.

----- Forwarded message -----

**From:** Will Stelle - NOAA Federal <will.stelle@noaa.gov>  
**Date:** Fri, Jan 10, 2014 at 11:48 AM  
**Subject:** Fwd: Request for Time Extension on BDCP Comments  
**To:** Maria Rea <Maria.Rea@noaa.gov>, "Ryan.Wulff@noaa.gov" <Ryan.Wulff@noaa.gov>, Deanna Harwood <deanna.harwood@noaa.gov>, "Michael.Tucker@NOAA.GOV" <Michael.Tucker@noaa.gov>

FYI

Sent from my iPhone

Begin forwarded message:

**From:** Grant Wilson <gwilson@earthlaw.org>  
**Date:** January 10, 2014, 10:03:45 AM PST  
**To:** "Samuel.Rauch@NOAA.gov" <Samuel.Rauch@NOAA.gov>, "mlconnor@usbr.gov" <mlconnor@usbr.gov>, "Gary\_Frazer@FWS.gov" <Gary\_Frazer@FWS.gov>, "secretary@resources.ca.gov" <secretary@resources.ca.gov>, "Will.Stelle@noaa.gov" <Will.Stelle@noaa.gov>, McCarthy.Gina@EPA.gov  
**Subject:** Request for Time Extension on BDCP Comments

Please find attached Earth Law Center's request for an extension of the BDCP Draft Plan and EIR/EIS public review and comment period. Thank you.

Sincerely,

Grant Wilson



P.O. Box 3283 Fremont, CA 94539  
tel (510) 490-1690  
[www.earthlawcenter.org](http://www.earthlawcenter.org)

January 10, 2014

Samuel D. Rauch  
Administrator for Fisheries  
NOAA Fisheries Service  
[Samuel.Rauch@NOAA.gov](mailto:Samuel.Rauch@NOAA.gov)

Michael L. Connor  
Deputy Secretary  
U.S. Bureau of Reclamation  
[mlconnor@usbr.gov](mailto:mlconnor@usbr.gov)

Gary Frazer  
Assistant Director-Endangered Species  
U.S. Fish and Wildlife Service  
[Gary\\_Frazer@FWS.gov](mailto:Gary_Frazer@FWS.gov)

Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
[McCarthy.Gina@EPA.gov](mailto:McCarthy.Gina@EPA.gov)

William W. Stelle, Jr.  
Acting Regional Administrator  
NOAA Fisheries Service  
[Will.Stelle@noaa.gov](mailto:Will.Stelle@noaa.gov)

John Laird  
Secretary  
California Resources Agency  
[secretary@resources.ca.gov](mailto:secretary@resources.ca.gov)

Subject: BDCP Public Comment Review Time Extension Request

You may recall that in a November 21 letter, prior to the December 13 release of the BDCP Draft Plan and EIR/EIS, the Environmental Water Caucus requested that the public review and comment period be extended beyond the planned 120 days, based on the anticipated 25,000 page estimate of the BDCP documents. We have now reviewed the 40,214 actual pages of the released documents and request that you extend the review and comment period for at least 120 additional days, due to the extraordinary size of the documents to be reviewed.

Based on the dictated 120 day review time period, the public is being asked to review 473 pages per day during the 85 working days that are available during the comment period. These documents represent 20% more pages than the 32 volumes of the last printed edition of the Encyclopedia Britannica. As was pointed out in the previous request, NEPA regulation 40 CFR 1502.7 declares that the text of an EIS for "proposals of unusual scope or complexity shall normally be less than 300 pages." In addition, one of the overarching goals of CEQA is to ensure that the public is not deprived of a meaningful opportunity to provide input. (CA Pub. Res. Code § 21003(b).) As was stated in that previous letter, it is impossible for organizations interested in thoughtfully responding to these BDCP documents to be staffed for a meaningful NEPA/CEQA review, based on the size and complexity of the documents to be reviewed, within the timeframe offered.

Earth Law Center respectfully requests that the public review period be extended for an additional 120 days, until July 15, based on the size of the actual documents released on December 13, 2013. Thank you.

Best regards,

Linda Sheehan  
Executive Director  
[lsheehan@earthlaw.org](mailto:lsheehan@earthlaw.org)

**From:** Nick Holt <nholt@mcwd.dst.ca.us>  
**Sent:** Friday, January 10, 2014 4:30 PM  
**To:** BDCP.comments@noaa.gov  
**Subject:** Error in "Why are the draft documents so massive" Question

For the webmasters,

Trying to click on the 'public meetings link' at the bottom of this section gives a 404.0 error. I'm using Chrome 31.0.1650.63 m & Windows 7. I've copied and pasted it below:

## Server Error in Application "BAYDELTA CONSERVATION PLAN.NET"

Internet Information Services 7.0

Error Summary

### HTTP Error 404.0 - Not Found

**The resource you are looking for has been removed, had its name changed, or is temporarily unavailable.**

Detailed Error Information

Module **IsapiModule**

Notification **ExecuteRequestHandler**

Handler **PageHandlerFactory-ISAPI-2.0**

Error Code **0x00000000**

Requested URL **http://baydeltaconservationplan.com:80/PublicReview/PublicMeetings.aspx**

Physical Path **E:\HostingSpaces\bdcweb\baydeltaconservationplan.net\wwwroot\PublicReview\PublicMeetings.**

Logon Method **Anonymous**

Logon User **Anonymous**

Most likely causes:

- The directory or file specified does not exist on the Web server.
- The URL contains a typographical error.
- A custom filter or module, such as URLScan, restricts access to the file.

Things you can try:

- Create the content on the Web server.
- Review the browser URL.
- Create a tracing rule to track failed requests for this HTTP status code and see which module is calling SetStatus. For more information about creating a tracing rule for failed requests, click [here](#).

Links and More Information This error means that the file or directory does not exist on the server. Create the file or directory and try the request again.

[View more information >>](#)



BDCP80

Cheers,

BDCP80

Nick Holt  
Assistant Engineer  
Mammoth Community Water District  
P.O. Box 597  
1315 Meridian Blvd.  
Mammoth Lakes, CA 93546  
Office: 760-934-2596 x290  
Cell: 619-540-3723  
Fax: 760-934-2143

---

**From:** Cumpston, Tom <tcumpston@eid.org>  
**Sent:** Monday, January 13, 2014 4:47 PM  
**To:** 'BDCP.comments@noaa.gov'  
**Subject:** Redline Against Administrative Draft Documents

Dear BDCP: Last year, BDCP representatives stated that the BDCP would make available documents tracking the changes between the administrative draft documents then available for review, and the then-forthcoming public review draft documents. The purpose of doing so was to encourage early public review and comment the administrative draft documents by making it possible, later, to see whether and how the documents changed in response to public review and comment.

Where can I find the promised redlines?

**Thomas D. Cumpston**

General Counsel  
El Dorado Irrigation District  
2890 Mosquito Road  
Placerville, CA 95667

Phone (530) 642-4144  
Fax (530) 622-1195

**ATTENTION**

The preceding email message/messages string (including any attachments thereto) contains information that may be legally privileged, confidential and/or non-public information. It is intended to be read only by the individual(s) or entit(y/ies) to whom it is addressed. If the reader of the message/message string (including any attachments thereto) is not an intended recipient, you are on notice that any use, dissemination, distribution, or reproduction of the preceding email message/message string (including any attachments thereto) in any form, is strictly prohibited and may be unlawful. If you have received this message/message string in error, please immediately notify the sender by replying, and promptly delete the message/message string (including any attachments thereto) entirely from your computer system.

---

**From:** jrieker@usbr.gov on behalf of Hunt, Shane <shunt@usbr.gov>  
**Sent:** Tuesday, January 14, 2014 5:41 AM  
**To:** Ryan Wulff - NOAA Federal; bdcplcomments@noaa.gov  
**Cc:** Patricia Idlof; Jeffrey Rieker  
**Subject:** Fwd: BDCP Public Comment Review Time Extension Request  
**Attachments:** Time Extension Request December.pdf

Ryan,

This is Jeff Rieker from Shane's email; Shane is out this week and I'm acting for him. Attached is a time extension request for BDCP EIS review that was sent to the Commissioner. I understood from Shane that these were to be forwarded to you and [bdcplcomments@noaa.gov](mailto:bdcplcomments@noaa.gov). I'll send another one momentarily. Let me know if you need these to go anywhere else.

Thanks,  
Jeff for Shane

----- Forwarded message -----

**From:** Michael Connor <[mlconnor@usbr.gov](mailto:mlconnor@usbr.gov)>  
**Date:** Tue, Jan 14, 2014 at 7:16 AM  
**Subject:** Fwd: BDCP Public Comment Review Time Extension Request  
**To:** SHANE HUNT <[SHunt@usbr.gov](mailto:SHunt@usbr.gov)>

fyi

Sent from my iPad

Begin forwarded message:

**From:** Reuben Childress <[reuben@foothillconservancy.org](mailto:reuben@foothillconservancy.org)>  
**To:** "Samuel.Rauch@NOAA.gov" <[samuel.rauch@noaa.gov](mailto:samuel.rauch@noaa.gov)>, "[mlconnor@usbr.gov](mailto:mlconnor@usbr.gov)" <[mlconnor@usbr.gov](mailto:mlconnor@usbr.gov)>, "Gary.Frazer@FWS.gov" <[gary\\_frazer@fws.gov](mailto:gary_frazer@fws.gov)>, "[McCarthy.Gina@EPA.gov](mailto:McCarthy.Gina@EPA.gov)" <[mccarthy.gina@epa.gov](mailto:mccarthy.gina@epa.gov)>, "[Will.Stelle@noaa.gov](mailto:Will.Stelle@noaa.gov)" <[will.stelle@noaa.gov](mailto:will.stelle@noaa.gov)>, "[secretary@resources.ca.gov](mailto:secretary@resources.ca.gov)" <[secretary@resources.ca.gov](mailto:secretary@resources.ca.gov)>  
**Subject:** BDCP Public Comment Review Time Extension Request

Please see attached PDF.  
Thank you,

Reuben Childress Watershed Conservation Associate Foothill Conservancy  
PO Box 1255 Pine Grove CA. 95665 209.295.4900

BDCP 82

--

Shane Hunt  
Mid-Pacific Regional Liaison  
Bureau of Reclamation  
202-513-0669 (office)  
916-468-2708 (cell)



January 13, 2014

Samuel D. Rauch  
Administrator for Fisheries  
NOAA Fisheries Service  
[Samuel.Rauch@NOAA.gov](mailto:Samuel.Rauch@NOAA.gov)

Michael L. Connor  
Deputy Secretary  
U.S. Bureau of Reclamation  
[mlconnor@usbr.gov](mailto:mlconnor@usbr.gov)

Gary Frazer  
Assistant Director-Endangered Species  
U.S. Fish and Wildlife Service  
[Gary\\_Frazer@FWS.gov](mailto:Gary_Frazer@FWS.gov)

Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
[McCarthy.Gina@EPA.gov](mailto:McCarthy.Gina@EPA.gov)

William W. Stelle, Jr.  
Acting Regional Administrator  
NOAA Fisheries Service  
[Will.Stelle@noaa.gov](mailto:Will.Stelle@noaa.gov)

John Laird  
Secretary  
California Resources Agency  
[secretary@resources.ca.gov](mailto:secretary@resources.ca.gov)

Subject: BDCP Public Comment Review Time Extension Request

In a November 21 letter, prior to the December 13 release of the BDCP Draft Plan and EIR/EIS, the Environmental Water Caucus, of which the Foothill Conservancy is a member, requested that the public review and comment period be extended beyond the planned 120 days, based on the anticipated 25,000 page estimate of the BDCP documents. Having now counted the 40,214 actual pages of the released documents, our organization requests that you extend the review and comment period for at least 120 additional days, due to the extraordinary size and technical nature of the documents to be reviewed.

Based on the dictated 120 day review time period, the public is being asked to review 473 pages per day during the 85 working days that are available during the comment period. These documents represent 20% more pages than the 32 volumes of the last printed edition of the Encyclopedia Britannica. As was pointed out in the previous request, NEPA regulation 40 CFR 1502.7 declares that the text of an EIS for "proposals of unusual scope or complexity shall normally be less than 300 pages." As was also stated in that previous letter, it is impossible for organizations interested in thoughtfully responding to these BDCP documents to be staffed for a thorough NEPA/CEQA review based on the enormity of size and complexity of the documents to be reviewed.

Our organization respectfully requests that the public review period be extended for an additional 120 days, until August 15, based on the size of the actual documents you released on December 13.

Reuben Childress  
Watershed Conservation Associate  
Foothill Conservancy  
Pioneer, California

**From:** jrieker@usbr.gov on behalf of Hunt, Shane <shunt@usbr.gov>  
**Sent:** Tuesday, January 14, 2014 5:43 AM  
**To:** Ryan Wulff - NOAA Federal; bdcpr.comments@noaa.gov  
**Cc:** Patricia Idlof; Jeffrey Rieker  
**Subject:** Fwd: Request for extension of public comment period for BDCP Draft EIR/EIS  
**Attachments:** EPIC\_BDCP\_requestcommentextension.pdf

Forwarding additional comments that were received by the Commissioner of Reclamation.

----- Forwarded message -----

**From:** Michael Connor <mlconnor@usbr.gov>  
**Date:** Tue, Jan 14, 2014 at 7:17 AM  
**Subject:** Fwd: Request for extension of public comment period for BDCP Draft EIR/EIS  
**To:** SHANE HUNT <SHunt@usbr.gov>

Sent from my iPad

Begin forwarded message:

**From:** Gary Graham Hughes <gary@wildcalifornia.org>  
**Date:** January 13, 2014 at 4:25:35 PM MST  
**To:** <Samuel.Rauch@NOAA.gov>, <mlconnor@usbr.gov>, <Gary\_Frazer@FWS.gov>, <McCarthy.Gina@EPA.gov>, <Will.Stelle@noaa.gov>, <secretary@resources.ca.gov>  
**Subject:** Request for extension of public comment period for BDCP Draft EIR/EIS

Dear responsible officials,

Please take into consideration the attached letter.

Thank you,

Gary

--

Gary Graham Hughes  
Executive Director  
EPIC -- the Environmental Protection Information Center  
Office: 145 G St., Suite A, Arcata, CA 95521  
Tel: 707-822-7711  
Email: [gary@wildcalifornia.org](mailto:gary@wildcalifornia.org)  
Web: <http://www.wildcalifornia.org>  
Like EPIC on [Facebook](#)

--

Shane Hunt  
Mid-Pacific Regional Liaison  
Bureau of Reclamation  
202-513-0669 (office)  
916-468-2708 (cell)

BDCP83



Keeping Northwest California wild since 1977

*Transmitted via electronic mail*

January 13, 2014

Samuel D. Rauch  
Administrator for Fisheries  
NOAA Fisheries Service  
[Samuel.Rauch@NOAA.gov](mailto:Samuel.Rauch@NOAA.gov)

Michael L. Connor  
Deputy Secretary  
U.S. Bureau of Reclamation  
[mlconnor@usbr.gov](mailto:mlconnor@usbr.gov)

Gary Frazer  
Assistant Director-Endangered Species  
U.S. Fish and Wildlife Service  
[Gary\\_Frazer@FWS.gov](mailto:Gary_Frazer@FWS.gov)

Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
[McCarthy.Gina@EPA.gov](mailto:McCarthy.Gina@EPA.gov)

William W. Stelle, Jr.  
Acting Regional Administrator  
NOAA Fisheries Service  
[Will.Stelle@noaa.gov](mailto:Will.Stelle@noaa.gov)

John Laird  
Secretary  
California Resources Agency  
[secretary@resources.ca.gov](mailto:secretary@resources.ca.gov)

**Re: BDCP Public Comment Review Time Extension Request**

Dear Responsible Officials:

I am writing on behalf of the Environmental Protection Information Center ("EPIC"), a nonprofit organization that works to protect human and natural communities in Northwest California. Consistent with this mission, and in representation of the staff, board of directors, and the 2000 individuals that make up the membership of EPIC, our organization submits the following comments in regards our request of an extension in the public comment review time currently provided for submitting informed comments on the Bay Delta Conservation Plan Draft EIR/EIS.

In a letter from November 21, 2013 (prior to the December 13, 2013, release of the BDCP Draft Plan and EIR/EIS), the Environmental Water Caucus, of which EPIC is an active participating member, requested that the public review and comment period be extended beyond the planned 120 days, based on the anticipated 25,000 page estimated volume of the BDCP documents. Staff at our organization has now begun review of the 40,214 actual pages of the released documents, and we reiterate the request that you extend the review and comment period for at least 120 additional days, due to the extraordinary size of the documents to be reviewed.

---

**Environmental Protection Information Center**

145 G Street, Suite A, Arcata, California 95521

Tel: (707) 822-7711

Fax: (707) 822-7712

[www.wildcalifornia.org](http://www.wildcalifornia.org)



Based on the dictated 120 day review time period, the public is being asked to review 473 pages per day during the 85 working days that are available during the comment period. Though our cursory review of the documentation has already revealed glaring omissions, such as the lack of analysis of impacts of the proposed water conveyance structures of the BDCP on Coho Salmon in the Trinity River, our organization finds in-depth review of the BDCP Draft EIR/EIS to be nearly impossible in the short time frame defined within the current public comment period. As was pointed out in the previous request, NEPA regulation 40 CFR 1502.7 declares that the text of an EIS for "proposals of unusual scope or complexity shall normally be less than 300 pages." As was also stated in that previous letter, it is impossible for organizations interested in thoughtfully responding to these BDCP documents to be staffed for a thorough NEPA/CEQA review based on the outlandish size and complexity of the documents to be reviewed. Our public interest conservation organization is community supported and grassroots scale; it is imperative that the public be granted an appropriate opportunity to understand, assess, and provide comment on a proposed project that would transform the nature of water management in our state for generations to come, with potentially very harmful outcomes for natural and human communities in the Northwest corner of the state.

In conclusion, our organization respectfully requests that the public review period be extended for an additional 120 days, until August 15, 2014, based on the size of the actual documents you released on December 13, 2013.

Respectfully,



Gary Graham Hughes  
Executive Director  
EPIC – the Environmental Protection Information Center  
145 G St., Suite A, Arcata, CA 95521  
Tel: 1-707-822-7711  
Email: [gary@wildcalifornia.org](mailto:gary@wildcalifornia.org)

---

**From:** Bob Wright <BWright@friendsoftheriver.org>  
**Sent:** Tuesday, January 14, 2014 9:41 AM  
**To:** BDCP.Comments@noaa.gov  
**Subject:** BDCP comment letter attached and submitted herewith  
**Attachments:** 1 14 14 BDCP prelim cmt ltr.pdf; 1 14 14 attach 1 BDCP cmt ltr.pdf; 1 14 14 attach 2 BDCP cmt ltr.pdf; 1 14 14 attach 3 BDCP cmt ltr.pdf; 1 14 14 attach 4 BDCP cmt ltr.pdf

Dear NOAA and Ryan Wulff, NMFS:

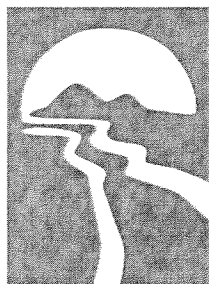
Attached please find our formal comment letter of today, January 14, 2014, and its four attachments that are incorporated by reference, on the BDCP public draft Plan and draft EIR/EIS that were issued in December 2013 for public review.

We would appreciate a reply confirming that our comment letter and its attachments have been received. We expect to submit additional comments and/or join in additional comments on or before the present comment due date of April 14, 2014.

Please call if you have any questions.

Sincerely,

Bob Wright  
Senior Counsel  
Friends of the River  
Sacramento, CA  
(916) 442-3155 x207



To protect and restore California Rivers by influencing public policy and inspiring citizen action.

## **FRIENDS OF THE RIVER**

1418 20<sup>TH</sup> STREET, SUITE 100, SACRAMENTO, CA 95811

PHONE: 916/442-3155 • FAX: 916/442-3396

WWW.FRIENDSOFTHERIVER.ORG

January 14, 2014

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

### **Re: COMMENT LETTER/Preliminary Comments on Fundamental BDCP Violations of ESA, NEPA, and CEQA**

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

#### **INTRODUCTION**

This is our preliminary Comment Letter on the public draft Bay Delta Conservation Plan (BDCP) and public draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) issued in December 2013. This letter focuses on the adverse modification of critical habitats for five threatened and endangered fish species that would be caused by the proposed BDCP Water Tunnels. Extinction is forever. The fish face an extinction crisis. The BDCP Water Tunnels would adversely modify designated critical habits and thus promote species extinction and preclude species recovery. *The BDCP Water Tunnels project is not a permissible project under the Endangered Species Act (ESA) because it would adversely modify designated critical habitat for at least five Endangered and Threatened fish species.*

This letter follows up our earlier comment letters to you of June 4, August 13, September 25, and November 18, 2013 (all posted on the BDCP website) and our meeting with Bureau of Reclamation, National Marine Fisheries Service (NMFS), United States Fish and Wildlife Service (USFWS) and United States Environmental Protection Agency (EPA) representatives in Sacramento on November 7, 2013. Each of our earlier comment letters is attached hereto (pages showing cc.s deleted from the attachments) and incorporated herein by this reference. We will submit or join in one or more additional comment letters after we have completed review of as much of the 40,000 pages of BDCP documents as we are able to review.

