From: Jim Peifer <JPeifer@cityofsacramento.org>
Sent: Tuesday, July 22, 2014 4:25 PM
To: 'BDCP.comments@noaa.gov'
Cc: Bill Busath; Jamille Moens; Elissa Callman; Sherill Huun; Robert Armijo; Tom Buford; Scott Johnson; 'Bonny Starr (bstarr@usamedia.tv)'; 'brianl@lwa.com'; Joe Robinson; M Lennihan; 'Kris Deutschman'; Michael Malone; Dan Sherry; Brett Ewart; Terrance Davis; Linda Tucker; Jessica Hess; John F. Shirey; Dave Brent; Patti Bisharat; Randi Knott; Daniel Conway; Angelique Ashby; Steve Cohn; Darrell Fong; Mayor Johnson; Steve Hansen; Kevin McCarty; Allen Warren; Jay Schenirer
Subject: City of Sacramento BDCP Comment Letters
Attachments: Mayor and Mayor Pro Tem BDCP Cmt Lttr Jul 22 2014.pdf; Sacramento City Manager BDCP Cmt Lttr Jul 22 2014.pdf

Greetings,

Attached are two comment letters on the Bay Delta Conservation Plan (BDCP) and BDCP DEIR/DEIS:

1. A letter from Mayor Kevin Johnson and Mayor Pro Tem Angelique Ashby
2. A letter from City Manager John Shirey.

Thank you,

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BDCP1527

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July 22, 2014

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

Submitted via U. S. Mail and Email: BDCP.Comments@noaa.gov

Subject: City of Sacramento Comments on the Bay Delta Conservation Plan (BDCP) Draft DEIR/EIS and the BDCP

Dear Mr. Wulff:

The City of Sacramento (City) appreciates the opportunity to provide these comments on the Bay Delta Conservation Plan (BDCP) Draft Environmental Impact Report/Environmental Impact Statement (DEIR/EIS), and the BDCP (December 13, 2013 Public Review Draft).

The City provides a potable water supply primarily from surface waters tributary to the Delta that serves more than 136,000 customer accounts, and approximately 486,000 residents. The City's diversions of surface water are made pursuant to pre-1914 rights, five water right permits, and a permanent water right settlement contract with the U.S. Bureau of Reclamation. In addition, the City provides the following critical services that benefit City residents and businesses as well as the Delta:

- Municipal separate stormwater sewer system (MS4) services that include a management program, compliance with the National Pollutant Discharge Elimination System permit (NPDES No. CAS082597, Order No. R5-2008-0142), and participation in the Sacramento Stormwater Quality Partnership (SSQP). The SSQP is a multi-jurisdictional program made up of Sacramento County and the incorporated cities of Sacramento, Citrus Heights, Elk Grove, Folsom, Galt, and Rancho Cordova, to provide education and outreach to reduce pollution and to standardize pollution best management practices for development projects across the region. These programs have supported water quality improvements in local creeks and rivers for more than 25 years. The Stormwater Quality Program includes construction, industrial, illicit discharge, new development, municipal, and public outreach elements that are designed to improve water quality.

- A combined sewer system (NPDES No. CA0079111, Order No. R5-2010-0004) that treats more than 99.5% of stormwater drainage and wastewater from an 11.3 square mile area in the City's Downtown, East Sacramento, and Land Park areas.

The City values environmental resources and is committed to the protection of our waterways, biological species and habitat, and other environmental resources. Preservation of these environmental resources and maintenance of their quality is not only beneficial to current residents but is crucial to the sustainability of future generations. The City has been a major participant in the Sacramento Area Water Forum, in support of regional water supply reliability and protection of the Lower American River environmental values. The City supports the co-equal goals of restoring the ecological health of the Delta and creating a reliable water supply for all of California.

The City is also participating with the North State Water Alliance and the American River Water Agencies in preparing and submitting comments on the BDCP and BDCP DEIR/DEIS. The comments by these two groups largely focus on the deficiencies in both BDCP documents relative to water supply and hydrologic and fisheries analysis, and the City incorporates those comment letters by reference into this comment letter.

The Sacramento Stormwater Quality Partnership also is submitting comments on the BDCP and DEIR/EIS, and the City supports the comments made by the SSQP.

Sacramento County submitted comments on the BDCP and BDCP DEIR/EIS, which were endorsed by the Sacramento County Board of Supervisors on May 28, 2014. The City also supports the comments submitted by Sacramento County.

COMMENTS ON DEIR/EIS

The City has reviewed the water quality analysis included in the DEIR/EIS and found numerous deficiencies. The most significant deficiencies are generally discussed in this letter, which is supported by the specific comments provided in Attachment 1, which is included and incorporated in our comments:

1. Insufficient Scope of Reasonable Alternatives
2. Inadequate Assessment of Impacts to Conservation Measure 1 if Conservation Measures 2 through 22 Not Fully Implemented
3. Insufficient Incorporation of Other Major Programs, Plans, and Projects
4. Insufficient Water Quality Analysis to Support Characterization of Water Quality Impacts
5. Insufficient Mitigation of Adverse and Significant Impacts
6. Insufficient Evaluation of Fiscal Burden on Local Agencies
7. Inconsistent and Inadequate Definition of the Areas of Additional Analysis in Plan Area
8. Technical Errors and Omissions in Evaluation of Impacts

COMMENT 1 – INSUFFICIENT SCOPE OF REASONABLE ALTERNATIVES

The BDCP analysis must include an evaluation of the Portfolio-Based Conceptual Alternative for BDCP, as detailed in the letter dated January 16, 2013 from NRDC, et al. (Attachment 2.)