#### **ESA VIOLATIONS AND RELATED NEPA AND CEQA VIOLATIONS**

#### **PRECLUDING INFORMED PUBLIC REVIEW**

The Water Tunnels would divert enormous quantities of water from the Sacramento River near Clarksburg, California. The water would be shipped through two giant Tunnels about 40 miles long to the south for diversion to the Central Valley and State Water Projects. As a result of this massive diversion, enormous quantities of water that presently flow through the

Sacramento River and sloughs to and through the Sacramento-San Joaquin Delta would not reach the Delta, and flows would be reduced in the Sacramento River and sloughs. Also, there would be adverse cumulative effects ranging from rising sea levels and reduced snowpack and runoff due to climate change to changes in upstream reservoir operations and current preservation of flows for fishery purposes all the way upstream to the Shasta, Trinity, Oroville, and Folsom reservoirs. The Water Tunnels are identified as Alternative 4, the California Department of Water Resources (DWR)' Preferred Alternative. (BDCP Draft EIR/EIS, 3-3).

As a result of the discussion at our November 7, 2013 meeting with the federal agency BDCP representatives, it was confirmed that the factual matters set forth in our September 25, 2013 comment letter are correct. **First**, it is correct that the Sacramento River Winter-Run Chinook Salmon is listed as an endangered species under the ESA. Likewise, it is correct that the Central Valley Spring-Run Chinook Salmon, Central Valley Steelhead, Southern Distinct Population Segment of North American Green Sturgeon, and Delta Smelt, are listed as threatened species under the ESA. **Second**, it was confirmed that the reaches of the Sacramento River, sloughs, and the Delta that would lose significant quantities of freshwater and freshwater flows through operation of the proposed BDCP Water Tunnels are designated critical habitats for each of these five listed endangered and threatened fish species. **Third**, it was confirmed that no Biological Assessment has been prepared and issued by the federal Bureau of Reclamation with respect to the BDCP Water Tunnels project. **Fourth**, it was confirmed that no final or even draft Biological Opinion has been prepared by NMFS or USFWS with respect to the impacts of the operation of the BDCP Water Tunnels on the five listed species of fish or their critical habitats.

NMFS reiterated its previous "Red Flag" comment in 2013 that the Water Tunnels threaten the "potential extirpation of mainstem Sacramento River Populations of winter-run and spring-run Chinook salmon over the term of the permit. . . ." (NMFS Progress Assessment and Remaining Issues Regarding the Administrative Draft BDCP Document, Section 1.17, 12, April 4, 2013). In comments on the Administrative Drafts, the EPA explained that "many of these scenarios of the Preferred Alternative 'range' appear to decrease Delta outflow (p. 5-82), despite the fact that several key scientific evaluations by federal and State agencies indicate that more outflow is necessary to protect aquatic resources and fish populations." (EPA Comments on Administrative Draft EIR/EIS, III Aquatic Species and Scientific Uncertainty, Federal agency Release, July 18, 2013).

"The goal of the ESA is not just to ensure survival but to ensure that the species recover to the point it can be delisted." *Alaska v. Lubchenko*, 723 F.3d 1043, 1054 (9<sup>th</sup> Cir. 2013), citing *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F.3d 1059, 1070 (9<sup>th</sup> Cir. 2004). Pursuant to the commands of the ESA, each federal agency "shall . . . insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of [critical] habitat of such species. . . ." 16 U.S.C. § 1536(a)(2)(emphasis added). "[T]he purpose of establishing 'critical habitat' is for the government to carve out territory that is not only necessary to the species' survival but also essential for the species' recovery." *Gifford Pinchot*, 378 F.3d 1059, 1070. Also, "existing or potential conservation measures outside of the critical habitat cannot properly be a substitute for the maintenance of critical habitat that is required by Section 7 [of the ESA, 16 U.S.C § 1536]." *Gifford Pinchot*,

378 F.3d 1059, 1076. The failure to prepare the ESA and National Environmental Policy Act (NEPA) required Biological Assessments and Opinions analyzing the threatened adverse modification of critical habitats renders the draft EIR/EIS essentially worthless as an environmental disclosure and informational document under NEPA. The draft EIR/EIS is also premature and unlawful under the ESA.

The ESA Regulations (50 C.F.R. § 402.14(a)) require that “Each Federal agency shall review its actions *at the earliest possible time* to determine whether any action may affect listed species or critical habitat. If such a determination is made, formal consultation is required. . . .” *Karuk Tribe of California v. U.S. Forest Service*, 681 F.3d 1006, 1020 (9<sup>th</sup> Cir. 2012) (en banc)(emphasis added), *cert. denied*, 133 S.Ct. 1579 (2013). The Biological Assessments and Biological Opinions are the written documents that federal agencies must prepare during the ESA consultation process. The NEPA Regulations require that “To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the . . . Endangered Species Act. . . .” 40 C.F.R. § 1502.25(a). “ESA compliance is not optional,” and “an agency may not take actions that will tip a species from a state of precarious survival into a state of likely extinction.” *National Wildlife Federation v. National Marine Fisheries Service*, 524 F.3d 917, 929-30 (9<sup>th</sup> Cir. 2008).

The Biological Opinion is to determine “whether the action, taken together with cumulative effects, is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.” 50 C.F.R. § 402.14(g)(4).

Consequently, against this threat of extinction, conducting the draft EIR/EIS public review and comment stage without Biological Opinions or even Biological Assessments and draft Biological Opinions, leaves the public in the dark and violates both the ESA and NEPA. Conducting the NEPA environmental draft process prior to and in a vacuum from the ESA consultation process violates the ESA command to carry out the ESA process “at the earliest possible time” and violates the NEPA command to conduct the NEPA and ESA processes “concurrently” and in an “integrated” manner.

***The public and the decision-makers now have what they do not need:*** 40,000 pages of advocacy from the consultants including self-serving speculation that the adverse effects of reducing flows in the Sacramento River, sloughs, and Delta will be offset. ***The public and the decision-makers do not have what they do need and are entitled to by law:*** the federal agency Biological Assessments and Biological Opinions required by the ESA and NEPA.

This draft EIR/EIS circulated prior to preparation and circulation of federal agency prepared Biological Assessments and Biological Opinions is “so inadequate as to preclude meaningful analysis,” 40 C.F.R. § 1502.9(a), because the public and decision-makers do not have the basic federal agency analyses required by the ESA to determine whether DWR’s preferred alternative—the BDCP Water Tunnels—is even a lawful alternative, let alone an environmentally acceptable alternative.

Just as the inadequate draft EIR/EIS violates NEPA, the draft EIR/EIS is so fundamentally and basically inadequate and conclusory in nature that meaningful public review

and comment are precluded which also violates the California Environmental Quality Act (CEQA). 14 Code Cal. Regs. § 15088.5(a)(4). As the California Supreme Court said in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal.4<sup>th</sup> 412, 449 (2007), “Especially given the sensitivity and listed status of the resident salmon species, the County’s failure to address loss of Cosumnes River stream flows in the Draft EIR ‘deprived the public . . . of meaningful participation’ [citation] in the CEQA discussion. (See CEQA Guidelines, Cal. Code Regs., tit. 14, § 15065, subd. (a)(1)[potential substantial impact on endangered, rare or threatened species is per se significant].)”

### CONCLUSION

In the absence of answers to basic questions including ESA questions about jeopardy of listed fish species and adverse modifications of designated critical habitats, the draft BDCP EIR/EIS is not sufficient for informed review by the public and the decision-makers. It will be necessary at minimum under the ESA, NEPA and CEQA for the federal and state agencies to prepare, issue, and circulate for public review a **new draft** EIR/EIS concurrently with and integrated with Biological Assessments and Biological Opinions. 40 C.F.R. §§ 1502.9(a); 1502.25(a) (NEPA); 14 Code Cal. Regs. §§ 15065(a)(1); 15088.5(a)(CEQA). Then, and only then, would the public and the decision-makers have the opportunity to engage in meaningful analysis of a preferred project alternative and informed comparison with other alternatives.

Finally, we reiterate that the BDCP Water Tunnels project is in fact prohibited by the ESA because it would adversely modify designated critical habitat for at least five endangered and threatened fish species. The fact that the ESA required consultations would result in determinations in the Biological Assessments and Opinions that the preferred project alternative is prohibited by the ESA does not justify the unlawful evasion and postponement of the consultations.

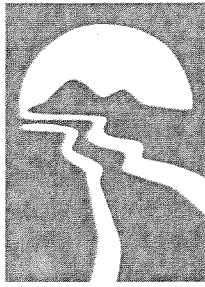
Please call Robert Wright, Senior Counsel, Friends of the River, (916) 442-3155x 207 with any questions you may have.  
(incl. 4 attachments)

Sincerely,

/s/ E. Robert Wright

Senior Counsel  
Friends of the River

/s/ Kathryn Cotter  
Legal Counsel  
Friends of the River



To protect and restore California Rivers by influencing public policy and inspiring citizen action.

## FRIENDS OF THE RIVER

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June 4, 2013

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Acting Administrator  
U.S. Environmental Protection Agency

Addressees and additional Addressees at end of letter

**Re: COMMENT LETTER/Fundamental BDCP Process Violations of ESA, NEPA and the Clean Water Act**

### [ATTACHMENT 1]

Dear Federal Agencies, Officers, and Staff Members:

#### INTRODUCTION

Extinction is forever. Consequently, the Endangered Species Act (ESA) obligates federal agencies “to afford first priority to the declared national policy of saving endangered species.” *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 185 (1978); *see also, Pacific Coast Federation of Fishermen's Associations v. U.S. Bureau of Reclamation*, 426 F.3d 1082, 1084-5 (9<sup>th</sup> Cir. 2005).

This is a comment letter to alert you to foundational violations of law and fundamental analytical deficiencies in the Bay Delta Conservation Plan (BDCP) process being carried out by the federal Bureau of Reclamation and California Department of Water Resources (DWR). Our concern is with the proposed Delta Water Tunnels and the devastating impact the diversions of freshwater for the Tunnels would have on the Delta, the Sacramento River watershed, and endangered fish species which are in catastrophic decline in Northern California. As recently

explained by the U.S. Fish and Wildlife Service (USFWS) “There is clear evidence that most of the covered fish species have been trending downward.” (USFWS Staff BDCP Progress assessment, Section 1.2, p. 4, April 3, 2013). USFWS, National Marine Fisheries Service (NMFS), Environmental Protection Agency (EPA) and California Department of Fish and Wildlife (DFW) have submitted insightful and scientifically sound comments (also known as the “Red Flag” comments) on the Administrative Drafts of the BDCP. Your legitimate concerns have not been addressed by the BDCP lead agencies and have jeopardized your ability to complete your ESA obligations. The laws being violated or to be violated by the ongoing BDCP process include the ESA and National Environmental Policy Act (NEPA). The purpose of this letter is to summarize several of the most profound illegalities and deficiencies for you. We urge you to refrain from providing your stamp of approval on the BDCP and to keep pushing for an endangered species-centered approach towards Delta governance.

The Tunnels, both of which would be 40 feet in diameter and 35 miles long, would have the capacity to take 15,000 cubic feet per second (cfs) (though only three intakes with a total capacity of 9000 cfs are now planned at the start it would be easy to add two additional intakes down the road to achieve the total capacity of 15,000 cfs.). It is time for some common sense. It is hard to imagine that the exporters would pay the additional billions of dollars to construct the 15000 cfs Tunnels capacity *unless* the true plan and project is to operate at that level. That is an enormous quantity of fresh water approximately equal to the entire average summer flow of the Sacramento River at the location of the proposed new North intakes. Consequently, massive quantities of freshwater would be taken out of the Sacramento River upstream from the Delta near Clarksburg for the benefit of subsidized agricultural water interests south of the Delta.

The “take” of endangered species, which is prohibited by the ESA, includes “harm” as action constituting a “take.” 16 U.S.C. § 1532(19). “Harm” includes “significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or shelter.” 50 C.F.R. § 17.3 (USFWS ESA Regulations). The NMFS ESA Regulations add “spawning, rearing, migrating” to the means by which habitat modification or degradation kills or injures wildlife. 50 C.F.R. § 222.102.

In addition to prohibiting federal agency actions unless determined not likely to jeopardize the continued existence of any endangered species, Section 7 of the ESA *also* prohibits actions unless determined to not likely “*result in the destruction or adverse modification of [critical] habitat of such species. . .*” 16 U.S.C. § 1536 (a)(2). (Emphasis added). “Actions” include “actions directly or indirectly causing modification to the land, water, or air.” 50 C.F.R. 402.02 (Emphasis added).

The massive diversions of freshwater for the Delta Water Tunnels would result in the destruction or adverse modification of critical habitat-- the freshwater-- for several endangered fish species including: winter-run Chinook salmon, 50 C.F.R. § 226.204; Central Valley Spring-run Chinook salmon, 50 C.F.R. §§ 226.211(a)(6), and 226.211(k)(5); and Central Valley steelhead 50 C.F.R. § 226.211(a)(7), and § 226.211(l)(5). The critical habitat areas designated for these species include the precise reaches of the Delta, the Sacramento River, and certain sloughs



including Elkhorn, Georgianna, Miners, Steamboat, and Sutter sloughs that would be deprived of freshwater by reason of diversion upstream from the Delta for the Delta Water Tunnels.

The National Marine Fisheries Service (NMFS) recently reiterated its previous “Red Flag” comment that the Delta Water Tunnels threaten the “potential extirpation of mainstem Sacramento River populations of winter-run and spring-run Chinook salmon over the term of the permit. . . .” (NMFS Progress Assessment and Remaining Issues Regarding the Administrative Draft BDCP Document, Section 1.17, 12, April 4, 2013). That is just one of many critical issues that have been flagged by NMFS and USFWS as to how the Delta Water Tunnels would threaten endangered fish species. Given that the BDCP’s adverse modification to critical habitat will jeopardize the continued existence of various endangered and threatened species and the lack of effective mitigation or alternatives analysis for such adverse modification, the BDCP cannot serve as the legitimate basis for any Section 7 analysis or Section 10 permits. Moreover, the BDCP process is unlawfully preceding rather than following the setting of new flow objectives under the Clean Water Act (CWA) and public trust doctrine, which all responsible agencies admit are essential to informing planning decisions for the Delta and the watershed.

**THE BDCP IS NOT A LEGITIMATE HCP AND THE BDCP PROCESS VIOLATES THE ESA BY ATTEMPTING TO SUPPLANT ESA SECTION 7 REQUIREMENTS WITH LONG-TERM REGULATORY ASSURANCES**

The BDCP is not a legitimate Habitat Conservation Plan (HCP) because it does not actually ensure the continued existence of the relevant endangered species. 50 C.F.R. § 17. The ESA only allows for incidental take when the overall purpose of the authorized action is to “enhance the propagation or survival of the affected species.” 15 U.S.C. § 1539 (a)(1)(A). The BDCP will not enhance the propagation or survival of threatened Delta species. The purpose of the BDCP is to ignore the dire Delta ecosystem challenges by building around it rather than improve it. This is a rerun of the old “peripheral canal” that was blocked in June 1982 by a referendum vote of about 63% to 37%. The only difference now is that the exporters and the State claim they want to do this for the fish in spite of overwhelming evidence that the tunnels will destroy fish populations.

This entire process has up until recently been predicated on the untenable claim that taking more freshwater away from the Sacramento River upstream from the Delta and thus reducing flows would somehow be good for the endangered species of fish. We did not see any compelling evidence to support this unlikely conclusion. Now the process is predicated on the new claim that in the words of Jerry Meral, California Deputy Resources Secretary and lead State Official for the BDCP, “BDCP is not about, and has never been about saving the Delta. The Delta cannot be saved.” (Sacramento Bee, p. A3, April 30, 2013). That statement is fully consistent with the April 11, 2013 response by the California Resources Agency to the reiterated Red Flag comment of the NMFS about the “potential extirpation of mainstem Sacramento River populations of winter-run and spring-run Chinook salmon over the term of the permit” referred to above. The Resources Agency response basically writes off the salmon, pointing fingers at other conditions-- “climate change is going to cause challenging conditions for winter-run that BDCP alone cannot address.” (Resources Agency response, April 11, 2013). If the State has determined that the Delta ecosystem cannot be saved and this assumption pervades the BDCP

analysis, the plausibility that the BDCP can constitute an adequate HCP has been seriously undermined.

The State appears to have convinced itself that the future extirpation of the salmon is inevitable and blames other contributing, cumulative problems such as climate change. Fish and wildlife agencies cannot, however, merely resolve that the Delta ecosystem is ill-fated and throw up their hands; rather, they must implement feasible, effective mitigation measures and alternatives. The ESA does not allow such easy avoidance of its mandates. “[A]n agency may not take action that will tip a species from a state of precarious survival into a state of likely extinction. Likewise, even where baseline conditions already jeopardize a species, an agency may not take action, that deepens the jeopardy by causing additional harm.” *National Wildlife Federation v. National Marine Fisheries Service*, 524 F.3d 917, 930 (9<sup>th</sup> Cir. 2007). Given that the BDCP is intended to serve as the basis for the issuance of Incidental Take Permits, the fish and wildlife agencies must demonstrate additional, more rigorous analysis in fulfilling their ESA duties.<sup>1</sup>

ESA Section 7 consultation procedures are mandatory because the Bureau of Reclamation is a federal agency taking action with respect to the Delta Water Tunnels. The USFWS and NMFS must issue a Biological Opinion finding that the HCP does not jeopardize the continued existence of any endangered or threatened species. The BDCP process, however, is founded on the unlawful mixing, piecemealing, segmenting of the mandatory Section 7 consultation process with and from other Authorized Entities such as Westlands Water District ESA Section 10 processes. (Plan, 1-1). Other Authorized Entities such as Westlands are CVP water contractors through Reclamation. Because the areas that will be affected by the BDCP involve designated critical habitat for several species, the Services must not only reach a “no jeopardy” conclusion, but must also find that the action does not adversely modify these critical habitat areas. “[I]f the areas . . . [are] designated as critical habitat, any future section 7 consultation would be required to also determine whether the proposed action would destroy or adversely modify the critical habitat, *an inquiry that is broader than the jeopardy analysis.*” *Center for Biological Diversity v. Bureau of Land Management*, 422, F.Supp.2d 1115, 1144-45 (N.D. Cal. 2006) (emphasis added). Removing freshwater deliveries from critical habitat areas and replacing it with dubious mitigation measures elsewhere will surely not satisfy ESA’s mandates to refrain from adversely modifying critical habitat and avoiding jeopardy to the continued existence of endangered species.

In Chapter 6, NMFS and USFWS would tie their ESA Section 7 hands behind their backs for fifty years by way of Regulatory Assurances including the “No Surprises rule” for the water contractors. (Plan, 6-28, 29). The problem is that the BDCP does not contain convincing evidence that it will actually recover the species at issue and there are no guaranteed protective actions if species populations begin to crash. This approach lacks legal validity given that the BDCP will ensure the demise of the Delta ecosystem without anyone taking accountability.

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<sup>1</sup> “On the basis of the BDCP, USFWS and NMFS are expected to issue Section 10 permits. An integrated biological opinion (BiOp) on coordinated long-term operation of the CVP and SWP will be completed, and will incorporate the conservation strategy as part of its proposed action.” (Administrative Draft BDCP, p. 1-7 (March 2013)).

This adulterated Section 7 consultation process, discussed below, coupled with a Section 10 “Habitat Conservation Plan” long-term Regulatory Assurances and the “No Surprises rule” for the exporters would be carried out in the face of declining water quality and declining populations of endangered fish species and admitted adverse impacts and scientific uncertainty with respect to taking additional massive quantities of freshwater out of critical habitat upstream from the Delta. Yet, the BDCP will free the contractors from any obligation to provide adequate water for fish, even if the BDCP fails to achieve recovery goals. This action would be astonishing in its scope and its trampling on the fundamental ESA federal agency obligation “to afford first priority to the declared national policy of saving endangered species.” *Tennessee Valley Authority v. Hill*, 437 U.S. 153 (1978). This action if carried out would be so contrary to the language and purpose of the ESA as to raise the appearance of impropriety.

A function of ESA Section 10 HCP’s is to allow private property owners to make economically viable use of their lands avoiding “Regulatory Takings” issues under the Fifth Amendment of the Constitution. Those issues could arise if such use would be prevented because of prohibitions against adversely affecting critical habitat for endangered species on the land owners’ property. No such issues are present here. The contractors do not own the water in the Sacramento River and the Delta. The water is a public resource. Even the permits for use of the water are held by the Federal and State governments— not the contractors.

The contractors also have little to do with the HCP’s mitigation funding; thus, the proposed mitigation is largely untied to the Delta Water Tunnels. According to the Plan, “Funding from a variety of state and federal sources will be available to pay for the majority of the conservation measures that will provide the substantial public benefits of the BDCP.” (Plan, 1-2). The public— meaning the taxpayers— would pay for the conservation measures as well as for mitigating all effects resulting from the new upstream Delta Water Tunnels conveyance with the exception of the project footprint itself. More importantly, there is no convincing evidence that the proposed conservation measures will actually protect and restore endangered fish species. It is well-understood that healthy ecosystems require healthy river flows.<sup>2</sup> Given this premise, habitat restoration on the ground is not a substitute for taking away crucial freshwater habitat. Consequently, there is no nexus between either the fish or the contractors and the BDCP mitigation and conservation measures.

Given all of these circumstances, the mixing and segmenting of the mandatory Reclamation ESA Section 7 consultation process with and from the ESA Section 10 Regulatory Assurances for the contractors would violate the ESA. Regulatory Assurances and the “No Surprises Rule” have no place here, most notably because the decline of Delta fish species is not an “unforeseen circumstance,”<sup>3</sup> -- it is all but assured with the passage of the BDCP. Likewise, the Delta Water tunnels have no place in an HCP. The Tunnels need to be removed from the HCP. Your agencies can approve the BDCP if you find that it “will not appreciably reduce the

<sup>2</sup> California Water Solutions Now, “A Report From Member Organizations of the Environmental Water Caucus,” Third Edition, 2011.

<sup>3</sup> 50 C.F.R. § 17.

likelihood of the survival and recovery of the species in the wild.” 16 U.S.C.A. § 1539. (a)(2)(B)(iv). There is simply no evidence in the BDCP to support such a conclusion.

**THE BDCP PROCESS VIOLATES THE ESA BY SUBSTITUTING ADVOCACY FOR REASONED ENVIRONMENTAL EVALUATIONS AND BY POSTPONING THE ESA SECTION 7 CONSULTATION PROCESS UNTIL AFTER THE BDCP DECISION IS MADE TO CONSTRUCT THE DELTA WATER TUNNELS**

The Supreme Court has explained that “The obvious purpose of the requirement [in ESA § 7(a)(2)] that each agency ‘use the best scientific and commercial evidence available’ is to ensure that the ESA not be implemented haphazardly, on the basis of speculation or surmise.” *Bennett v. Spear*, 520 U.S. 154, 176 (1997). The BDCP advocacy documents are riddled with speculation and surmise.

The basic legal problem that the NMFS and USFWS face in attempting to review the BDCP Plan administrative draft documents is that the cart has unlawfully been placed before the horse. The Plan recites that it will “provide the basis for a biological assessment (BA) that supports new ESA Section 7 consultations between the U.S. Department of the Interior, Bureau of Reclamation (Reclamation), USFWS and NMFS. The parties seeking take authorizations pursuant to the BDCP and the associated biological assessments are referred to as the *Authorized Entities*.” In addition to including seven federal and state water contractors such as Westlands Water District the authorized entities also include the Bureau of Reclamation and DWR.

The consultations need to go before not after the BDCP process. The ESA Section 7(a)(2) prohibitions against jeopardy of continued existence of any endangered species and against “destruction or adverse modification of habitat of such species” is effectuated by consultation and assistance by the NMFS and USFWS with the subject federal action agency. 16 U.S.C. § 1536(a)(2). Here, the federal action agency is Reclamation. Additionally, in fulfilling the requirements of Section 7(a)(2) “each agency shall use the best scientific and commercial data available.” 16 U.S.C. § 1536(a)(2). Biological assessments are required under 16 U.S.C. § 1536(c)(1). It is improper to rely entirely on the BDCP documents to fulfill your discrete and independent obligations to conduct a Biological Assessment, a Section 7 consultation, a Biological Opinion (including a Reasonable Prudent Alternatives Analysis), and an HCP.

The joint NMFS and USFWS Regulations provide that “Section 7 and the requirements of this part apply to all actions in which there is discretionary Federal involvement or control.” 50 C.F.R. § 402.03. “Each Federal agency shall review its actions *at the earliest possible time* to determine whether any action *may affect* listed species or critical habitat. If such a determination is made, formal consultation is required. . . .” *Karuk Tribe of California v. U.S. Forest Service*, 681 F.3d 1006, 1020 (9<sup>th</sup> Cir. 2012)(en banc)(first emphasis added, second emphasis in opinion), *cert. den.*, 133 S.Ct. 1579 (2013), quoting 50 C.F.R. 402.14(a). The term “agency action” under the ESA is to be construed broadly. *Karuk Tribe*, 681 F.3d at 1021. “Agency Action” includes programmatic plans. *Pacific Rivers v. Thomas*, 30 F.3d 1050, 1053-4 (9<sup>th</sup> Cir. 1994); *Center for Biological Diversity v. U.S. Fish and Wildlife Service*, 623 F.Supp.2d 1044, 1052, 1054 (N.D. Cal. 2009). In addition to consultation and preparation of a biological assessment, formal consultation including preparation of a Biological Opinion beyond that contained in the BDCP are plainly required here.

The starting point for analysis under the ESA formal consultation process is data and information supplied by the federal agency followed by NMFS and USFWS evaluations of the status of listed species and critical habitat and the effects of the action and cumulative effects on the listed species and the critical habitat. The Biological Opinion is to determine “whether the action, taken together with cumulative effects, is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.” 50 C.F.R. § 402.14(g)(4).

In this setting of taking away massive quantities of freshwater from the critical habitat for the fish coupled with cumulative effects ranging from rising sea levels to changes in upstream reservoir operations to reducing flushing of the Delta, the Delta Water Tunnels would be the final nail in the coffin for endangered species of fish ranging all the way from where the Delta meets the Bay, upstream through the Sacramento River and sloughs to the Shasta, Trinity, Oroville, and Folsom reservoirs. This extinction crisis cries out for additional ESA Section 7 consultations, biological assessment, formal consultation and the Biological Opinions that go beyond the information provided in the BDCP.

To proceed in a manner required by law, Reclamation, NMFS and USFWS need to withdraw from or suspend participation in the BDCP process. The next step would be to carry out the ESA Section 7 process including consultation, biological assessment, formal consultation and a Biological Opinion by NMFS and USFWS. This process should, at the very least, include a new alternatives analysis that analyzes options that would actually help sustain and recover endangered species. Then, and only then, would there be an adequate informational and analytical basis for a BDCP evaluation of which alternative to choose ranging from the Environmental Water Caucus (EWC) and Friends of the River reduced exports and no new conveyance alternative up to the massive 15,000 cfs Delta Water Tunnels alternative. It should be noted that both the EWC and Portfolio alternatives are 21<sup>st</sup> Century alternatives calling for increased water conservation and recycling to meet future water supply needs. The BDCP process postponing legitimate habitat and endangered species evaluation until after the horse is out of the barn violates both the spirit and the language of the ESA.

#### **BDCP PROCESS VIOLATIONS OF LAW INCLUDE FAILURES TO PERFORM CLEAN WATER ACT AND PUBLIC TRUST DOCTRINE ANALYSIS AND TO SET FLOW OBJECTIVES**

The BDCP process is upside down under the Clean Water Act (CWA) and California state law as well as under the ESA. The decision whether to select the Delta Water Tunnels alternative needs to await California State Water Resources Control Board (SWRCB) performance of Clean Water Act and public trust doctrine analysis including the setting of flow objectives necessary to preserve the Delta, the rivers, and the endangered fish species. That needs to be done before, not after, a tragic, foundational decision is made choosing the alternative of developing massive new upstream conveyance—the Delta Water Tunnels. As explained by EPA in its recent letter to the SWRCB, “The State Board. . . has recognized that increasing freshwater flows is essential for protecting resident and migratory fish populations.” (EPA letter to SWRCB re: EPA’s comments on the Bay-Delta Water Quality Control Plan; Phase 1; SED, pp. 1-2, March 28, 2013)

The Delta Reform Act requires in pertinent part that “For *the purpose of informing planning decisions* for the Delta Plan and the Bay Delta Conservation Plan, the board [SWRCB] *shall*, pursuant to its public trust obligations, *develop flow criteria* for the Delta ecosystem *necessary to protect public trust resources*. In carrying out this section, the board shall review existing water quality objectives and use the best available scientific information. The flow criteria for the Delta ecosystem shall include the volume, quality, and timing of water necessary for the Delta ecosystem under different conditions.” California Water Code § 85086 (c)(1)(emphasis added).

The determination of flow criteria by the SWRCB has *not* been done. The federal agencies participate in the SWRCB processes. The SWRCB process is the correct one to set flow objectives as opposed to the BDCP Delta Water Tunnels process. Moreover, SWRCB determined water quality standards are then subject to EPA review for approval or disapproval under section 309 of the Clean Water Act. The BDCP process is simply a DWR effort to make a premature and unlawful decision to develop the massive Delta Water Tunnels before rather than after determining whether updated flow objectives would even allow such quantities of water to be diverted upstream away from the Delta. Selection of the Tunnels alternative is a planning decision. By law, BDCP planning decisions must be informed by SWRCB determinations. The most important BDCP planning decision to ever be made--whether or not to construct new upstream conveyance--cannot be made lawfully until the SWRCB determinations have been made.

Because the BDCP process is trying to push forward with the Delta Water Tunnels before rather than after SWRCB Clean Water Act and public trust doctrine analysis and setting of new, stricter flow objectives, and EPA review thereof, the BDCP process has, consequently, also failed to conduct the water supply availability analysis, quantification, and analysis of the environmental impacts of supplying specific quantities of water required under the California Environmental Quality Act (CEQA) according to the California Supreme Court’s decision in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal.4<sup>th</sup> 412, 429, 430, 434, 440-441 (2007).

In the absence of completion of SWRCB proceedings and EPA review regarding water availability, public trust doctrine analysis, and determination of new, stricter flow objectives, there is not the informational and scientific basis to sustain selection of the Delta Water Tunnels alternative under NEPA, CEQA or the ESA.

## CONCLUSION

The BDCP process is fatally flawed with foundational illegalities that will not be subject to dismissal or evasion by way of responses to comments on a future draft EIS/EIR. In the absence of the required ESA Biological Assessment, Formal Consultations and Biological Opinions and in the absence of completed SWRCB proceedings and EPA review thereof a draft BDCP EIS/EIR would not be sufficient for informed review by the public and the decision-makers. It is time now for the federal agencies to withdraw from the unlawful BDCP process and follow ESA Section 7 and federal Clean Water Act and California CEQA and public trust doctrine procedures.

Please call Robert Wright, Senior Counsel, Friends of the River, (916) 442-3155 x207 with any questions you may have. We would be happy to meet with you in person to answer questions you may have. Thank you in advance for your anticipated attention to the grave issues raised by this comment letter.

Sincerely,

/s/ E. Robert Wright

E. Robert Wright  
Senior Counsel  
Friends of the River

/s/ Katy Cotter

Katy Cotter  
Legal Counsel  
Friends of the River

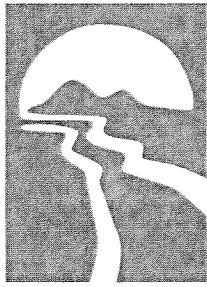
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Jerry Meral  
Deputy Secretary  
California Resources Agency

Addresses and additional Addressees at end of letter

**Re: COMMENT LETTER/Inaccurate and Misleading BDCP Project Description and Project Segmentation**

### **[ATTACHMENT 2]**

Dear Federal Agencies, Officers, and Staff Members and Deputy Secretary Meral:

This Comment Letter is submitted to you by the following public interest organizations in an effort to protect the Delta and California rivers: Friends of the River; Environmental Water Caucus, Nick Di Croce, Co-Facilitator; Restore the Delta, Barbara Barrigan-Parrilla, Executive Director; California Water Impact Network (C-WIN), Carolee Krieger, President; California Sportfishing Protection Alliance (CSPA), Bill Jennings, Executive Director; Pacific Coast Federation of Fishermen's Associations, Zeke Grader, Executive Director; Institute for Fisheries



Resources, Pietro Parravano, President; Southern California Watershed Alliance, Conner Everts, Executive Director; California Striped Bass Association, Jackson Chapman, State Board President; Foothill Conservancy, Reuben Childress, Water Conservation Associate; and California Save Our Streams Council, Lloyd Carter, President, Board of Directors.

The Environmental Protection Agency (EPA), National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (USFWS), and Bureau of Reclamation submitted many excellent and scientifically sound comments on the Bay Delta Conservation Plan (BDCP) Administrative Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) on July 18, 2013. There is, however, a fundamental BDCP inaccuracy that is accepted at face value in the July 18, 2013 Release for your comments that is so profound that early correction is necessary. The Release states in pertinent part: “The Admin Draft reflects the significant downsizing of the proposed conveyance project that occurred in 2012 in direct response to federal and state wildlife agency comments. That downsizing includes a reduction in the number of intakes from 5 to 3, a reduction in the maximum diversion capacity from 15,000 to 9000 cubic feet per second (cfs), and a change to gravity-flow tunnels that would not require pressurization and additional pumping plants to move water.” (Release, p.1, July 18, 2013).

The reduction in the number of intakes is an obvious subterfuge intended to make the proposed project look smaller in response to federal agency concerns even though the ultimate 15,000 cfs carrying capacity of the Tunnels is preserved. In fact, the two Tunnels have actually been *increased* in diameter from 33 feet to 40 feet. Consequently, the Delta Water Tunnels project has not been downsized at all. Instead, the Administrative Draft fails to provide the “accurate, stable, and finite project description” required by the California Environmental Quality Act (CEQA) and the accurate project description required by the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). By this same subterfuge, the BDCP process unlawfully segments, piecemeals and chops up the project into different phases by seeking approval now based on intake capacity when the intent is to actually operate in the future at the capacity of the Tunnels. That also violates the ESA, NEPA, and CEQA.

### FACTS

The intakes, though massive in size, are a comparatively small part of the proposed enormous water conveyance facilities. The two Tunnels have actually increased in size from a proposed diameter of 33 feet in 2012 to what is now the Preferred Alternative, Alternative 4. Under Alternative 4, the two Tunnels would be about 35 miles long, 150 feet underground, with an internal diameter of 40 feet and an external diameter of 44 feet. (Administrative Draft EIR/EIS, pp. 3-54, 3C-17, March 2013).

Because of the greater size of the Tunnels, the quantity of total “Tunnel muck” to be removed, treated, and disposed of would increase by about 41%. (Id., p. 3C-17, 18). “Tunnel muck generated by the boring process is a plastic mix consisting of soil cuttings and soil conditioning agents (water, air, bentonite, foaming agents, and/or polymers/biopolymers). Before the muck, or elements of the muck, can be reused or returned to the environment, the muck must be managed and at a minimum, go through a drying-water solids separation process and a possible physical or chemical treatment. The daily volume of muck withdrawn from the tunneling operations is estimated at approximately 7000 cubic yards per day.” (BDCP

would constitute a clear failure to proceed in the manner required by law. Making the project look smaller is quite different from actually making the project smaller.

### **MISLEADING PROJECT DESCRIPTION AND PROJECT SEGMENTATION**

Though the BDCP EIR/EIS is intended to be a programmatic level analysis of some aspects of the “Habitat Conservation Plan”, it is intended to be “a site-specific analysis of the proposed tunnel export facility” including “direct project-level impacts from facilities operations. . .” (EPA comments pp. 1-2). EPA has already explained that “The level of engineering detail provided for the tunnels, however, is not commensurate with the level of site-specific information typically provided in an EIS for a project that will require federal permits.” (EPA comments, V). EPA recommended “that the DEIS provide a level of detail that supports meaningful calculations of anticipated direct and indirect effects of the project-level elements, and clarify whether this EIS is meant to support a permit decision for CM1.” (*Id.*). In the words of USFWS, the DEIS “will need a clear and concise project-level description of the water conveyance facilities (CM1-Proposed Action and 15 alternatives), including a description of the physical, chemical, and biological changes resulting from CM1.” (USFWS comments “2.3 Incomplete Project Description”, p.5).

The EPA recognized that the Tunnels would be part of the problem not the solution. “Compared to the No Action alternative and existing conditions, many of the scenarios of the Preferred Alternative ‘range’ appear to decrease Delta outflow (p. 5-82), despite the fact that several key scientific evaluations by federal and State agencies indicate that more outflow is necessary to protect aquatic resources and fish populations.” (EPA Comments on Administrative Draft EIR/EIS, III. Aquatic Species and the Scientific Uncertainty).

The Bureau of Reclamation, NMFS and USFWS have all recognized that the BDCP EIR/EIS advocates for the project and/or is biased. (Bureau Comments p. 1) (NMFS Comments p. 2)(USFWS Comments p. 1). The consultant prepared BDCP Administrative Draft Plan chapters and Draft EIR/EIS are indeed biased advocacy documents. The consultants are getting paid enormous sums of money to advocate for the Delta Water Tunnels. That is one reason why we pointed out in our June 4, 2013 Comment Letter that the federal agencies need to withdraw from the unlawful BDCP process and instead proceed under ESA §7 federal agency Biological Assessment, consultation, and Biological Opinion processes. By starting with the biased advocacy documents instead of agency ESA and Clean Water Act work product the water contractors have cleverly seized direction and control of the process from the federal agencies as well as bogged down the federal scientific and expert personnel with assessing and attempting to cope with reams of advocacy, bias, surmise, and speculation.

Making the project look smaller by way of a subterfuge is part of the bias and advocacy the federal agencies are confronted with in the BDCP process.

### ***CEQA Requirements***

The courts have stated over and over that “An accurate, stable and finite project description is the sine qua non [absolutely indispensable requirement] of an informative and legally sufficient EIR. [citation deleted]. However, a curtailed, and enigmatic or unstable project description draws a red herring across the path of public input. [citation deleted]. Only through

Administrative Draft Chapter 4, Covered Activities and Associated Federal Actions, p. 4-9). Moreover, “Because of the high groundwater level throughout the proposed Tunnel alignment area, extensive dewatering. . .and groundwater control in the tunneling operation and shaft construction would likely be required.” (Administrative Draft EIR/EIS, p. 3C-18).

Under Alternative 4, there would be a combined enormous “dual-conveyance” diversion capacity. “The total diversion capacity for the south Delta export facilities would remain constant at 15,000 cfs. . . .” (Id., p. 3-54).

We are informed and believe and on that basis contend to you that the capacity of the Tunnels in the Preferred Alternative either remains at 15,000 cfs, or is now greater than that. To fulfill your responsibilities under the ESA, NEPA and CEQA you must ensure that the next draft BDCP EIR/EIS and Plan completely and comprehensively describe and disclose the true capacity of the Tunnels. Environmental impacts and impacts on endangered species and critical habitat must be evaluated at true capacity operating levels. As the Bureau of Reclamation comments point out, “The current BDCP analysis assumes no operational impacts to upstream reservoir operations.” (Reclamation clarification added July 16, 2013 p. 1). That astonishing and incredible assumption given a capacity of 9000 cfs becomes an even more glaring violation of ESA and NEPA analytical duties given a capacity of 15,000 cfs.

The estimates of dollar costs to implement the BDCP are set forth in Chapter 8 of the Administrative Draft Plan entitled “Implementation Costs and Funding Sources”. Chapter 8 sets forth that 50 year permit term total estimated costs for the intakes and pumping plants would amount to only about \$1 billion in contrast to over \$7 billion for the Tunnels, and \$9.7 billion for the Tunnels adding in the “Tunneling contingency.” (Administrative Draft BDCP Plan, Chapter 8, Table 8-7, p. 8-14, April 2013). Of course, given the current exceeding of the estimates for the cost of the Oakland-San Francisco Bay Bridge reconstruction by a factor of 4, it would be consistent with recent California large project public works engineering and construction experience if the Tunnels wind up actually costing far more than \$9.7 billion. As columnist Dan Walters recently explained (Sacramento Bee, p. A3, July 29, 2013) Oxford University professor Bent Flyvbjerg has published a paper entitled “Delusion and Deception in Large Infrastructure Projects,” 51 California Management Review 170 (Winter 2009). The professor explains that “across the globe, large infrastructure projects almost invariably arrive late, over-budget and fail to perform up to expectations.” The underlying reasons are “delusions born of ignorance, deceptions to make projects sound more feasible than they truly are, and bad luck.” Dan Walters explains that the Delta Water Tunnels are “based on assumptions of need and utility that are questionable and may be, to use Flyvbjerg’s words, ‘delusions’ or perhaps ‘deceptions.’”

In physical size, complexity, and cost, the Tunnels greatly exceed the intakes in magnitude. Given the massive size and length of the Tunnels, construction process of many years, massive costs in comparison to cost for the intakes, and complexities including disposal and treatment of the Tunnel muck and dewatering for Tunnel construction, the only reasonable conclusion is that the intent of the contractors who would pay for the construction of the Tunnels, is to operate the project at the capacity of the Tunnels. Enormous additional costs result from building Tunnels to a greater size than would be used. Thus accepting the subterfuge that the project has been significantly downsized as a basis for ESA, NEPA, and CEQA analysis

an accurate view of the project may the public and interested parties and public agencies balance the proposed project's benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives." *E.g.*, *San Joaquin Raptor Rescue Center v. County of Merced*, 149 Cal.App.4<sup>th</sup> 645, 654 (2007) (project description held unstable and misleading) (internal quotation marks deleted). "The entirety of the project must be described, and not some smaller portion of it." *Id.* "The Guidelines specify that every EIR must set forth a project description that is sufficient to allow an adequate evaluation and review of the environmental impact. (Guidelines, § 15124.)." *Id.* "The description must also include 'a general description of the project's technical, economic and environmental characteristics, considering the principal engineering proposals if any and supporting public-service facilities.' (Guidelines, § 15124, subd. (c))" *Id.* at 654-5.

Just as the EIR in *San Joaquin Raptor Rescue Center*, 149 Cal.App.4<sup>th</sup> 645, 660 needed to include analysis of impacts that would result from peak levels of operation, the same is true of the BDCP EIR/EIS for the Delta Water Tunnels. Under CEQA, where it is reasonably foreseeable that an entire facility will be used in the future or there will be future expansion, and that will change the scope or nature of the project or its environmental effects, analysis of that future use or expansion must be included in the EIR. *Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal.3d 376, 396 (1988). Under CEQA, environmental impact analysis for a project cannot be limited to water supply for the first stage or first few years. The EIR "must assume that all phases of the project will eventually be built and will need water, and must analyze, to the extent reasonably possible, the impacts of providing water to the entire proposed project." *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal.4<sup>th</sup> 412, 431 (2007). Also, "the future water supplies identified and analyzed must bear a likelihood of actually proving available; speculative sources and unrealistic allocations ('paper water') are insufficient bases for decision-making under CEQA." *Id.* at 432.

Consequently, it must be presumed that the operating capacity of the Water Tunnels will be used. Just as it made no sense to build a facility of a certain size in the University of California case and not ultimately use the entire facility, it likewise makes no sense that the contractors would not ultimately use the full capacity of the Water Tunnels.

### ***NEPA Requirements***

Under NEPA an agency may not divide a project into multiple actions to avoid producing a single EIS on the overall project. *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 969 (9<sup>th</sup> Cir. 2006). The scope of the required EIS is set forth in the NEPA regulation at 40 C.F.R. 1508.25. *Great Basin Mine Watch*, 456 F.3d at 968-9. "Connected actions" that should be discussed in the same EIS include actions that automatically trigger other actions that may require an EIS, actions that cannot or will not proceed unless other actions are taken previously or simultaneously, and actions that are interdependent parts of a larger action and depend on the larger action for their justification. 40 C.F.R. 1508.25 (a)(1). The Tunnels and intakes are, obviously, connected actions. The operating capacity of the Tunnels must be disclosed and accurately described and evaluated in the EIS.

### *ESA Requirements*

Applicants seeking an incidental take permit must provide “a complete description of the activity sought to be authorized.” 50 CFR § 17.22(b)(1)(i); § 222.307(b)(4)(“detailed description”). Hiding the true carrying capacity of the Delta Water Tunnels by conflating the intake capacity of the proposed project with the actual carrying capacity of the Tunnels, composing the lion’s share of the project, violates this requirement.

Furthermore, describing a project by an intentional, and largely pretextual, bottleneck does not provide a complete description for agency findings or the ESA Section 10(c) notice and review. Section 10(c), “protects the informational interest of those who participate in that process,” and “a denial of the ability to participate meaningfully in the §10 permit process is an injury that is procedural or informational in nature.” *Cary v. Hall*, 2006 WL 6198320, \*11 (C.D. Cal., September 30, 2006) (internal quotations omitted). Completing the project description by stating the actual carrying capacity of the Delta Water Tunnels and basing ESA analysis on that capacity would be the starting point for scrutiny of the impacts of the project on endangered species and critical habitat.

Projects may not be inaccurately described or chopped up for piecemeal review under the ESA. The ESA requires evaluation of the *entire* agency action. *Connor v. Burford*, 848 F.2d 1441, 1452-1454 (9th Cir. 1988). The Bureau of Reclamation, NMFS and the USFWS are all federal agencies. All federal agencies have a substantive duty to ensure that their authorization of a project will not jeopardize the survival of listed fish or adversely modify the species’ critical habitat. *Center for Biological Diversity v. U.S. Bureau of Land Management*, 698 F.3d 1101, 1127-8 (9th Cir. 2012). The starting point for beginning to comply with that statutory duty is to accurately describe and evaluate the full scope and capacity of the entire project.

The largest and most expensive part of the overall project includes the Delta Water Tunnels and their carrying capacity of 15,000 cfs or more of water away from designated critical habitat for endangered species of fish. Unless and until the Tunnels themselves are downsized, the true carrying capacity of the Tunnels must be disclosed and the environmental and endangered species and habitat impacts of operations at capacity must be the basis for analysis under CEQA, NEPA, and the ESA. The conveyance project has *not* been downsized.

### **CONCLUSION**

The BDCP process and the consultant-prepared Plan and EIR/EIS chapters are permeated throughout by bias, advocacy, speculation and surmise. That is true from the very foundation, starting with the claim that simply taking two intakes out of the project accomplishes downsizing. The biggest parts of the conveyance facilities are the Water Tunnels. The capacity of the project is the capacity of the Tunnels and all future EIR/EIS work must be based on that reality.

Meanwhile, of course, the BDCP process remains fatally flawed with foundational illegalities set forth in our June 4, 2013 Comment Letter. As we said then, ESA Section 7, federal Clean Water Act, and California CEQA and public trust doctrine procedures must precede rather than follow the BDCP process.

Please call Robert Wright, Senior Counsel, Friends of the River, (916) 442-3155x 207 with any questions you may have.

Sincerely,

/s/ E. Robert Wright

E. Robert Wright

/s/ Katy Cotter

Katy Cotter, Legal Counsel

Friends of the River

Addresses and Additional Addressees:

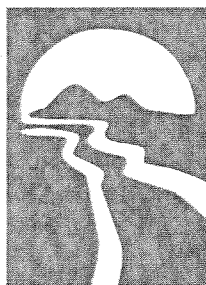
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September 25, 2013

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Acting Regional Administrator

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Jerry Meral

Deputy Secretary

California Resources Agency

Addresses and additional Addressees at end of letter [ATTACHMENT 3]

Re: Comment Letter/Supplementing our June 4, 2013 Comment Letter on Fundamental BDCP Process Violations of ESA, NEPA, and the Clean Water Act.

Dear Federal Agencies, Officers, Staff Members and Deputy Secretary Meral:

This is a comment letter to focus on the adverse modification of critical habitat for five Threatened and Endangered fish species, which would occur under the Bay Delta Conservation Plan (BDCP). This letter supplements our earlier comment letter to you of June 4, 2013. Under the BDCP, vast amounts of water will be diverted from the Sacramento River near Clarksburg, California. The water will be shipped through two tunnels roughly 35 miles south for the Central Valley and State Water Projects. As a result of this massive diversion, countless acre feet of water which would normally flow to the Sacramento-San Joaquin Delta (Delta) will now never reach the Delta. ***The BDCP Delta Water Tunnels project is not a permissible project under the Endangered Species Act (ESA) because it would adversely modify critical habitat for five Endangered and Threatened fish species.***

With respect to the ESA, the water will never reach the designated critical habitat for five Endangered and Threatened fish species: the Sacramento River Winter-Run Chinook Salmon, the Central Valley Spring-Run Chinook Salmon, the Central Valley Steelhead, the Southern Distinct Population Segment of the North American Green Sturgeon, and the Delta Smelt.

The Sacramento River Winter-Run Chinook Salmon is listed as an Endangered species under the ESA. 50 CFR § 17.11. Critical habitat for the species was designated to include the Sacramento River extending from River Mile 0 near the Delta to River Mile 302, which is far north of the proposed BDCP diversion near Clarksburg. 50 CFR § 226.204. The BDCP identifies reduced habitat due to water storage and water conveyance systems as a stressor and threat to the species. BDCP EIR-EIS Administrative Draft, 11A-47 (March 2013). Nevertheless, the BDCP proposes to divert massive amounts of water from the Winter-Run Chinook Salmon's critical habitat.

The Central Valley Spring-Run Chinook Salmon is listed as a Threatened species under the ESA. 50 CFR § 17.11. Critical habitat for the species was designated to include the Sacramento River from Lat 38.0612, Long -121.7948, near Mile 0, upstream to Elk Slough (38.4140, -121.5212) in Clarksburg, California. 50 CFR § 226.211(k)(5)(i). The BDCP identifies several threats and stressors to the Central Valley Spring-Run Chinook Salmon, which include flow reductions causing increased water temperature and habitat elimination or degradation due to water conveyance systems. BDCP EIR-EIS Administrative Draft, 11A-83, 11A-76 (March 2013). In disregard of these threats and stressors, the BDCP proposes to worsen these effects by diverting water away from the Spring-Run Chinook Salmon's critical habitat.

The Central Valley Steelhead is listed as Threatened under the ESA. 50 CFR § 17.11. Critical habitat for the species was designated to include the Sacramento River from Lat 38.0653, Long -121.8418, near Mile 0, upstream to Elk Slough in Clarksburg. 50 CFR § 226.211(l)(5). The BDCP states that threats and stressors to the Steelhead include water storage and conveyance systems as well as flow reductions contributing to increased water temperatures. BDCP EIR-EIS Administrative Draft, 11A-129, 11A-133 (March 2013).

The Southern Distinct Population Segment of North American Green Sturgeon is listed as Threatened under the ESA. 50 CFR § 17.11. Critical habitat for this species is designated to include the Sacramento-San Joaquin Delta including all waterways up to the elevation of mean higher high water within the area defined in California Water Code Section 12220. 50 CFR § 226.219(a)(3). The National Marine Fisheries Service's website provides a map displaying Green Sturgeon critical habitat:

<<http://www.nmfs.noaa.gov/pr/pdfs/criticalhabitat/greensturgeon.pdf>>. The map indicates that the critical habitat includes the Sacramento River from Mile 0 near the Delta to upstream beyond the proposed intake site near Clarksburg. The BDCP identifies increased water temperatures and habitat loss as threats and stressors to the Green Sturgeon. BDCP EIR-EIS Administrative Draft, 11A-162 – 65 (March 2013).

The Delta Smelt is listed as Threatened under the ESA. 50 CFR § 17.11. Critical habitat for the species was designated to include "all contiguous waters of the legal Delta." 50 CFR § 17.95–e–Fishes–Part 2. The US Fish and Wildlife Service's website provided a map displaying some of the Delta Smelt's critical habitat:

<[http://www.fws.gov/sfbaydelta/maps/delta\\_smelt\\_critical\\_habitat\\_map.pdf](http://www.fws.gov/sfbaydelta/maps/delta_smelt_critical_habitat_map.pdf)>. The map indicates



that the Delta Smelt's critical habitat includes the Sacramento River near Mile 0 upstream to the proposed BDCP intake site near Clarksburg. The BDCP identifies several threats and stressors to the species, including water exports and increased water temperature. BDCP EIR-EIS Administrative Draft, 11A-8 – 11 (March 2013).

Pursuant to the commands of the ESA, each Federal agency "shall. . . insure that any action authorized, funded, or carried out by such agency. . . is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of [critical] habitat of such species. . . ." 16 U.S.C. § 1536(a)(2). "Actions" include "actions directly or indirectly causing modification to the land, *water*, or air." 50 C.F.R. § 402.02 (Emphasis added). As listed species, the Sacramento River Winter-Run Chinook Salmon, the Central Valley Spring-Run Chinook Salmon, the Central Valley Steelhead, the Southern Distinct Population Segment of the North American Green Sturgeon, and the Delta Smelt each receive protection under the ESA. Further, their designated critical habitat also receives ESA protection.

As mentioned above, the BDCP itself identifies stressors and threats to each of the five species. Common threats and stressors to the five species include habitat loss due to water conveyance systems and increasing water temperatures. The BDCP Water Tunnels will worsen these threats and stressors in each species' critical habitat. By diverting massive amounts of water from the Sacramento River, the BDCP will literally reduce the amount of habitat available to these five species in their critical habitats. Additionally, the massive diversion will reduce flow in the critical habitat and contribute to a further increase in water temperature.

"The goal of the ESA is not just to ensure survival but to ensure that the species recover to the point it can be delisted." *Alaska v. Lubchenko*, 723 F.3d 1043, 1054 (9<sup>th</sup> Cir. 2013), citing *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F.3d 1059, 1070 (9<sup>th</sup> Cir. 2004). "[T]he purpose of establishing 'critical habitat' is for the government to carve out territory that is not only necessary to the species' survival but also essential for the species' recovery." *Gifford Pinchot*, 378 F.3d 1059, 1070. Moreover, "existing or potential conservation measures outside of the critical habitat cannot properly be a substitute for the maintenance of critical habitat that is required by Section 7 [of the ESA, 16 U.S.C. § 1536]." *Gifford Pinchot*, 378 F.3d 1059, 1076.

Taking the water and flows away from the Endangered and Threatened fish species would not insure their survival let alone insure their recovery and delisting. On-the-ground habitat restoration is not a lawful substitute under the ESA for maintaining the critical habitat of and in the waters of the Sacramento River, sloughs, and Delta.

The reduction of water and flows and increase in water temperature are adverse modifications of critical habitat. The BDCP ignores all the conservation measures, including critical habitat designations, NMFS and USFWS have taken to protect five federally listed species. If approved, the BDCP will undo years of conservation efforts, adversely modify critical habitat, and further jeopardize the continued existence of five listed species. Approval of the BDCP would violate the ESA. Consequently, the BDCP Water Tunnels are not a permissible project under the ESA. Please call Robert Wright at (916) 442-3155 x207 if you have any questions.

Sincerely,

/s/ E. Robert Wright  
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Senior Counsel  
Friends of the River

/s/ Patrick Huber  
Patrick Huber  
Legal Intern  
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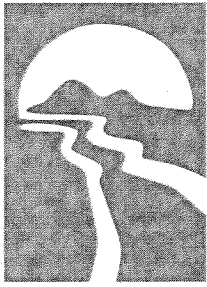
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To protect and restore California Rivers by influencing public policy and inspiring citizen action.

## FRIENDS OF THE RIVER

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November 18, 2013

Samuel D. Rauch  
Acting Assistant Administrator for Fisheries  
NOAA Fisheries Service

Michael L. Connor  
Commissioner  
U.S. Bureau of Reclamation

Gary Frazer  
Assistant Director-Endangered Species  
U.S. Fish and Wildlife Service

Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency

William W. Stelle, Jr.  
Acting Regional Administrator  
NOAA Fisheries Service

Jerry Meral  
Deputy Secretary  
California Resources Agency

Addresses and additional Addressees at end of letter

[ATTACHMENT 4]

**Re: COMMENT LETTER/Supplementing our June 4, August 13, and September 25, 2013  
Comment Letters on Fundamental BDCP process Violations of ESA, NEPA and the Clean  
Water Act**

Dear Federal Agencies, Officers, and Staff Members and Deputy Secretary Meral:

This letter follows up our earlier comment letters to you of June 4, August 13, and September 25, 2013 (all posted on the Bay Delta Conservation Plan website) and our meeting with your representatives in Sacramento on November 7, 2013. We deeply appreciate the scientifically sound and insightful Red Flag and Administrative Draft comments made during the Bay Delta Conservation Plan (BDCP) process by the staff of the National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (USFWS), Bureau of Reclamation (Reclamation), and the Environmental Protection Agency (EPA). We appreciate the candor

reflected in previous staff written comments made despite the pressure to approve the Water Tunnels desired by the exporters regardless of the consequences.

As a result of the discussion at our meeting, it is now confirmed that the factual matters set forth in our September 25, 2013 comment letter are correct. **First**, it is correct that the Sacramento River Winter-Run Chinook Salmon is listed as an endangered species under the Endangered Species Act (ESA), 16 U.S.C. § 1531 et seq. Likewise, it is correct that the Central Valley Spring-Run Chinook Salmon, Central Valley Steelhead, Southern Distinct Population Segment of North American Green Sturgeon, and Delta Smelt, are listed as threatened species under the ESA. **Second**, it is confirmed that the reaches of the Sacramento River, sloughs, and the Delta that would lose significant quantities of freshwater and freshwater flows through operation of the proposed BDCP Water Tunnels are designated critical habitats for each of these five listed endangered and threatened fish species. **Third**, it is confirmed that no Biological Assessment (BA) has been prepared and issued by the federal Bureau of Reclamation with respect to the BDCP Water Tunnels project. **Fourth**, it is confirmed that no final or even draft Biological Opinion (BO) has been prepared by NMFS or USFWS with respect to the impacts of the operation of the BDCP Water Tunnels on the five listed species of fish or their critical habitats.

In a nutshell, commencing the public review period on a Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) in the absence of the Biological Assessments and Biological Opinions will violate the ESA requirement that each federal agency review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat, and enter into formal consultation if that is the case. 50 C.F.R. § 402.14(a). Such premature review will also violate the National Environmental Policy Act (NEPA) requirement that agencies prepare a draft EIS “concurrently with and integrated with environmental impact analyses and related surveys and studies required” by the ESA. 40 C.F.R. § 1502.25(a). Yet this premature and unlawful draft EIS/EIR public review process—confronting the public with biased advocacy documents depriving the public of the essential ESA required analyses prepared by the federal agencies—is exactly what is now intended with a planned release date for the draft EIS/EIR of December 13, 2013. Further, diversions of large quantities of water from the Sacramento River will certainly impair the critical habitat areas mentioned above to the extent that they will adversely modify critical habitat in violation of Section 7 of the ESA.

This year, NMFS reiterated its previous “Red Flag” comment that the Water Tunnels threaten the “potential extirpation of mainstem Sacramento River Populations of winter-run and spring-run Chinook salmon over the term of the permit. . . .” (NMFS Progress Assessment and Remaining Issues Regarding the Administrative Draft BDCP Document, Section 1.17, 12, April 4, 2013). In comments on the Administrative Drafts, the EPA explained that “many of these scenarios of the Preferred Alternative ‘range’ appear to decrease Delta outflow (p. 5-82), despite the fact that several key scientific evaluations by federal and State agencies indicate that more outflow is necessary to protect aquatic resources and fish populations.” (EPA Comments On Administrative Draft EIR/EIS, III Aquatic Species and Scientific Uncertainty, Federal agency Release, July 18, 2013). Even the BDCP Administrative Drafts prepared by the project proponents’ consultants admit that the operation of the Water Tunnels would have adverse

effects on the designated critical habitats for each of the five listed fish species. (BDCP Appendix 5.1, March 2013, Winter-Run Chinook Salmon p. 5.1-21; Spring-Run Chinook Salmon p. 5.1-29; Steelhead p. 5.1-, 37; Green Sturgeon p. 5.1-40; and Delta Smelt p. 5.1-12). ***The public will have what it does not need:*** unsupported advocacy from the consultants speculating that the adverse effects will be offset. ***The public will not have what it does need:*** the federal agency Biological Assessments and Biological Opinions required by the ESA.

Despite the fact that extinction is forever and that the ESA obligates federal agencies “to afford first priority to the declared national policy of saving endangered species,” *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 185 (1978), Reclamation, NMFS and USFWS are joining with the California Department of Water Resources (DWR) in allowing the release of a draft EIS/EIR for a 120 day public comment period commencing December 13, 2013. However, the public draft EIS/EIR will be “so inadequate as to preclude meaningful analysis,” requiring circulation of a revised draft down the road pursuant to the command of NEPA Regulation 40 C.F.R. § 1502.9(a). (All Regulation citations will be to the NEPA Regulations at 40 C.F.R. § 1500.1 et seq. unless otherwise indicated). We urge your agencies to take this last opportunity to withhold your approval of these documents until the ESA required analysis has been conducted.

**THE DRAFT EIS/EIR ALTERNATIVE ANALYSIS WILL BE INADEQUATE UNLESS  
IT INCLUDES A TRUE ANALYSIS OF AN ALTERNATIVE THAT DOES NOT  
INCLUDE NEW CONVEYANCE**

“[T]he alternatives analysis section is the ‘heart of the environmental impact statement.’” 40 C.F.R. § 1502.14. *Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1065 (9th Cir. 1998). The purpose of the EIS process is to allow the public to weigh in on which feasible alternative is best for the environment and to afford the decision-makers the ability to make an informed choice among alternatives. Instead, this Draft EIS/EIR process avoids furnishing critical information required by the ESA: the Biological Assessments from Reclamation and the Biological Opinions, or at least Draft Biological Opinions, from NMFS and USFWS.

We urge you to review the “Responsible Exports Plan” proposed by the Environmental Water Caucus (EWC) as an alternative to the preferred tunnel project. This Plan calls for reducing exports from the Delta, implementing stringent conservation measures but no new upstream conveyance. This Plan additionally prioritizes the need for a water availability analysis and protection of public trust resources rather than a mere continuation of the status quo that has led the Delta into these dire circumstances.<sup>1</sup> Only that alternative is consistent with the EPA statements indicating that more outflow is needed to protect aquatic resources and fish populations. The EWC Responsible Exports Plan is feasible and accomplishes project objectives and therefore should be fully analyzed in a Draft EIS/EIR.

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<sup>1</sup> The Responsible Exports Plan can be found on the Friends of the River web site here: <http://www.ewccalifornia.org/reports/responsibleexportsplanmay2013.pdf>

**THE DRAFT EIS/EIR WILL BE SO INADEQUATE AS TO PRECLUDE  
MEANINGFUL ANALYSIS BECAUSE OF THE ABSENCE OF ESSENTIAL  
INFORMATION REQUIRED BY THE ESA AND NEPA**

The Draft EIS/EIR cannot pass muster under NEPA or ESA because it does not have adequate information to contribute to a “meaningful analysis.”

“The goal of the ESA is not just to ensure survival but to ensure that the species recover to the point it can be delisted.” *Alaska v. Lubchenko*, 723 F.3d 1043, 1054 (9<sup>th</sup> Cir. 2013), citing *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F.3d 1059, 1070 (9<sup>th</sup> Cir. 2004). Pursuant to the commands of the ESA, each Federal agency “shall. . . insure that any action authorized, funded, or carried out by such agency. . . is not likely to jeopardize the continued existence of any endangered or threatened species *or result in the destruction or adverse modification of [critical] habitat of such species. . .*” 16 U.S.C. § 1536(a)(2)(emphasis added). “[T]he purpose of establishing ‘critical habitat’ is for the government to carve out territory that is not only necessary to the species’ survival but also essential for the species’ recovery.” *Gifford Pinchot*, 378 F.3d 1059, 1070. Also, “existing or potential conservation measures outside of the critical habitat cannot properly be a substitute for the maintenance of critical habitat that is required by Section 7 [of the ESA, 16 U.S.C § 1536].” *Gifford Pinchot*, 378 F.3d 1059, 1076. The failure to have the ESA required Biological Opinions analyzing the threatened adverse modification of critical habitats renders the Draft EIS/EIR essentially worthless as an environmental disclosure and informational document.

The ESA Regulations (40 C.F.R. § 402.14(a)) require that “Each Federal agency shall review its actions *at the earliest possible time* to determine whether any action may affect listed species or critical habitat. If such a determination is made, formal consultation is required. . . .” *Karuk Tribe of California v. U.S. Forest Service*, 681 F.3d 1006, 1020 (9<sup>th</sup> Cir. 2012) (en banc)(emphasis added), *cert. denied*, 133 S.Ct. 1579 (2013). The NEPA Regulations require that “To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the. . . Endangered Species Act. . . .” 40 C.F.R. § 1502.25(a). “ESA compliance is not optional,” and “an agency may not take actions that will tip a species from a state of precarious survival into a state of likely extinction.” *National Wildlife Federation v. National Marine Fisheries Service*, 524 F.3d 917, 929-30 (9<sup>th</sup> Cir. 2008). Consequently, against this threat of extinction, conducting the draft EIS public review and comment stage without Biological Assessments or Biological Opinions leaves the public in the dark and violates both the ESA and NEPA. In the absence of the ESA required analyses, the draft EIS/EIR will be “so inadequate as to preclude meaningful analysis” in violation of NEPA. 40 C.F.R. § 1502.9(a).

**THE IMPACT ANALYSIS OF THE PREFERRED PROJECT—THE BDCP WATER  
TUNNELS—IS CURSORY AND INADEQUATE**

NEPA requires that “Impacts shall be discussed in proportion to their significance.” 40 C.F.R. § 1502.2(b). NEPA specifically includes as factors in evaluating significance impacts on “ecologically critical areas”; effects that are likely to be highly controversial; the “degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical”; and whether “the action threatens a violation of federal, state, or

local law or requirements imposed for the protection of the environment.” 40 C.F.R. § 1508.27(b)(3), (4), (9) and (10). The BDCP Water Tunnels alternative easily satisfies these categories, as the Tunnels threaten the extinction of fish species listed as endangered or threatened and will adversely modify designated critical habitats by substantially reducing water and flows in the critical habitats.

All federal agencies are required by NEPA to “make every effort to disclose and discuss at appropriate points in the draft [environmental impact] statement all major points of view on the environmental impacts of the alternatives including the proposed action.” 40 C.F.R. § 1502.9(a). Consequently, Reclamation, NMFS and USFWS are required to disclose and discuss in the Draft EIS the point of view that DWR’s preferred project—the BDCP Water Tunnels—threatens the extinction of the five listed fish species and would threaten to adversely modify the designated critical habitat for these listed fish species. Moreover, the agencies are required to disclose and discuss in the Draft EIS that, if the formal ESA consultations including Biological Assessments and Biological Opinions fail to demonstrate that the Water Tunnels would not be likely to jeopardize the continued existence of any of the listed fish species or result in the destruction or adverse modification of the designated critical habitats of such species, the Water Tunnels would not be a permissible or permissible project under the ESA.

Additionally, given the absence of Biological Opinions, or even Draft Biological Opinions and Biological Assessments, there is no lawful basis for the federal agencies to downplay or minimize the extinctions and adverse modifications of designated critical habitats threatened by the BDCP Water Tunnels. Under the ESA, the only way for federal agencies to reach conclusions as to jeopardy of species existence or adverse modification of critical habitats is through ESA consultation including preparation of Biological Assessments and Biological Opinions. In the absence of these required steps there is no basis for federal agencies to attempt to join with the exporters and DWR in their biased advocacy for the BDCP Water Tunnels.

Regardless of whether these three federal agencies agree now with us that approval of the Water Tunnels would violate the ESA, their red flag comments and the Record so far have made it clear that there is at minimum significant uncertainty about whether the BDCP Water Tunnels project is permissible under the ESA that will not be resolved until the Biological Assessments and Opinions have been prepared.

A Draft EIS/EIR circulated prior to preparation and circulation of federal agency prepared Biological Assessments and Biological Opinions or at least Draft Biological Opinions will be “so inadequate as to preclude meaningful analysis,” 40 C.F.R. § 1502.9(a), because the public and decision-makers will not have the basic federal agency analyses required by the ESA to determine whether DWR’s preferred alternative—the BDCP Water Tunnels— is even a lawful alternative, let alone an environmentally acceptable alternative.

**THE DRAFT EIS/EIR WILL BE SO INADEQUATE AS TO PRECLUDE  
MEANINGFUL ANALYSIS BECAUSE OF ABSENCE OF ESSENTIAL WATER  
QUANTITY AND QUALITY INFORMATION**

Like the absent analyses required by the ESA, the Draft EIS/EIR at this stage will also lack required water quantity and water quality analyses. The Delta Reform Act requires that “For the purpose of informing planning decisions for the Delta Plan and the Bay Delta Conservation Plan, the board [California State Water Resources Control Board (SWRCB)] shall, pursuant to its public trust obligations, develop flow criteria for the Delta ecosystem necessary to protect public trust resources. In carrying out this section, the board shall review existing water quality objectives and use the best available scientific information. The flow criteria for the Delta ecosystem shall include the volume, quality, and timing of water necessary for the Delta ecosystem under different conditions.” California Water Code § 85086(c)(1). The SWRCB did develop Flow Criteria, published at:

[www.swrcb.ca.gov/waterrights/water\\_issues/bay\\_delta/deltaflow](http://www.swrcb.ca.gov/waterrights/water_issues/bay_delta/deltaflow) on August 3, 2010, p. 5. The criteria include:

75% of unimpaired Delta outflow from January through June;

75% of unimpaired Sacramento River inflow from November through June; and

60% of unimpaired San Joaquin River inflow from February through June.

Those recommendations have not been the basis for the BDCP Water Tunnels Administrative Drafts and would preclude development of the Water Tunnels making that alternative infeasible pursuant to water quantity and quality considerations.

On the one hand, the BDCP process fails to base the preferred alternative on the SWRCB flow recommendations made pursuant to the Delta Reform Act. On the other hand, the BDCP process does not await completion of the pending SWRCB proceedings developing updated flow objectives. Once the SWRCB concludes that process, EPA will review and approve or disapprove any new or revised water quality standards pursuant to Clean Water Act § 303(c). (EPA letter, EPA’s comments on the Bay-Delta Water Quality Control Plan; Phase 1; SED, March 28, 2013). As the EPA has noted, “[t]he benefits of increasing freshwater flows can be realized quickly and help struggling fish populations recover.” (*Id.* at 1). By proceeding before the SWRCB has completed its Water Quality Control Plan Update, BDCP will not benefit from the analysis disclosed in this process.

Consequently, the BDCP process has failed to conduct the water supply availability analysis, quantification, and analysis of the environmental impacts of supplying specific quantities of water for the Water Tunnels required under the California Environmental Quality Act (CEQA) as determined by the California Supreme Court’s decision in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal.4<sup>th</sup> 412, 429, 430, 434, 440-441 (2007). Again, as in the case of the absent ESA analyses, basic analyses will be absent essential to determine whether the BDCP Water Tunnels, DWR’s preferred project is even feasible, let alone environmentally acceptable. Just as an inadequate draft EIS violates NEPA, a draft EIR so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment are precluded violates CEQA. 14 Code Cal. Regs. § 15088.5(a)(4).



## **THE DRAFT EIS/EIR WILL BE SO INADEQUATE AS TO PRECLUDE MEANINGFUL ANALYSIS BECAUSE OF ABSENCE OF OTHER ESSENTIAL INFORMATION**

At our November 7, 2013 meeting it was also confirmed that the Implementing Agreement (IA) will not be released with the draft EIS/EIR. The terms of the IA will be critical to informed public review of the preferred alternative. Consequently, the time for the public review period should not commence to run prior to release of the IA.

Dr. Peter Gleick, President of the Pacific Institute, and member of the U.S. National Academy of Sciences summarized several of the unanswered questions about the BDCP in his viewpoint published in the Sacramento Bee (November 6, 2013) entitled “*Delta project has many unanswered questions.*” The unanswered questions include: how much water would the new system take out of the Delta, what would the infrastructure or the water it provides cost, who is going to pay for it, there is no cost-benefit study including an evaluation of alternatives showing that the benefits of the Water Tunnels would exceed the cost, whether proposed ecosystem repairs and restoration would actually happen, what rules would govern the operation of the Water Tunnels and who would strictly monitor and enforce those rules, and what provisions would be put in place to change the operating rules as climate change increasingly alters water conditions. As Dr. Gleick says, “most scientists agree that a key to fixing the ecological problems of the Delta is to take less water out, not more.”

A critical example of absent BDCP analysis was pointed out by Reclamation: “The current BDCP analysis assumes no operational impacts to upstream reservoir operations.” (Reclamation clarification added to federal agency comments July 16, 2013 p.1). In addition to being in the dark upstream, the BDCP process is also in the dark at the downstream end. “The BDCP omits any analysis of possible effects on San Francisco Bay. . . As noted by the National Research Council review of BDCP in 2011: since BDCP aims to address management and restoration of the San Francisco Bay-Delta, this is a significant omission that must be rectified.”<sup>2</sup> Indeed, by reducing outflows from the Delta, the BDCP Water Tunnels would thereby reduce inflows into the Bay.

To sum it all up, the BDCP is at best ready for “scoping”. The public will not have adequate information to understand what this project is or would do to the environment, and the agencies will not have the analysis to support approval of such an expensive and dangerous to fish habitat and population project. There are more unanswered than answered questions about DWR’s preferred project, the Water Tunnels.

## **CONCLUSION**

In the absence of answers to basic questions including ESA questions about jeopardy of listed fish species and adverse modifications of designated critical habitats, as well as the other missing analyses set forth above, the planned draft BDCP EIS/EIR will not be sufficient for informed review by the public and the decision-makers. It will be necessary at minimum under

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<sup>2</sup> (Letter p.2, From Barbara Salzman, President, Friends of the San Francisco Estuary to Felecia Marcus, Chair, State Water Resources Control Board, October 30, 2013, <http://friendsofestyuary.weebly.com/comment-letters-from-friends.html>).

the ESA, NEPA and CEQA for the federal and state agencies to issue and circulate for public review a new draft EIS/EIR based on Biological Assessments and Biological Opinions. 40 C.F.R. § 1502.9(a) (NEPA); 14 Code Cal. Regs. § 15088.5(a)(CEQA). Then, and only then, would the public have the opportunity to engage in meaningful analysis of the preferred project alternative and informed comparison with other alternatives.

Please call Robert Wright, Senior Counsel, Friends of the River, (916) 442-3155x 207 with any questions you may have. Thank you for your anticipated attention to these issues.

Sincerely,

/s/ E. Robert Wright  
Senior Counsel  
Friends of the River

/s/ Kathryn Cotter  
Legal Counsel  
Friends of the River

/s/ Patrick Huber  
Legal Intern  
Friends of the River

Addresses and Additional Addressees:

Samuel D. Rauch, Acting Assistant Administrator for Fisheries  
National Marine Fisheries Service  
1315 East West Highway  
Silver Spring, MD 20910

Gary Frazer, Assistant Director-Endangered Species  
U.S. Fish and Wildlife Service  
Main Interior  
1849 C Street N.W., Room 3345  
Washington D.C. 20240-0001

**From:** Tara Krishna <tk022010@mymail.pomona.edu>  
**Sent:** Tuesday, January 14, 2014 11:13 AM  
**To:** bdcg.comments@noaa.gov  
**Subject:** BDCP document request

Hello,  
I would like to request the DVD copies of the BDCP and the draft EIR/EIS. I am a student at Pomona College in Claremont, CA and am writing a senior thesis focusing on the Delta Reform Act.

My address:  
Mailbox #628  
170 East Sixth St.  
Claremont, CA 91711

Kindly let me know what additional information I should provide.

Best,  
Tara Krishna

**From:** Kaylee Allen <kaylee.allen@sol.doi.gov>  
**Sent:** Tuesday, January 14, 2014 1:47 PM  
**To:** BDCP.comments@noaa.gov  
**Subject:** Fwd: BDCP Comment letter re ESA, NEPA, CEQA violations  
**Attachments:** 1 14 14 BDCP prelim cmt ltr.pdf

Sent from my iPad

Begin forwarded message:

**From:** Bob Wright <BWright@friendsoftheriver.org>  
**Date:** January 14, 2014, 11:15:07 AM PST  
**To:** "ryan.wulff@noaa.gov" <ryan.wulff@noaa.gov>, "deanna.harwood@noaa.gov" <deanna.harwood@noaa.gov>, "maria.rea@noaa.gov" <maria.rea@noaa.gov>, "Michael.Tucker@noaa.gov" <Michael.Tucker@noaa.gov>, "michael\_chotkowski@fws.gov" <michael\_chotkowski@fws.gov>, "michael\_hoover@fws.gov" <michael\_hoover@fws.gov>, "kaylee.allen@sol.doi.gov" <kaylee.allen@sol.doi.gov>, "lori\_rinek@fws.gov" <lori\_rinek@fws.gov>, "mknecht@usbr.gov" <mknecht@usbr.gov>, "pidlof@usbr.gov" <pidlof@usbr.gov>, "vendlinski.tim@epa.gov" <vendlinski.tim@epa.gov>, "skophammer.stephanie@epa.gov" <skophammer.stephanie@epa.gov>, "hagler.tom@epa.gov" <hagler.tom@epa.gov>, "Foresman, Erin (Foresman.Erin@epa.gov)" <Foresman.Erin@epa.gov>, "Lisa.clay@usace.army.mil" <Lisa.clay@usace.army.mil>  
**Subject:** RE: BDCP Comment letter re ESA, NEPA, CEQA violations

Dear Federal Officers and Staff Members:

The public draft BDCP Plan and draft EIR/EIS were issued for public review and comment in December 2013 even though no Biological Assessments or Biological Opinions were prepared on the effects of diversion of flows for the Water Tunnels on endangered and threatened fish species. Our attached comment letter focused on Endangered Species Act issues is in the public record as of earlier this morning.

We forward the attached comment letter to you as we have previously corresponded with you about the BDCP process and met with many of you here in Sacramento on November 7, 2013. We would greatly appreciate your prompt distribution of the comment letter to all BDCP involved Officers and Staff Members in your respective agencies. We did not include the four attachments to the letter as they are earlier comment letters posted on the BDCP website in 2013 and I believe we sent each of those letters to all or most of you in 2013. If anyone wants the attachments, just let me know & I will be happy to send them along to you.

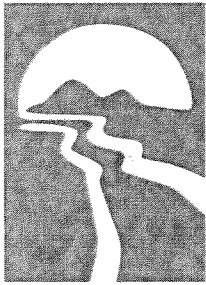
We appreciate the excellent work and science reflected in your previous Red Flag comments and your comments released on July 18, 2013 on the Administrative draft EIR/EIS. Thank you for your anticipated attention to the issues raised in our attached letter. Please call me with any questions you may have and we would be happy to respond as best we can.

Sincerely,

Bob Wright

Senior Counsel  
Friends of the River  
Sacramento, CA  
(916) 442-3155 x207

BDCP86



To protect and restore California Rivers by influencing public policy and inspiring citizen action.

## **FRIENDS OF THE RIVER**

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January 14, 2014

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

### **Re: COMMENT LETTER/Preliminary Comments on Fundamental BDCP Violations of ESA, NEPA, and CEQA**

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

#### **INTRODUCTION**

This is our preliminary Comment Letter on the public draft Bay Delta Conservation Plan (BDCP) and public draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) issued in December 2013. This letter focuses on the adverse modification of critical habitats for five threatened and endangered fish species that would be caused by the proposed BDCP Water Tunnels. Extinction is forever. The fish face an extinction crisis. The BDCP Water Tunnels would adversely modify designated critical habits and thus promote species extinction and preclude species recovery. *The BDCP Water Tunnels project is not a permissible project under the Endangered Species Act (ESA) because it would adversely modify designated critical habitat for at least five Endangered and Threatened fish species.*

This letter follows up our earlier comment letters to you of June 4, August 13, September 25, and November 18, 2013 (all posted on the BDCP website) and our meeting with Bureau of Reclamation, National Marine Fisheries Service (NMFS), United States Fish and Wildlife Service (USFWS) and United States Environmental Protection Agency (EPA) representatives in Sacramento on November 7, 2013. Each of our earlier comment letters is attached hereto (pages showing cc.s deleted from the attachments) and incorporated herein by this reference. We will submit or join in one or more additional comment letters after we have completed review of as much of the 40,000 pages of BDCP documents as we are able to review.

#### **ESA VIOLATIONS AND RELATED NEPA AND CEQA VIOLATIONS**

#### **PRECLUDING INFORMED PUBLIC REVIEW**

The Water Tunnels would divert enormous quantities of water from the Sacramento River near Clarksburg, California. The water would be shipped through two giant Tunnels about 40 miles long to the south for diversion to the Central Valley and State Water Projects. As a result of this massive diversion, enormous quantities of water that presently flow through the

Sacramento River and sloughs to and through the Sacramento-San Joaquin Delta would not reach the Delta, and flows would be reduced in the Sacramento River and sloughs. Also, there would be adverse cumulative effects ranging from rising sea levels and reduced snowpack and runoff due to climate change to changes in upstream reservoir operations and current preservation of flows for fishery purposes all the way upstream to the Shasta, Trinity, Oroville, and Folsom reservoirs. The Water Tunnels are identified as Alternative 4, the California Department of Water Resources (DWR)' Preferred Alternative. (BDCP Draft EIR/EIS, 3-3).

As a result of the discussion at our November 7, 2013 meeting with the federal agency BDCP representatives, it was confirmed that the factual matters set forth in our September 25, 2013 comment letter are correct. **First**, it is correct that the Sacramento River Winter-Run Chinook Salmon is listed as an endangered species under the ESA. Likewise, it is correct that the Central Valley Spring-Run Chinook Salmon, Central Valley Steelhead, Southern Distinct Population Segment of North American Green Sturgeon, and Delta Smelt, are listed as threatened species under the ESA. **Second**, it was confirmed that the reaches of the Sacramento River, sloughs, and the Delta that would lose significant quantities of freshwater and freshwater flows through operation of the proposed BDCP Water Tunnels are designated critical habitats for each of these five listed endangered and threatened fish species. **Third**, it was confirmed that no Biological Assessment has been prepared and issued by the federal Bureau of Reclamation with respect to the BDCP Water Tunnels project. **Fourth**, it was confirmed that no final or even draft Biological Opinion has been prepared by NMFS or USFWS with respect to the impacts of the operation of the BDCP Water Tunnels on the five listed species of fish or their critical habitats.

NMFS reiterated its previous "Red Flag" comment in 2013 that the Water Tunnels threaten the "potential extirpation of mainstem Sacramento River Populations of winter-run and spring-run Chinook salmon over the term of the permit. . . ." (NMFS Progress Assessment and Remaining Issues Regarding the Administrative Draft BDCP Document, Section 1.17, 12, April 4, 2013). In comments on the Administrative Drafts, the EPA explained that "many of these scenarios of the Preferred Alternative 'range' appear to decrease Delta outflow (p. 5-82), despite the fact that several key scientific evaluations by federal and State agencies indicate that more outflow is necessary to protect aquatic resources and fish populations." (EPA Comments on Administrative Draft EIR/EIS, III Aquatic Species and Scientific Uncertainty, Federal agency Release, July 18, 2013).

"The goal of the ESA is not just to ensure survival but to ensure that the species recover to the point it can be delisted." *Alaska v. Lubchenko*, 723 F.3d 1043, 1054 (9<sup>th</sup> Cir. 2013), citing *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F.3d 1059, 1070 (9<sup>th</sup> Cir. 2004). Pursuant to the commands of the ESA, each federal agency "shall . . . insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of [critical] habitat of such species. . . ." 16 U.S.C. § 1536(a)(2)(emphasis added). "[T]he purpose of establishing 'critical habitat' is for the government to carve out territory that is not only necessary to the species' survival but also essential for the species' recovery." *Gifford Pinchot*, 378 F.3d 1059, 1070. Also, "existing or potential conservation measures outside of the critical habitat cannot properly be a substitute for the maintenance of critical habitat that is required by Section 7 [of the ESA, 16 U.S.C § 1536]." *Gifford Pinchot*,

378 F.3d 1059, 1076. The failure to prepare the ESA and National Environmental Policy Act (NEPA) required Biological Assessments and Opinions analyzing the threatened adverse modification of critical habitats renders the draft EIR/EIS essentially worthless as an environmental disclosure and informational document under NEPA. The draft EIR/EIS is also premature and unlawful under the ESA.

The ESA Regulations (50 C.F.R. § 402.14(a)) require that “Each Federal agency shall review its actions *at the earliest possible time* to determine whether any action may affect listed species or critical habitat. If such a determination is made, formal consultation is required. . . .” *Karuk Tribe of California v. U.S. Forest Service*, 681 F.3d 1006, 1020 (9<sup>th</sup> Cir. 2012) (en banc)(emphasis added), *cert. denied*, 133 S.Ct. 1579 (2013). The Biological Assessments and Biological Opinions are the written documents that federal agencies must prepare during the ESA consultation process. The NEPA Regulations require that “To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the. . . Endangered Species Act. . . .” 40 C.F.R. § 1502.25(a). “ESA compliance is not optional,” and “an agency may not take actions that will tip a species from a state of precarious survival into a state of likely extinction.” *National Wildlife Federation v. National Marine Fisheries Service*, 524 F.3d 917, 929-30 (9<sup>th</sup> Cir. 2008).

The Biological Opinion is to determine “whether the action, taken together with cumulative effects, is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.” 50 C.F.R. § 402.14(g)(4).

Consequently, against this threat of extinction, conducting the draft EIR/EIS public review and comment stage without Biological Opinions or even Biological Assessments and draft Biological Opinions, leaves the public in the dark and violates both the ESA and NEPA. Conducting the NEPA environmental draft process prior to and in a vacuum from the ESA consultation process violates the ESA command to carry out the ESA process “at the earliest possible time” and violates the NEPA command to conduct the NEPA and ESA processes “concurrently” and in an “integrated” manner.

***The public and the decision-makers now have what they do not need:*** 40,000 pages of advocacy from the consultants including self-serving speculation that the adverse effects of reducing flows in the Sacramento River, sloughs, and Delta will be offset. ***The public and the decision-makers do not have what they do need and are entitled to by law:*** the federal agency Biological Assessments and Biological Opinions required by the ESA and NEPA.

This draft EIR/EIS circulated prior to preparation and circulation of federal agency prepared Biological Assessments and Biological Opinions is “so inadequate as to preclude meaningful analysis,” 40 C.F.R. § 1502.9(a), because the public and decision-makers do not have the basic federal agency analyses required by the ESA to determine whether DWR’s preferred alternative—the BDCP Water Tunnels—is even a lawful alternative, let alone an environmentally acceptable alternative.

Just as the inadequate draft EIR/EIS violates NEPA, the draft EIR/EIS is so fundamentally and basically inadequate and conclusory in nature that meaningful public review



and comment are precluded which also violates the California Environmental Quality Act (CEQA). 14 Code Cal. Regs. § 15088.5(a)(4). As the California Supreme Court said in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal.4<sup>th</sup> 412, 449 (2007), “Especially given the sensitivity and listed status of the resident salmon species, the County’s failure to address loss of Cosumnes River stream flows in the Draft EIR ‘deprived the public . . . of meaningful participation’ [citation] in the CEQA discussion. (See CEQA Guidelines, Cal. Code Regs., tit. 14, § 15065, subd. (a)(1)[potential substantial impact on endangered, rare or threatened species is per se significant].)”

### CONCLUSION

In the absence of answers to basic questions including ESA questions about jeopardy of listed fish species and adverse modifications of designated critical habitats, the draft BDCP EIR/EIS is not sufficient for informed review by the public and the decision-makers. It will be necessary at minimum under the ESA, NEPA and CEQA for the federal and state agencies to prepare, issue, and circulate for public review a **new draft** EIR/EIS concurrently with and integrated with Biological Assessments and Biological Opinions. 40 C.F.R. §§ 1502.9(a); 1502.25(a) (NEPA); 14 Code Cal. Regs. §§ 15065(a)(1); 15088.5(a)(CEQA). Then, and only then, would the public and the decision-makers have the opportunity to engage in meaningful analysis of a preferred project alternative and informed comparison with other alternatives.

Finally, we reiterate that the BDCP Water Tunnels project is in fact prohibited by the ESA because it would adversely modify designated critical habitat for at least five endangered and threatened fish species. The fact that the ESA required consultations would result in determinations in the Biological Assessments and Opinions that the preferred project alternative is prohibited by the ESA does not justify the unlawful evasion and postponement of the consultations.

Please call Robert Wright, Senior Counsel, Friends of the River, (916) 442-3155x 207 with any questions you may have.

(incl. 4 attachments)

Sincerely,

/s/ E. Robert Wright

Senior Counsel  
Friends of the River

/s/ Kathryn Cotter  
Legal Counsel  
Friends of the River

**From:** Lindsay <lindsayaf@earthlink.net>  
**Sent:** Wednesday, January 15, 2014 2:47 PM  
**To:** BDCP.comments@noaa.gov  
**Subject:** Water Project DVD

Please send a DVD of the Delta project documents.

Thank you.

Sincerely, Lindsay Fowler  
2661 E1 Pomar Dr  
Templeton, CA 93465

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**From:** JOHN <JFHARCK@yahoo.com>  
**Sent:** Thursday, January 16, 2014 8:11 AM  
**To:** BDCP.comments@noaa.gov  
**Subject:** The Tunnel Plan, etc.

Stop the madness. Kill this plan. California borders the Pacific Ocean. Put money into desalination!

---

**From:** Jensen, Bruce, CDA <bruce.jensen@acgov.org>  
**Sent:** Thursday, January 16, 2014 9:35 AM  
**To:** 'BDCP.comments@noaa.gov'  
**Subject:** Question on project description on Bay Delta Conservation Plan.

Good day – I was hoping to make a phone call to you, as I thought it the best method for the questions I have, but I did not see a contact number.

Here in Alameda County, we have a very small area that lies within the boundaries of the BDCP, the far northeast corner of Alameda County, perhaps on the order of 10 square miles; it is difficult to tell at the map scales provided in the documents precisely how large an area of the County is included. Our area contains some very modest frontage on wetlands and sloughs, but it is mostly farmlands, with some nonnative grasslands and possibly some woodlands. That area of the County contains some utility uses, and has been eyed recently by industrial-scale solar developers.

It is also difficult to tell whether or not any of the proposed actions of the plan – construction, habitat acquisition or restoration, or restrictions on land use - would apply within Alameda County. I was hoping to speak with someone who could provide some guidance to us on this matter.

We will have some additional comments as well. Thanks for your interest and guidance.

Bruce Jensen,  
Senior Planner  
Alameda County Planning Department  
224 West Winton Avenue, Room 111  
Hayward, CA 94544  
(510) 670-6527

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**From:** Steve Rosenblum(pol1) <pol1@rosenblums.us>  
**Sent:** Friday, January 17, 2014 11:38 AM  
**To:** BDCP.comments@noaa.gov  
**Subject:** Twin Tunnels not desirable

It is clear that we need to do a lot of work to preserve the Delta ecosystem, mainly shoring up the levees. This work could be done for \$6 billion. The construction of the twin tunnels, at a cost exceed \$30 billion, to export huge amounts of Sacramento River flow to Central Valley agribusiness is economically and environmentally unjustified. Agriculture uses 85% of the state's water and should expect to pay the true cost of delivering that water. Cities can meet their water demand by conservation and re-use of waste water and possibly by desalination. These methods are all justified by the high value that cities place on their water. Agribusiness, on the other hand, demands cheap water. This no longer exists in California and our farmers need to adjust their practices to recognize this fact rather than to continue to destroy the ecosystem, principally fish, plants and wildlife, to perpetuate this myth.

Stephen Rosenblum  
212 Santa Rita Ave  
Palo Alto, 94301

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**From:** Judith Mathat <djmathat@gmail.com>  
**Sent:** Monday, January 20, 2014 9:23 AM  
**To:** BDCP.comments@noaa.gov  
**Subject:** Bad expensive idea to fill someone's pocketbook instead if a long term solution.

This is a very bad idea when the technology to use desalination plants that are providing water to many other countries at this very moment work very well. Also I lived in Europe for 8 yrs and recycled water was used then and is used today, that was at least 30 plus years ago. Why build tunnels to transport water at great expense when building desalination plants are a much more long term viable solution. Also it is very suspicious that this is just another pork project for some politicians and or their cronyism actions. Not a viable use of taxpayers dollars and not a good project when you look at today's drought situation and promised water allocations would fall apart if there was no water to send. This will destroy the Delta and the economy in the area. The water secured from the Owens Valley destroyed the opportunity for that area of California to flourish and provide jobs and produce for the world. Do not relive history and take water from Northern California to supplement Southern California when they are sitting next to the Pacific Ocean. If the decisions to do this was made by ANY graduates of ANY college in the USA then we truly are graduating a bunch of book smart dirt stupid students with no common sense!!!!

The only other reason besides the above is that some bodies rice bowl needs filling or will get broken if it does not go through. More government plodding on itself!!!

From Judy Mathat

530-417-1018

God Bless America

**From:** ronald flores <ronaldward2004@yahoo.com>  
**Sent:** Monday, January 20, 2014 4:24 PM  
**To:** BDCP.comments@noaa.gov  
**Subject:** Comments for BDCP

The Twin Tunnels part of the BDCP makes no sense. **Billions of Tax Payer Dollars** for a plan that makes no new water is a joke. I would love to hear the answers to my questions. I am sure there are many folks that have the same questions and would appreciate direct answers.

1) What about shoring up the delta levees if you want to secure delta water from earthquake or flooding? A lot less expensive than tunnels. By the way, Independent Geologists Science Experts give that threat little or close to no weight.

2) What about water recycling and cleaning up underground water? **Actually Make More Water, like what Orange Co is doing. So we are prepared for droughts when they come again. Isn't Reliability one of your goals?**

3) What about using solar power for desalinization plants for So Cal cities? Lots of sun and ocean water in So Calif.

It might not cover the total need however maybe we can use natural resorces of the region to provide a part of a clean reliable water supply that is actually made usable water.

4) Why do farmers plant their crops on poisoned lands? That makes no sense. The runoff washes toxic salts, boron and selenium into our delta and bays. Water should be priced right or penalties in place so that type of destructive business practice is not practical. Reduction in poisoning our water is a good thing for the public.

5) What about the independent scientific data that supports too much water is being taken out of the delta? Shouldn't we increase flows like the scientific data points us?

6) What about water leaks in the cities? Is some infrastructure outdated and leaking? If not a problem, great. I would like to know of potential water in that area that could be made.

7) What about gathering support for a plan from the folks that live in the areas that are directly affected? Did you get support from the folks in No Calif or Native Americans? Did you reach out and ask for their input during the planning stages? Why were planning meetings held in private?

8) Is there surplus water? How much surplus do you think? Give us Taxpayers a ball park figure. Why would we agree to pay for something when you do not how much water you plan to take out?

9) Doesn't the water in the rivers belong to all of us? Why do Water Districts get to Broker Water for a profit? Isn't that the public's money that gets transferred to private hands when water is brokered?

10) If Ag uses 80% of the water, do they pay 80% of the construction and maintenance costs? Does it make financial sense for Ag to pay 80% of the cost, every year?

10) In a dry year if/wen Ag does not get enough water, how will they pay their part of the construction and maintenance

costs of Twin Tunnels? What assurance do we have that taxpayers are not stuck with that bill?

11) Why would the BDCP build huge tunnels if they were not going to be used?

Conclusion:

There is enough water for farms and cities and for the river to be healthy. The reason we are at where we are is because we are out of balance with nature. The amount of "surplus water " exported South has increased dramatically over the last 14 yrs and that has seriously affected our ecosystem. Fresh water needs to flow through the delta or it will surely collapse and change into a stagnant foul pool of mud. Water is a limited resource and is no longer cheap. We, the people of Calif, must value it and speak up for a plan that makes sense. One that actually makes more water and makes economic sense. The Twin Tunnels move water around the delta and benefits Ag and

puts the cost on Tax Payers and our delta ecosystem. Current delta flows are unsustainable. Working towards Regional sufficiency has got to be the goal of the plan for the plan to work.

Sincerely,  
Ron Flores  
510 Alameda Dr  
Livermore CA 94551



---

**From:** Mark Phillips <MPhillips@dpf-law.com>  
**Sent:** Tuesday, January 21, 2014 9:35 AM  
**To:** BDCP.comments@noaa.gov  
**Subject:** Draft Bay Delta Conservation Plan

Good Morning:

I would like to obtain a larger, more readable copy of an exhibit in the draft plan. It is Figure 214 of Chapter 2, Existing Ecological Conditions. The figure is a map of the Distribution of Natural Communities and Urban Land Cover. The online version is too small to be able to identify the property I am researching.

Thank you,

**Mark Phillips**

**Land Use Planner**

DICKENSON, PEATMAN & FOGARTY

1455 FIRST STREET, SUITE 301 | NAPA, CA 94559

T: 707.252.7122 | F: 707.255.6876

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**From:** Roger Lang <drjangdds@sbcglobal.net>  
**Sent:** Tuesday, January 21, 2014 12:54 PM  
**To:** BDCP.comments@noaa.gov  
**Subject:** Twin tunnels

I am a dentist and resident of Stockton, California---I am most concerned about the water situation in California--if you look at the history of California you will see that much of it is desert--we have brought water projects along to inhabit and farm 'the desert'--our population has grown and the demands on fresh water are beyond what we can handle and still keep Sacramento-San Joaquin water ways healthy or even "alive"--there is a limit on growth and use and we have already reached this limit--it will be a disaster to send water down into the areas that are no longer sustainable and lose the quality and health of the Sacramento-San Joaquin--we will in short time be an irreversible estuary if not already--these areas need this fresh water flush--it may be time to close up communities and farmlands and become sustainable--Roger Lang



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**From:** Lyster, Stefanie <Stefanie.Lyster@icfi.com>  
**Sent:** Friday, January 10, 2014 2:55 PM  
**To:** BDCP.comments@noaa.gov  
**Subject:** FW: formal economic impact comments  
**Attachments:** BDCP economic impact report review final.pdf

Ryan,

We are forwarding the attached to you for submittal as a formal comment on BDCP, although the comment may also come in through San Joaquin County.

Stefanie

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**From:** Zippin, David  
**Sent:** Thursday, January 09, 2014 8:05 PM  
**To:** Pierre, Jennifer; Greenwood, Marin; Wilder, Rick  
**Cc:** Lyster, Stefanie; Janet Barbieri ([Janet@JBEnviroComm.com](mailto:Janet@JBEnviroComm.com))  
**Subject:** FW: formal economic impact comments

Hi,

Stefanie and Janet, it didn't sound like Jeff was submitting this as a formal comment (San Joaquin County was going to do that), but we should probably consider it as such just to be sure.

David

----- Forwarded message -----

**From:** Jeffrey Michael <[jmichael@pacific.edu](mailto:jmichael@pacific.edu)>  
**Date:** Wed, Jan 8, 2014 at 7:23 PM  
**Subject:** formal economic impact comments  
**To:** "David Sunding ([sunding@berkeley.edu](mailto:sunding@berkeley.edu))" <[sunding@berkeley.edu](mailto:sunding@berkeley.edu)>

David,

I have attached a more formal review I was asked to prepare by San Joaquin County. I think they are sending it to BDCP, but they asked me to post it on the web and I thought I should send it on directly to you. There shouldn't be any big surprises to you, as I have previewed most of the new questions with you informally and much of the rest are repeats from previous comments. Thanks for your answers and clarifications throughout the process.

I think the biggest gap is a biological assessment of the existing conveyance scenario. I know chapter 9 sidesteps this by comparing alternatives to each other, but the economic welfare analysis in this report can't do that. I have asked a lot of biologists opinions on this, and none said BDCP was better for fish, and many said the existing conveyance scenario seems more protective of fish than the BDCP.

Jeff

--  
David Sunding  
Thomas J. Graff Professor of Resource Economics  
207 Giannini Hall MC3310  
University of California  
Berkeley, CA 94720

Tel: 510-642-8229  
Fax: 510-643-8911

email: [sunding@berkeley.edu](mailto:sunding@berkeley.edu)

# Review of the Bay Delta Conservation Plan Statewide Economic Impact Report, August 2013 draft<sup>1</sup>

December 2013

Dr. Jeffrey A. Michael  
Director, Business Forecasting Center  
Eberhardt School of Business  
University of the Pacific

## Executive Summary

The “Bay Delta Conservation Plan Statewide Economic Impact Report” (Report, hereinafter) was released in August 2013. The Report is an economic evaluation of the \$25 billion (2012\$) BDCP proposal to build water conveyance tunnels under the Delta and habitat restoration projects. The Report was produced for the California Department of Water Resources by ICF Inc. and The Brattle Group, consultants who have worked extensively on the development of the BDCP. Although the Report is an economic analysis prepared for the Department of Water Resources, it deviates significantly from the Department of Water Resources’ Economic Analysis Guidelines in ways that bias the analysis in favor of the tunnels.

The Report includes two distinct economic analyses of the BDCP proposal; 1) an economic welfare or benefit-cost analysis, and 2) an economic impact analysis on statewide employment and income. Combining these two distinct studies into the Report results in some confusion and inconsistency since some costs that are included in the economic impact analysis are incorrectly omitted from the economic welfare or benefit-cost analysis. Overall, both analyses suffer from high-level structural errors in how the issue is framed, as well as significant errors and biased assumptions in the details of the calculations.

The overall structural flaws of the Report include:

- **The twin tunnels are not analyzed independently.** The Report violates accepted benefit-cost and policy analysis principles by presenting the tunnels and habitat projects as a single package, and creates a false choice that habitat restoration can only occur with the tunnels.

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<sup>1</sup> Financial support for this review was provided by the San Joaquin County Department of Public Works. San Joaquin County received funding from the US Department of The Interior, via the California Department of Water Resources and the Delta Conservancy to analyze the impacts of the BDCP on San Joaquin County. The analyses and conclusions herein are solely those of the author.

- **The BDCP is compared to a weak and unrealistic no-BDCP alternative that assumes water agencies do nothing.** This assumption conflicts with the Metropolitan Water District's and other export water agencies' management plans, and incorrectly assumes that water agencies take no actions to comply with the 2009 Delta Reform Act in the absence of BDCP.

Some of the specific problems with the Report include:

- **The Report assumes water agencies make no additional investments in alternative water supplies in California for the next sixty years,** even if Delta water exports further diminish in the future. Thus, the Report makes exaggerated and alarmist claims about the extent and impact of water shortages that directly contradict the export water agencies' planning documents.
- **The Report invalidly changes the baseline level of water exports for the valuation of water supply and environmental benefits.** A scientifically valid report would measure all impacts from a consistent baseline, but the Report varies the no-tunnel baseline for water exports by over 1 million acre feet per year in ways that severely bias the assessment in favor of the BDCP tunnels.
- **The Report grossly overstates future urban water demand by utilizing aggressive and outdated population forecasts and ignoring conservation improvements.**
- **Over \$7 billion in costs paid by taxpayers primarily for habitat are omitted from the Statewide economic welfare analysis,** even though benefits from these investments are included.

Many of the errors and omissions within the Report are directly related to the BDCP's San Joaquin County impacts.

- **The economic costs from the loss of approximately 100,000 acres of Delta farmland to BDCP habitat and tunnel construction are omitted from the Report.**
- **The Report includes an incorrect and biased estimate that a million dollars of crops produced by water exporters creates 48 jobs, whereas a million dollar of crops in the Delta only creates 13 jobs.** The discrepancy is because the Report uses a different methodology for each region of the State covered by the Report. The Report's methodology for agricultural water exporters incorrectly double counts agricultural support services jobs (i.e. labor contractors) and uses multipliers that includes food processing jobs that are excluded from the Delta analysis.
- **The Report ignores the impact of the tunnels on in-Delta municipal and industrial water diversions.**
- **The Report ignores the impact of tunnel construction on existing Delta recreation.**

Many more errors and omissions in the Report are discussed in the detailed review that follows. Overall, the Report exaggerates the benefits of the Delta tunnels by comparing it to an invalid, unrealistic, ineffective and inconsistent description of conditions without the tunnel-based BDCP. Without these extreme assumptions and omissions, the BDCP would not be able to claim that it economically benefits California. It is highly unlikely that a valid and unbiased benefit-cost analysis following the Department of Water Resources' Economic Analysis Guidelines or other broadly accepted frameworks for benefit-cost analysis would find the twin tunnels to be economically justified for California.

In addition, the economic impact results are greatly distorted by the assumption of no alternative water supply investment in the no-tunnel BDCP scenario as well as errors in the agricultural jobs analysis. Simply correcting these two errors in the water supply reliability analysis would reduce the estimated employment gains from BDCP by over 900,000 "job years", a nearly 90% reduction in the claimed 1.1 million "job years" the Report estimates from BDCP. If BDCP were compared to a strong no-BDCP alternative, the BDCP would be unlikely to result in any net gain to California employment.

## Introduction

The Report has two main components. The majority of the Report is an “economic welfare” analysis that attempts to satisfy the many requests for a statewide benefit-cost analysis. The second part is an economic impact analysis that attempts to estimate the effect of the BDCP on Statewide employment and income. While there are pieces of useful information and analysis within each part of the Report, the overall effort is fatally flawed by inconsistencies, biased assumptions, and other errors and oversights that inflate the benefits of BDCP relative to an inaccurate and inconsistent portrayal of conditions without the BDCP.

The first part of this review focuses on the inconsistencies and errors of the no-BDCP alternative that greatly affect both the welfare analysis and the economic impact analysis. The second part of this review makes specific comments on the welfare analysis, and the third part provides detailed comments on the economic impact analysis. As long as the no-BDCP alternative is incorrectly and inconsistently defined, any future revisions of the Report will continue to be useless for policy analysis even if all the detailed comments are adequately addressed.

### 1. The No-BDCP Alternative is Incorrect and Inconsistent

The economics of the BDCP can only be measured by comparing it to no-BDCP conditions. Thus, correctly defining the no-project conditions is essential. Any project can be justified if it is compared to a bad enough alternative. The Report does not have a section which clearly describes a non-BDCP alternative that is utilized consistently throughout the Report. Instead, the scenario to which BDCP is compared varies from section to section of the Report which creates large errors that bias the analysis in favor of the BDCP.

There are three important parts to defining the no-BDCP scenario: a) Delta water exports; b) the level of habitat investment; and c) the level of investment in BDCP alternatives. The Report makes critical errors in all these areas, and in each case the error exaggerates the benefits of BDCP.

**1.1. Shifting baselines for Delta water exports:** The Report shifts back and forth between Delta water export scenarios that differ by more than one million acre feet per year. The inconsistent baseline is scientifically invalid. It results in extreme overstatements of the water supply and environmental benefits of BDCP. The poorly justified shift away from the EIR/EIS baseline increases the estimate of water supply benefits by over \$10 billion.

The BDCP EIR/EIS defines the scenario without the BDCP as full implementation of the existing biological opinions. Estimates of average annual water exports would be 4.7 maf in 2025 if the tunnels were not built. This EIR/EIS no-tunnel baseline has been used by BDCP for many years. All the environmental analysis done for BDCP impacts has been conducted relative to this baseline. Thus, the economic analysis of the environmental benefits in the Report utilizes this EIR/EIS baseline.

In May 2013, BDCP chapter 9 introduced a new no-BDCP baseline that dramatically lowered the assumed water deliveries from the Delta without the BDCP. This new scenario, called the “existing



conveyance scenario,” imposes the BDCP restrictions on the south Delta pumps without introducing the new north Delta intakes and tunnels. The scenario reduces Delta water exports to an average of 3.4 maf to 3.9 maf, an average decrease of more than 1 maf of water exports compared to the EIR/EIS baseline. The valuation of water supply benefits in the Report uses the existing conveyance scenario. Thus, the Report estimates the water supply increase from BDCP is over 1 maf per year larger than if the Report had utilized the EIR/EIS baseline.

Because it does not include the environmental damage of the north Delta intakes while including the beneficial restrictions on south Delta pumping, the existing conveyance scenario has been said by many to be significantly more protective of fish than the BDCP preferred tunnels project. The Report does not include any environmental analysis for the existing conveyance scenario. Thus, it is invalid to use it as the baseline of a statewide analysis of benefits and costs that assesses both water supply and environmental benefits of BDCP.

If the EIR/EIS baseline was used for the water supply analysis, the BDCP consultants have stated that the economic benefits to the water contractors would be significantly lower than their costs, and the analysis detailed in the BDCP chapter 9 Appendix suggest that the change in baseline would decrease benefits by over \$10 billion. In contrast, if the “existing conveyance scenario” was used for the environmental analysis, the estimated environmental benefits of BDCP to the state would drop substantially and possibly be negative since the significantly lower levels of water exports in the “existing conveyance scenario” are likely to be better for fish and will have lower greenhouse gas emissions than the BDCP proposal.

The failure to use a consistent no-BDCP baseline for water exports across all components of the analysis is a fatal flaw that makes all policy conclusions from the Report scientifically invalid.

**1.2. No-BDCP Habitat Assumption.** The Report inaccurately assumes that none of the habitat projects included in the BDCP would be implemented in the absence of the BDCP. This assumption is contradicted by the funding plan for BDCP, the Delta Stewardship Council’s Delta Plan, and the 2009 Delta Reform Act which requires significant actions to improve water supply reliability and ecosystem restoration with or without the twin tunnels and BDCP.

Both the welfare analysis and the economic impact analysis quantify significant economic benefits that stem from the construction of restored habitats envisioned in the BDCP. Since these analyses are relative to the no-BDCP baseline, the implicit assumption is that none of these habitat projects would be implemented without the BDCP. The funding plan for BDCP suggests otherwise, as all the habitat investments (except for the mitigation requirements for the tunnels) are funded by existing sources or anticipated water bonds that are separate from BDCP. Every dollar utilized for these habitat investments would still be available for these habitat investments without BDCP, and in most cases the projects would still go forward without BDCP because they are included in the Delta Stewardship Council’s Delta Plan and the 2009 Delta Reform Act requires actions to achieve the co-equal goals.

The economic analysis must define the habitat projects that would be likely to move forward without BDCP. Given the funding plan for BDCP, where the water contractors only pay for the tunnels and

mitigation and public funds pay for BDCP habitat, it is hard to argue that BDCP will result in any net increase in statewide conservation investments over the duration of the project. In fact, it is possible that BDCP could cause conservation funds to be diverted from projects with higher conservation values outside the Delta to implement the BDCP, and thus result in a net statewide loss. Since BDCP does not provide any new resources to Statewide conservation investments compared to a no-BDCP scenario, it is invalid for the report to assume that BDCP results in an increase in statewide habitat investments relative to the no-BDCP scenario.

**1.3. Investment in Tunnel Alternatives:** The Report incorrectly assumes that the level of investment in conservation and alternative water supplies is the same in the BDCP and no-BDCP scenario.

As discussed later in this review, the baseline urban water supply and demand projections in the Report are founded on an overly pessimistic view of future conservation and development of alternative water supplies. The Report assumes conservation gains slow dramatically compared to the past twenty years, totaling only 250,000 acre feet by 2035, and assumes that less than 200,000 acre feet of water recycling and desalination projects would be completed, for a total of only 450,000 af of new conservation and alternative water supplies. In contrast, the San Diego County Water Authority has identified up to 1,300,000 acre feet of alternative water supplies that are already in the plans of southern California urban water agencies. In addition, this assumption conflicts with integrated resource management plan of the Metropolitan Water District (MWD).<sup>2</sup> The MWD regional plan includes nearly 700,000 acre feet of new conservation and alternative water supplies in the “Core Resource Strategy” that MWD plans to implement under any future scenario, and an additional 500,000 acre feet of “Uncertainty Buffer” water supplies that MWD would develop if necessary.

Given the pessimistic baseline for conservation and recycling, it is invalid for the Report to assume that there would not be any additional water supply development stimulated by the extreme water shortages the Report forecasts in the no-BDCP existing conveyance scenario. The MWD Integrated Regional Plan describes the “Uncertainty Buffer” as a strategy that calls for additional local resource development that would be triggered by the type of action envisioned in the No-BDCP alternative. This strategy would result in an additional 500,000 acre feet buffer above the Core Resource Strategy that would only be developed if needed. Thus, the Report’s assumption that there would be no difference in conservation and local water resource development with or without BDCP is invalid.

“For example, the imposition of additional and unforeseen environmental and regulatory restrictions could cause significant impacts to water supplies. Under additional restrictions, Metropolitan would need to significantly adapt in order to meet anticipated water demands...”

Through the IRP Technical Workgroups, Metropolitan’s member agencies have also identified various local supply projects that could be implemented and added to the regional supply portfolio if necessary. For the purposes of the rate discussion in Section 4, this additional local supply development is assumed to be up to 300,000 AF regionally. Combined with the 200,000 AF of regional water-use efficiency buffer, the

<sup>2</sup> <http://www.mwdh2o.com/mwdh2o/pages/yourwater/irp/IRP2010Report.pdf>

total regional buffer could be as much as 500,000 AF. These local supply projects would be developed as needed, based on an evaluation of risk, cost and regional benefit.” (MWD Integrated Regional Plan 2010, page 3-18)

Rather than follow the largest urban water agency’s official plan for how it would respond to a no-BDCP alternative with reduced water exports, the Report paints an unrealistic, do-nothing alternative. The result is an alarmist prediction of economic losses without the BDCP.

#### **1.4. Outline of a Correct No-BDCP or No-Tunnels Alternative**

The co-equal goals of the 2009 Delta Reform Act remain the law of California even without BDCP, and non-tunnel conservation measures in the BDCP rely on funding sources that will exist in the absence of the BDCP. A better and more realistic no-BDCP, no-tunnels, alternative would have the following four elements:<sup>3</sup>

1. Delta water exports that match the BDCP EIR/EIS no-action alternative and are consistently applied throughout all sections of the Report’s analysis.<sup>4</sup>
2. Implementation of most, if not all, of the non-tunnel conservation measures included in the BDCP.
3. Significantly higher investments in conservation and alternative water supplies financed by the tens of billions of dollars saved by not constructing the tunnels.
4. An assumption of higher level of levee investment, and flood protection from seismic and catastrophic events, for both the BDCP and no-BDCP alternatives.

This no-BDCP alternative is not only more accurate and realistic, it also would greatly simplify and clarify the economic study. Since the level of habitat investments and recovery prospects for endangered and threatened fish would be similar in the BDCP and no-BDCP alternatives, the costs and benefits of these actions would mostly cancel each other out when the BDCP and no-BDCP alternative are compared. The resulting economic analysis would then be properly focused on the main decision facing the State with respect to the BDCP: whether or not to build the twin tunnels.

## **2. Economic Welfare Analysis Comments**

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<sup>3</sup> This alternative is similar to the recommendations of the Delta Protection Commission’s Economic Sustainability Plan adopted in January 2012. The DPC is a State agency with representation from in-Delta communities and State agencies and has taken an official position in opposition to the BDCP’s proposed project that is centered around the twin tunnels. The DPC’s Economic Sustainability Plan can be found at <http://forecast.pacific.edu/desp.html> or [http://www.delta.ca.gov/res/docs/ESP/ESP\\_P2\\_FINAL.pdf](http://www.delta.ca.gov/res/docs/ESP/ESP_P2_FINAL.pdf). The executive summary is at this link [http://www.delta.ca.gov/res/docs/ESP/ESP\\_ES\\_FINAL.pdf](http://www.delta.ca.gov/res/docs/ESP/ESP_ES_FINAL.pdf).

<sup>4</sup> A lower level of water exports than the EIR no-action alternative could be utilized if there were a complete analysis of the environmental benefits of such an alternative so that the lower level of water exports could be consistently applied throughout the entire Report. At this point, there is no environmental analysis of the so-called Existing Conveyance Scenario used in the Report and Chapter 9 of the BDCP. Thus, the EIR/EIS no-action alternative is the only defensible no-tunnel alternative for water exports with the necessary information for a complete economic welfare analysis.

Most of the Report consists of the economic welfare analysis which BDCP asserts is equivalent to a statewide benefit-cost analysis. However, the economic welfare analysis has a number of serious shortcomings and falls short of the standards laid out in State and Federal benefit-cost guidelines. As discussed above in Section 1 above, it is critical that the Report's analysis compares the proposed project to strong and likely no-project alternatives. Instead, the Report uses a weak and unlikely scenario for comparison. If the Report were to use a strong no-BDCP alternative as described above, it would also resolve many of the criticisms of the economic welfare analysis listed below.

**2.1. The tunnels must be analyzed and justified separately from the habitat investments according to standard benefit-cost principles, including those published by the State Department of Water Resources.**

The Report co-mingles effects of the tunnels with habitat repeatedly. Benefit-cost guidelines are clear that conveyance and habitat elements are separable and should be justified independently. If the no-BDCP alternative were defined as described in Section 1 above, this issue would be less important since there would be little difference in the habitat enhancement in the BDCP and no-BDCP alternative. In addition, many of the criticisms below would not be relevant if the benefit-cost calculations were focused solely on the tunnels.

**2.2. The Report analysis ignores BDCP costs that are not paid by the water contractors. Thus, over \$7 billion in costs paid by taxpayers primarily for habitat are omitted from the calculation of statewide net benefits.**

The absence of non-contractor BDCP costs from the economic welfare analysis portion of the Report is a glaring omission. Table ES-2 of the Report summarizes the statewide welfare changes from implementing does not include over \$7 billion in BDCP costs that would be paid by State and Federal taxpayers. Simply including this important cost would substantially change the result of \$5 billion present value of net benefits. The Report provides no explanation for this important omission.

During the public meeting on the Report, the consultants reportedly stated that they intentionally omitted this cost because they had not quantified all the non-market values of BDCP habitat restoration. This is an invalid excuse since the Report did calculate many non-market benefits from restoration, but omitted all of the costs. In addition, as discussed below, there are many non-market benefits and costs from implementing BDCP that are left out of the Report's analysis and it is not clear that BDCP is even a net positive for these non-market values. This is another issue that would be less important if the no-BDCP alternative were defined as described in Section 1 above, or would be irrelevant if the benefit-cost analysis was properly focused on the tunnels alone.

**2.3 The economic costs from the loss of approximately 100,000 acres of Delta farmland to BDCP are omitted from the calculation of statewide net benefits.**

It is surprising that this cost is omitted from the Report's welfare analysis since most of it is included in the economic impact analysis (see Table 5.1-8 which includes agricultural land loss from all the conservation measures except the tunnels). The loss in producer welfare from the estimated \$89

million loss in Delta agricultural production would likely result in a present value loss of economic welfare of between \$500 million and \$1 billion that should be included as a cost in the Report's welfare analysis. This is another issue that would be irrelevant if the benefit-cost analysis was properly focused on the tunnels alone.

**2.4. The Report uses an aggressive, outdated population growth scenario for the State that overstates the number of future water consumers by several million.**

The excessive population forecast in the Report results in a large overstatement of future growth in water demand, and subsequently overstates future water shortages and the value of water supply reliability. The California Department of Finance has updated population growth projections based on the 2010 Census, as well as updated data on fertility, mortality and migration. As a State planning document, the BDCP should be consistent with CA DOF projections. It appears that BDCP study has 5 million too many urban residents in 2050 compared to current projections, which suggests urban water demand and the resulting shortages are overstated by at least 500,000 af per year. The information about the forecast of future water demand is in BDCP chapter 9, appendix A, and is incorporated by reference into the Report.

**2.5. The Report's analysis contains an unrealistically pessimistic view of future water conservation.**

The Report's water demand forecast assumes that very little new water conservation is adopted in urban areas that receive exported water from the Delta. The information about the effect of conservation on the forecast of future water demand is in BDCP chapter 9, appendix A, and is incorporated by reference into the Report.

**2.6. The Report's analysis pessimistically assumes no technological improvements in alternative water supplies and conservation.**

The Report's calculation of future water supply reliability benefits assumes fixed technology for alternatives and conservation through 2075. In reality, technological improvements are already underway and more can be reasonably expected to result in significantly lower costs for alternative water supplies in the future. This assumption is embedded into the forecast of future water demand and valuation of future water supply reliability in BDCP chapter 9, appendix A, and is incorporated by reference into the Report.

**2.7. The valuation of reduced seismic risk to export water supply is a strong point of the Report, but may still be an overstatement when compared to an equally strong BDCP alternative.**

Compared to the incorrect scare tactics of the BDCP public relations campaign, the relatively modest estimate of \$470 million in seismic reduction benefits is an important point of the report. It correctly accounts for the fact that, even with the tunnels, water exports would still be significantly curtailed by a massive earthquake and flood event that disabled the south Delta pumps. The largest amount of seismic protection for water exports is achieved by a strategy that invests in a seismically resilient levee system. Such an investment would make sense not just to protect water exports, but also to protect

public safety, tens of billions of dollars in other critical transportation, energy and water infrastructure in the Delta, private property, farmland, and to protect against environmental damage from levee failures.

It could be argued that the BDCP provides zero or negative seismic risk reduction benefits for two reasons. First, if seismic levee improvements are made to the Delta to protect other infrastructure and water supply, then the incremental seismic protection benefits of the tunnels are near zero. Second, building the tunnels reduces the probability of investment in a seismically-resilient levee system because politically-influential water exporters will be less willing to support this investment. Thus, if the tunnels result in a lower overall level of seismic protection in the Delta, the construction of the tunnels result in a net decrease in seismic flood protection in the Delta on a statewide basis. Finally, it should be noted that the seismic failure probabilities in BDCP study are based on the DRMS report, which is thought by many engineers to be exaggerated and which utilizes outdated historical information on Delta levees that does not account for significant improvements that have been made in recent decades.

**2.8. The Report's finding that Delta salinity will be little changed by BDCP is unsubstantiated and inconsistent with policy actions of the Department of Water Resources and commitments in the draft BDCP.**

The Report uses a sound economic model to relate changes in Delta salinity to changes in Delta crop production. The finding in the Report of minimal salinity effects does not stem from the economic model, but from DSM-II modeling results provided by the Department of Water Resources that supposedly find that implementing the BDCP will have little effect on Delta salinity. The Report provides no references to a document with the modeling results or the results themselves. Thus, the Report offers little explanation and no scientific substantiation for the controversial and counter-intuitive result that diverting an additional 3 million acre feet of fresh water from the Sacramento River has little to no effect on Delta salinity. On page 3.1-11, the Report states that salinity in the south Delta is actually expected to decrease because of implementing the BDCP, in part due to "increased freshwater flows from the San Joaquin River." This is a plausible explanation for how Delta water quality might be maintained if the north Delta intakes and tunnels are built, but it should be noted that the "Existing Conveyance" scenario used as the baseline in the Report includes a substantial reduction in exports from the South Delta compared to current conditions or the EIR no-action alternative. The average baseline salinity level reported in the Report looks like current conditions, which adds further confusion as to which baseline is being used. This may be another case where the Report is plagued by the shifting baseline, and is another reason why the DSM-II results need to be clearly displayed for the "Existing Conveyance" scenarios, the BDCP scenarios, EIR no-action scenario and existing conditions. The Report needs to provide the detailed modeling results that are the basis of this controversial claim.

Furthermore, the Department of Water Resources should stand behind the modeling results by putting Delta water quality assurances within the BDCP that match their modeling. Without such documentation or policy assurances, the approach in the DPC Economic Sustainability Plan, based on water quality degradation consistent with the State's policy proposals, is more valid. In the absence of such assurances, Delta agricultural users face increased uncertainty about water quality if the BDCP is implemented. Undocumented computer modeling results, upon which the Report relies, do nothing to

alleviate that uncertainty in the absence of enforceable Delta water quality commitments within the BDCP itself.

**2.9. The Report is unbalanced in its consideration of regulatory uncertainty. The value of reducing uncertainty to water exporters is considered, whereas increased uncertainty in other regions of the State is ignored.**

BDCP documents note how climate change could reduce freshwater availability and reservoir levels in the future. Upstream water interests are concerned that the assurances BDCP provides to water deliveries outside the area of origin could destabilize future water availability in their regions. This increase in uncertainty has an economic cost that is ignored in the Report. Furthermore, the BDCP increases uncertainty for in-Delta interests, including water quality issues and the large "Restoration Opportunity Areas" that create uncertainty over land use and property values. The Report is unbalanced in that it values the uncertainty-reducing benefits of BDCP to some interests, but ignores the uncertainty-increasing effects of BDCP on other interests. On a statewide basis, many aspects of BDCP are properly seen as transferring risks rather than reducing risks.

**2.10. The Report's discussion of recreation impacts is unbalanced and uses an incorrect no-BDCP baseline. It does not quantify large negative impacts associated with the tunnels, while crediting significant speculative recreation benefits to BDCP that may also occur in the no-BDCP scenario.**

This section of the Report is poorly documented and explained. The Report only presents qualitative discussion of important negative impacts of the tunnels even those these impacts that physically disrupt recreation sites and water levels with historical usage levels are the easiest to estimate with real data. Instead, the researchers use a benefit transfer toolkit to make speculative assessments of increased recreation from increased conservation acres. The Report ignores other research on Delta recreation and fails to compare its baseline estimates of visitor counts to known data to validate the modeling. The Report ignores dozens of negative comments from Delta recreationists about BDCP, and makes no effort to collect quantitative and qualitative data from local recreation providers. While there are lots of numbers in this section of the Report, the most important numbers are missing. For example, the Report shows the estimated change in visitor levels, but does not provide the estimated visitation levels with and without BDCP, so that the results can be tested for reasonableness. The Report is unclear whether the increased visitation is driven by non-BDCP factor such as population or income growth. Most importantly, the Report's modeling appears to increase estimated recreational visits for substantial amount of acreage while the Report acknowledges that recreational access may not be significantly changed. For example, much of the conserved acres are conservation easements, not fee simple acquisition, and the Report states that visitor access may be restricted in many conservation areas. The BDCP makes no provision for increasing recreational facilities that would be needed to support the increased visits. The Report downplays the disruptive effects on boat navigation and the loss of existing recreational facilities from BDCP. Overall, this section of the Report simply has an unacceptable bias from not quantifying substantial and important negative impacts, while overstating and quantifying benefits from BDCP that may also occur in the no-BDCP scenario. Since the main difference between the BDCP and a reasonable no-BDCP scenario is the water conveyance tunnels

proposal, the recreation impacts of the tunnel construction and operation should be prioritized and quantified. It is highly unlikely that BDCP would result in recreation benefits and could result in net losses to recreation benefits.

**2.11. Significant negative groundwater impacts in the Delta are ignored in the Report.**

Delta communities will be negatively impacted by dewatering required for construction of the tunnels, and some habitat development could also negatively affect groundwater resources in the Delta. These significant in-Delta economic impacts are discussed in the BDCP's EIR/EIS, but are ignored in the Report.

**2.12. The Report's in-Delta urban water quality losses are not quantified, utilize an incorrect baseline, and do not discuss several important contaminants such as methyl mercury and organic carbon.**

The Urban Water Treatment section of the Report appears to be taken from the EIR/EIS, and does not appear to be consistently using the "Existing Conveyance Scenario" as the baseline. Since the "Existing Conveyance Scenario" has substantially lower exports than the EIR/EIS no-action scenario or existing conditions, it is likely to result in lower salinity in several in-Delta locations. In addition, this section of the Report discusses water quality changes at the Banks and Jones pumping plants, and these water quality benefits are already quantified in an earlier section of the Report that values the benefits of BDCP to water exports. In addition to double counting water quality benefits to export water agencies in two sections of the Report, this section of the Report ignores the potential impacts on the City of Stockton's new in-Delta water supply intakes.

The section of the Report does not discuss concerns of urban agencies about methyl mercury and organic carbon contamination from the BDCP. Overall, the biggest problem with this section of the Report is that it uses an incorrect baseline and offers only a qualitative discussion of benefits. The lack of economic valuation of these effects is inexcusable since the Report researchers went to great effort to quantify water quality benefits to the export agencies but did not bother to quantify water quality costs to other urban water agencies.

**2.13. The Report's commercial fisheries analysis is invalid and biased, because it does not use the same no-tunnel baseline scenario as the water supply analysis.**

The assessment in this section of the Report uses the EIR/EIS baseline instead of the "Existing Conveyance Scenario" that imposes BDCP pumping constraints on the south Delta and has far lower water exports than the EIR/EIS baseline. The Report provides no environmental analysis of the "Existing Conveyance Scenario", but it is thought by some experts to be more beneficial to salmon than the BDCP since it includes the benefits of BDCP pumping reduction in the south Delta without imposing the harmful effects of the new North Delta intakes. Thus, if compared to a consistent baseline as the water supply analysis, the commercial fishery effect of BDCP would be a cost, not a benefit. In addition to the wrong water export baseline, the Report's assessment takes credit for salmon improvements from habitat projects – like the Yolo bypass enhancement – that are likely to be implemented without BDCP. Finally, the Report's discussion of chinook salmon benefits is taken from the EIR/EIS which has been



challenged by fishery experts, so the Report may be overstating BDCP benefits to salmon even without the problem of the invalid baseline.

**2.14. The Report's air quality and greenhouse gas emissions analysis are incorrect because they do not use the same no-tunnel baseline scenario as the Report's water supply analysis.**

The "Existing Conveyance Scenario" used in the Report's water supply analysis has much lower water exports and water pumping south of the Delta. Thus, the Report's analysis grossly understates the increase in electricity consumption from implementing the BDCP, and also greatly underestimates the greenhouse gas and air quality costs of implementing the BDCP. If the "Existing Conveyance Scenario" baseline were used, the incremental amount of water exports resulting from BDCP would more than double, and the incremental greenhouse gas cost from the additional water pumping would double as well. Based on the results in the Report, the cost of BDCP would increase by roughly \$100m to \$250m if a consistent baseline were utilized.

**2.15 The Report's flood risk section assumes that there will be no difference in levee investment between the tunnel and no-tunnel scenarios.**

A more realistic and correctly specified no-BDCP scenario would include a higher level of levee investment than the BDCP. The Delta Stewardship Council Delta Plan calls on the State to create a levee assessment district that will assess levee beneficiaries to generate resources for flood protection and emergency response. BDCP would reduce the benefits of the levee system to water agencies and would result in a lower assessment and thus fewer funds to invest in the levee system. In addition, it would also reduce the incentive of the Department of Water Resources to allocate public funds to these projects because the levees would be of less value to the State Water Project. Finally, the Report's qualitative discussion of BDCP flood control takes credit for flood bypasses and other conservation measures that reduce flood risk, are part of the Delta Stewardship Council's Delta Plan, and are likely to be implemented with or without the BDCP.

**2.16. Property value benefits from BDCP open-space habitat are overstated in the Report. Development of farmland open space is already severely restricted in the Delta such that the BDCP will not increase open space.**

Between the land use restrictions of the Delta Protection Commission, the Delta Stewardship Council, floodplain designation, and restrictive agricultural zoning from Delta Counties, Delta agricultural lands already have some of the strongest development restrictions to be found anywhere. As a result, it is unlikely that Delta property owners will experience significant benefits from additional open space protection from BDCP. In fact, there could be conflict between agriculture and endangered species habitat on adjacent properties that increase regulatory risk and lower the value of Delta farmland. Finally, it should be noted that the north Delta area where the negative construction and operations impacts of the tunnel intakes will occur is the most populated portion of the Delta and has the highest value real estate in the Delta Primary Zone.

### **2.17. Including non-market values for endangered species protection in the Report could result in additional costs from implementing BDCP.**

The Report should account for the non-market value associated with the protection of endangered and threatened species. Since the low-export "Existing Conveyance Scenario" is likely to be more protective of fish than the BDCP, there would be a non-market cost associated with BDCP. Due to the use of the "Existing Conveyance Scenario" as the baseline, the Report is omitting non-market costs to endangered species resulting from not implementing the enhanced flows in this Scenario. These values could be considerable.

Instead of focusing on the more important non-market valuation of improving fish populations, the Report's consultants have stated that they may provide non-market values for habitat restoration to increase BDCP benefits in a future revision of this Report. As discussed above, there may not be a meaningful difference in habitat restoration if the BDCP and no-BDCP alternatives are defined correctly. However, if the Report's consultants do estimate non-market values for habitat development, it should also be noted that this development eliminates existing non-market values for the preservation of prime farmland. Prime farmland, as found throughout the Delta, provides non-use societal values similar to habitat. The public value placed on the preservation of prime farmland is manifested through a variety of policies that subsidize the preservation of or otherwise work to preserve farmland for public benefits. The BDCP would convert large amounts of farmland to habitat, and it is not clear at all whether the non-market values of prime farmland that is eliminated is higher or lower than that of habitat restoration. Any non-market valuations of restoration must be net of the lost non-market values of farmland. This is another controversial issue could be largely avoided if the no-BDCP alternative were properly specified as discussed in Section 1.

## **3. Income and Employment Impacts Comments**

The Report's economic impact analysis is separate from the economic welfare analysis discussed above. Some issues, like loss of agricultural land to habitat projects and taxpayer costs, are included in the Report's economic impact analysis but are excluded from the economic welfare analysis. The combination of two analyses into one report and the inconsistent treatment of impacts between the two analyses creates confusion. For example, including taxpayer costs in the Report's economic impact analysis does not minimize the error from excluding these impacts from the Report's welfare analysis.

The incorrect no-BDCP scenario described in section 1 of the Report is a source of major errors in the Report's economic impact analysis. In fact, the Report's incorrect assumption that there are no additional alternative water supplies developed in urban areas drives most of the results in the Report's economic impact analysis. It is worth noting that there are well-known problems with applying a static input-output model such as IMPLAN to the types of long-run macroeconomic effects considered in this section of the Report, and those weaknesses and the possible overstatement of impacts from the modeling approach should also be acknowledged.

**3.1. Urban Water Supply Reliability Impacts Are Grossly Overstated in the Report.** If Metropolitan Water District and other agencies follow their own plans for investment in alternative water supplies and conservation, there will be no water shortages for commercial and industrial activity if the tunnels are not built and thus no economic impact.

**3.2. Employment Impacts From Agricultural Water Supply Reliability Are Grossly Overstated in the Report.** The Report includes an incorrect and biased estimate that a million dollars of crops produced by water exporters creates 48 jobs, whereas a million dollar of crops in the Delta only creates 13 jobs.

The discrepancy is because the Report uses a different methodology for agricultural water exporters and Delta agriculture. The Report's methodology for agricultural water exporters incorrectly double counts agricultural support services jobs (i.e. labor contractors) and uses multipliers that includes food processing jobs that are excluded from the Delta region analysis. A consistent estimate for the SJ Valley agriculture region would have entered the change in agricultural revenue into the IMPLAN model in the same manner that was done for Delta agriculture region. Instead, the Report's analysis uses an econometric estimate of how water deliveries effect both direct farm employment and indirect agricultural services employment. Then, the Report's analysis incorrectly applies an employment multiplier derived from IMPLAN that includes both food processing and agricultural production. There are two large errors in this portion of the Report. First, the econometric model already includes indirect agricultural employment in its estimates, so applying an IMPLAN multiplier to these results double counts indirect jobs. Second, the multiplier is not for agricultural production but an aggregate industry that includes food processing and has a larger multiplier than just agricultural production. This is inconsistent with the treatment of Delta agriculture, and creates the nonsensical finding that a dollar of agricultural revenue in the Westlands Water District creates nearly four times the employment of a dollar of agricultural revenue in the Delta.

The bottom line is that there should be no significant difference in the employment multiplier between two agricultural regions in the Central Valley. Dr. Sunding, the lead Report consultant, used this econometric model in two other studies (a declaration he submitted on behalf of the water exporters in 2011 for a Federal court case regarding the Delta Smelt and Salmon biological opinions and an article in the UC ARE Update newsletter) but he did not apply a multiplier to his estimates of agricultural employment change in these other studies.

**3.3. Correcting the Report's errors in the urban and agricultural water supply reliability analysis would reduce the estimated employment gains from BDCP by over 900,000 "job years", a nearly 90% reduction in the claimed 1.1 million "job years" the Report estimates from BDCP.**

**3.4 The Report's calculations of employment impacts of building the tunnels are very small relative to the enormous public expenditure, generating only 7.8 years of employment per \$1 million in public spending.** This part of the Report's analysis is actually quite good, and generates a low employment number because of heavy spending on imported components and equipment, as well as concrete and other materials, that generate few jobs. Investing in alternative water supplies will generate far more

employment per dollar spent, and thus a correct no-BDCP scenario with alternative investments could create more jobs than BDCP.

**3.5. Agricultural land acquisition is a conversion of wealth from one form to another, and is incorrectly modeled in the Report as an increase in income in the Delta.** There is no reason why such a wealth shift would increase consumption over the 50 year BDCP period, especially since alternative investments with that wealth could be less profitable than farming. In addition, there could be debt against the acquired property that would have to be paid off with the compensation and which would reduce the net proceeds. Furthermore, the recipients of the proceeds of the property acquisition in many cases would have lost their homes and their jobs and are very likely to relocate from the area, which could reduce local spending. The Report's statement of positive impact that simply purchasing the land creates 7,000 jobs from increased household spending is incorrect and should be eliminated.

**3.6. The Report's statement of losses from increased water rates and taxpayer contributions to BDCP are underestimated due to an incorrect treatment in IMPLAN.** BDCP does not include a tax increase to fund public costs. It is a redirection of government spending from other areas to pay water bonds. For households, rate increases are a change to after-tax income, not pre-tax income.

Correctly modeling the State contribution as a decrease in State government spending on General Fund-supported programs, such as education, corrections, and healthcare, will result in much larger in-State losses to employment and income than the Report's approach of only including induced impacts and treating it as a pre-tax income change. For households, correctly treating the change as a post-tax income change will increase the induced effect and losses from BDCP.

**3.7. The Report's economic impact analysis excludes the loss of agricultural land from production from the construction of the tunnels.** Although fewer acres than habitat, this loss of agricultural production occurs before construction even starts, and thus it is very important because it has impacts over the entire analysis period covered by the Report.

**3.8. The Report's rate increase impacts do not account for financing costs.** Even though a finance plan remains in development, reasonable estimates of the costs of issuing bonds and maintaining appropriate bond coverage and reserves should be included in the Report because ratepayers will bear these costs.

**3.9. The reliability impacts of the BDCP would start very small and grow over time.** They would not be fully felt in 2025 even if the impacts really were as large as this Report inaccurately suggests. Properly accounting for the timing of these impacts would reduce the overall economic impact of water supply reliability from the BDCP.

**From:** xila <xilabo@gmail.com>  
**Sent:** Monday, January 27, 2014 2:17 PM  
**To:** 'BDCP.comments@noaa.gov'  
**Subject:** DVD request | BDCP and Draft EIR/EIS

Greetings --

Please inform me the steps to obtain a DVD of the subject materials. Thank you!

Alix Bo

**From:** Ruben Sundeen <rsundeen@ssrplaw.com>  
**Sent:** Monday, January 27, 2014 10:03 AM  
**To:** 'BDCP.comments@noaa.gov'  
**Cc:** 'Taniseia Vo'; 'lauren.bisnett@water.ca.gov'  
**Subject:** Request for Speaker

I am the President of the Rotary Club of Oakland Sunrise.

I would like to schedule someone from or associated with the *Bay Delta Conservation Plan* to present/discuss current issues and/or goals of the Bay/Delta conservation plan – and perhaps the impact of the Governor's recent declaration of drought.

The approximate half hour presentation would be made at one of our weekly breakfast meetings. The meeting starts at 7:30am, with the speaker/program from 8am to 8:30am.

As the name suggest, we meet in Oakland at the Terrace Room of the Lake Merritt Hotel.

We are looking for speakers for February 18, March 4, March 11, March 18. We also can schedule things farther out.

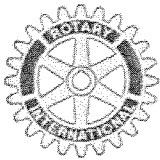
Let me know if there is someone who would be interested in speaker to our club.

Thanks.

Ruben

PS – Sorry if this is a repeat, but the email bounced back.

Ruben Sundeen  
President 2013-2014  
Rotary Club of Oakland Sunrise  
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**From:** Enos, Cassandra@DWR <Cassandra.Enos@water.ca.gov>  
**Sent:** Monday, January 27, 2014 9:09 AM  
**To:** 'BDCP.comments@noaa.gov'  
**Subject:** FW: Delta Counties Coalition - Letter Requesting 120-Day Extension in the BDCP Comment Period  
**Attachments:** DCC Letter Requesting 120-Day Extension in the BDCP Comment Period\_Final\_Signed.pdf

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**From:** Helliker, Paul@DWR  
**Sent:** Monday, January 27, 2014 6:32 AM  
**To:** Enos, Cassandra@DWR; Nemeth, Karla@CNRA  
**Subject:** FW: Delta Counties Coalition - Letter Requesting 120-Day Extension in the BDCP Comment Period

FYI - in case you have not seen this yet.

Paul

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**From:** Ren Lohofener [ren\_lohofener@fws.gov]  
**Sent:** Sunday, January 26, 2014 5:20 PM  
**To:** Cowin, Mark@DWR; Helliker, Paul@DWR; Murillo, D@USBR  
**Subject:** Fwd: Delta Counties Coalition - Letter Requesting 120-Day Extension in the BDCP Comment Period

fyi

Sent from my iPad

Begin forwarded message:

**From:** "Frazer, Gary" <gary\_frazer@fws.gov>  
**Date:** January 26, 2014 16:47:55 PST  
**To:** Ren Lohofener <Ren\_Lohofener@fws.gov>, Michael Fris <Michael\_Fris@fws.gov>  
**Subject:** Fwd: FW: Delta Counties Coalition - Letter Requesting 120-Day Extension in the BDCP Comment Period

fyi

*Gary Frazer  
Assistant Director -- Ecological Services  
U.S. Fish and Wildlife Service  
(202) 208-4646*

----- Forwarded message -----

**From:** Roger Gwinn <rgwinn@tfgnet.com>  
**Date:** Sun, Jan 26, 2014 at 5:25 PM  
**Subject:** FW: Delta Counties Coalition - Letter Requesting 120-Day Extension in the BDCP

Comment Period

To: "Frazer, Gary" <[gary\\_frazer@fws.gov](mailto:gary_frazer@fws.gov)>

BDCP 98

Attached, for your information, is a letter the Delta Counties Coalition has sent to state and federal officials requesting a 120 day increase in the BDCP comment period. Let me know if you have any questions or would like more information regarding this request. Thanks.

**W. Roger Gwinn**

The Ferguson Group, LLC

1130 Connecticut Avenue, N.W., Suite 300

Washington, DC 20036

(202) 261-6006 (Direct)

(202) 255-5759 (Cell)

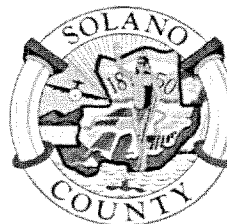
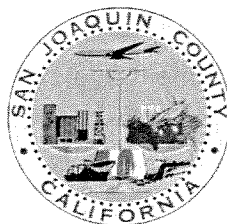
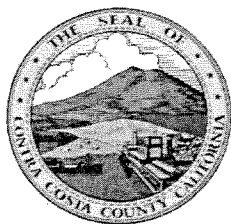
(202) 331-8500 (Office)

202-331-1598 (Fax)

[roger.gwinn@thefergusongroup.com](mailto:roger.gwinn@thefergusongroup.com)

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### Delta Counties Coalition

Contra Costa County · Sacramento County · San Joaquin County · Solano County · Yolo County

*"Working together on water and Delta issues"*

January 24, 2014

The Honorable Governor Jerry Brown  
State Capitol, Suite 1173  
Sacramento, CA 95814

John Laird, Secretary  
California Natural Resources Agency  
1416 Ninth Street, Suite 1311  
Sacramento, CA 95814

The Honorable Sarah "Sally" Jewell  
Secretary  
U.S. Department of the Interior  
1849 C Street, NW, Room 6156  
Washington, DC 20240

The Honorable Penny S. Pritzker  
Secretary  
U.S. Department of Commerce  
1401 Constitution Avenue, NW  
Washington, DC 20230

The Honorable Regina A. "Gina" McCarthy  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW, Room 3000  
Washington, DC 20460

Dear Governor Brown, Secretaries Laird, Jewell and Pritzker, and Administrator McCarthy:

The recent release of the Bay-Delta Conservation Plan (BDCP) and the associated Environmental Impact Report and Environmental Impact Statement (EIR/EIS) marks the first time the public can truly review the Plan. Prior to the release of the Public Review Draft EIR/EIS, residents of the greater Sacramento-San Joaquin Bay-Delta region have not been provided with a complete and detailed description of the project, an accurate assessment and characterization of the potential impacts, and the specific elements of a comprehensive mitigation strategy to compensate for the impacts of this massive project. We hope that this latest iteration of the BDCP will provide these necessary details, but an extensive and detailed analysis is required in order to make that determination.

The spirit of both the California Environmental Quality Act and the National Environmental Policy Act is grounded in fully disclosing the impacts of project actions so that we as a society can make decisions knowing full well the consequences of these actions to our communities, our livelihoods, and the environment in which we live and work. The BDCP and the Public Review Draft EIR/EIS amount to an unprecedented amount of paper, nearly 40,000 pages.

Given the size and complexity of the document, the 120-day public comment period is woefully inadequate.

The Delta counties, cities and towns are among the communities most affected by the proposed actions of the BDCP, and it seems apparent that additional time will be needed to thoroughly review and comment on the BDCP documents. On behalf of the Delta Counties Coalition and all who live in the Delta, we respectfully request that the public comment period for the BDCP EIR/EIS be extended by a minimum of 120-days beyond the current 120-day comment period.

Thank you for your consideration.

Sincerely,



Mary Nejedly Piepho  
Supervisor, Contra Costa County



Skip Thomson  
Supervisor, Solano County



Don Nottoli  
Supervisor, Sacramento County



Jim Provenza  
Supervisor, Yolo County



Larry Ruhstaller  
Supervisor, San Joaquin County

cc: Delta Counties State Legislative Delegation  
Delta Counties Federal Legislative Delegation  
The Honorable Michael L. "Mike" Connor, Bureau of Reclamation  
Mr. Gary D. Frazer, U.S. Fish and Wildlife Service  
Mr. Samuel D. Rauch, III, National Marine Fisheries Service  
Mr. Ryan Wulff, National Marine Fisheries Service  
Delta Stewardship Council  
Delta Protection Commission  
Delta Conservancy  
Delta Coalition

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**From:** Enos, Cassandra@DWR <Cassandra.Enos@water.ca.gov>  
**Sent:** Monday, January 27, 2014 9:07 AM  
**To:** 'BDCP.comments@noaa.gov'  
**Subject:** FW: Extension Request for BDCP public comment  
**Attachments:** Time Extension Request for BDCP EIR.pdf

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**From:** Helliker, Paul@DWR  
**Sent:** Monday, January 27, 2014 6:30 AM  
**To:** Enos, Cassandra@DWR  
**Subject:** FW: Extension Request for BDCP public comment

Another one asking for 120 days.

Paul

---

**From:** Ren Lohofener [ren\_lohofener@fws.gov]  
**Sent:** Sunday, January 26, 2014 7:42 PM  
**To:** Cowin, Mark@DWR; Helliker, Paul@DWR; Murillo, D@USBR  
**Subject:** Fwd: Extension Request for BDCP public comment

fyi

Sent from my iPad

Begin forwarded message:

**From:** "Frazer, Gary" <gary\_frazer@fws.gov>  
**Date:** January 26, 2014 17:36:00 PST  
**To:** Ren Lohofener <Ren\_Lohofener@fws.gov>, Michael Fris <Michael\_Fris@fws.gov>  
**Subject:** Fwd: Extension Request for BDCP public comment

fyi

*Gary Frazer  
Assistant Director -- Ecological Services  
U.S. Fish and Wildlife Service  
(202) 208-4646*

----- Forwarded message -----

**From:** **Edward Moreno** <edward.moreno@sierraclub.org>  
**Date:** Fri, Jan 24, 2014 at 8:48 PM  
**Subject:** Extension Request for BDCP public comment  
**To:** [Samuel.Rauch@noaa.gov](mailto:Samuel.Rauch@noaa.gov), [mlconnor@usbr.gov](mailto:mlconnor@usbr.gov), [Gary\\_Frazer@fws.gov](mailto:Gary_Frazer@fws.gov),  
[McCarthy.Gina@epa.gov](mailto:McCarthy.Gina@epa.gov), [Will.Stelle@noaa.gov](mailto:Will.Stelle@noaa.gov), [secretary@resources.ca.gov](mailto:secretary@resources.ca.gov)

Hi All,

BDCP99

Please find Sierra Club's letter of request for an extension of the comment period for the Bay Delta Conservation Plan attached to this email.

Best,

--

**Edward Moreno**  
Policy Advocate  
Sierra Club California  
909 12 Street, Suite 202  
Sacramento, CA 95814  
Ph: (916) 557-1100, x109  
Mobile: (510) 452-7551  
[edward.moreno@sierraclub.org](mailto:edward.moreno@sierraclub.org)





BDCP 99

January 24, 2014

Samuel D. Rauch  
Administrator for Fisheries  
NOAA Fisheries Service  
[Samuel.Rauch@NOAA.gov](mailto:Samuel.Rauch@NOAA.gov)

Michael L. Connor  
Deputy Secretary  
U.S. Bureau of Reclamation  
[mlconnor@usbr.gov](mailto:mlconnor@usbr.gov)

Gary Frazer  
Assistant Director-Endangered Species  
U.S. Fish and Wildlife Service  
[Gary\\_Frazer@FWS.gov](mailto:Gary_Frazer@FWS.gov)

Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
[McCarthy.Gina@EPA.gov](mailto:McCarthy.Gina@EPA.gov)

William W. Stelle, Jr.  
Acting Regional Administrator  
NOAA Fisheries Service  
[Will.Stelle@noaa.gov](mailto:Will.Stelle@noaa.gov)

John Laird  
Secretary  
California Resources Agency  
[secretary@resources.ca.gov](mailto:secretary@resources.ca.gov)

Subject: BDCP Public Comment Review Time Extension Request

You may recall that in a November 21 letter, prior to the December 13 release of the BDCP Draft Plan and EIR/EIS, the Environmental Water Caucus requested that the public review and comment period be extended beyond the planned 120 days, based on the anticipated 25,000 page estimate of the BDCP documents. There are actually 40,214 pages in the released documents and request that you extend the review and comment period for at least 120 additional days, due to the extraordinary size of the documents to be reviewed.

Based on the dictated 120 day review time period, the public is being asked to review 473 pages per day during the 85 working days that are available during the comment period. These documents represent 20% more pages than the 32 volumes of the last printed edition of the Encyclopedia Britannica. As was pointed out in the previous request, NEPA regulation 40 CFR 1502.7 declares that the text of an EIS for "proposals of unusual scope or complexity shall normally be less than 300 pages." As was also stated in that previous letter, it is impossible for organizations interested in thoughtfully responding to these BDCP documents to be staffed for a thorough NEPA/CEQA review based on the outlandish size and complexity of the documents to be reviewed.

Sierra Club California respectfully requests that the public review period be extended for an additional 120 days, until August 15, based on the size of the actual documents you released on December 13.

Sincerely,

Edward Moreno  
Policy Advocate

**From:** Elissa Callman <ECallman@cityofsacramento.org>  
**Sent:** Tuesday, January 21, 2014 3:06 PM  
**To:** 'BDCP.comments@noaa.gov'  
**Subject:** Request for DVD copy of BDCP and associated Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS)

Dear BDCP staff:

I would like to request two sets of DVD copies of the BDCP and BDCP EIR/EIS.  
Please send to the following address:

Elissa Callman  
City of Sacramento Dept of Utilities  
1395 35<sup>th</sup> Avenue  
Sacramento, CA 95822

If you have any questions on this request, please contact me at 808-1424

Thank you in advance! Sincerely, Elissa