The DEIR/EIS indicates that the project alternatives selected were based on the Delta Reform Act requirements; however, the scope of alternatives in a DEIR/EIS also must be developed in compliance with CEQA and National Environmental Policy Act (NEPA) requirements. The environmental review process must evaluate reasonable alternatives that avoid or minimize the environmental and economic impacts of the proposed project. Although it is not necessary to consider every conceivable alternative, the analysis must include "a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation."[1] Moreover, the analysis in an EIR should focus on alternatives that can avoid or substantially reduce significant impacts even if they would impede attainment of the project objectives to some degree or be more costly.[2] The range of alternatives considered under NEPA must foster rather than constrain the options available to decision makers.[3]

The alternatives provided in the DEIR/EIS do not meet these standards; therefore, the analysis is incomplete and insufficient.

A reasonable range of alternatives would consider storage alternatives and regional independence to minimize or modify exports from the Delta. This evaluation should include other water supply strategies including increased desalination, recycled water use, conservation and conjunctive use. Evaluating only different sizes and configurations of North Delta intakes and conveyance does not provide a reasonable or sufficient assessment of impacts for Conservation Measure 1 (CM1).

The scope of alternatives must be expanded. Attachment 1 provides additional specific comments on the DEIR/EIS related to the sufficiency of the scope of reasonable alternatives to CM1.

COMMENT 2 - INADEQUATE ASSESSMENT OF IMPACTS TO CONSERVATION MEASURE 1 IF CONSERVATION MEASURES 2 THROUGH 22 NOT FULLY IMPLEMENTED

The Delta Reform Act, in California Water Code Section 85320(b), states that the BDCP will not be incorporated into the Delta Plan if it does not meet the Delta Reform Act's requirements. The Delta Reform Act requires that construction of a new Delta conveyance facility shall not be initiated until arrangements have been made to pay for the cost of mitigation required for construction, operation, and maintenance of any new Delta conveyance facility. (Water Code Section 85089.) Accordingly, the mitigation measures need to be clearly specified, and linkages to impacts of the proposed project should be plainly identified so that the financial obligations are apparent. The Draft DEIR/EIS fails to address this, as well as other major requirements of the Delta Reform Act. Therefore, the BDCP cannot be incorporated into the Delta Plan unless these flaws are remedied.

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[1] State CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3) § 15126.6(a). The California Supreme Court has described the analysis of alternatives and mitigation as "the core of an EIR." *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

[2] State CEQA Guidelines § 15126.6(b).

[3] *See, e.g., State Of California v. Block* (9th Cir. 1992) 690 F.2d 753.

The DEIR/EIS must specifically identify the minimum and expected levels of implementation, the benefits of these levels of implementation, and CM1 operational limitations based on the level of implementation for CM2 through CM22.

The DEIR/EIS is a project level analysis for CM1 and refers to the environmental commitments and other BDCP conservation measures (CM2-22) intended to reduce, avoid, or minimize environmental effects of the BDCP and CM1 (page 1-13, lines 3-9). In contrast to CM1, which is the new diversion and delivery facilities themselves[4], these other BDCP conservation measures are only evaluated at a program level of review. The DEIR/EIS further acknowledges that these commitments and conservation measures will require additional environmental documentation. Also, the BDCP proposes to fund many of the conservation measures by State bonds that will need to be approved by the public. There is no current guarantee of full or even partial implementation (permitting and funding) of CM2 through CM22.

The DEIR/EIS analysis assumes completion of all of these items and does not account for lack of implementation or partial implementation of any of these commitments or conservation measures. There is no analysis included to address impacts to CM1 if any or all of the other supporting CMs are not implemented and how the design, construction, and operation of CM1 may need to be modified accordingly. The Adaptive Monitoring program of the BDCP should include a process for verifying the completion of supporting conservation measures and the necessity of revising analyses conducted, if necessary, to modify CM1.

Under CEQA, mitigation measures must be enforceable and legally binding, so there is adequate assurance that the measures actually will be implemented.[5] The environmental commitments and other BDCP conservation measures proposed as mitigation for the environmental effects of the BDCP and CM1 do not meet this test.

The 2013 Delta Plan (Chapter 6, Page 230) includes recommendation WQ R2 that "Covered actions should identify any significant impacts to water quality." All conservation measures and combinations of their cumulative effects should therefore be evaluated for all impacts. A reasonable evaluation of the implementation schedule for conservation measures, identification of the most critical conservation measures, and an overall assessment of water quality impacts should be performed and clearly presented to meet the Delta Plan recommendations as well as CEQA/NEPA requirements.

The DEIR/EIS must provide an assessment of impacts to and by CM1 if CM2 through CM 22 are not fully implemented. Attachment 1 provides specific comments related to the assessment of non-implementation of supporting conservation measures. The Adaptive Monitoring program must include a process for verification of completion of supporting conservation measures and a plan for revising analysis if modifications to CM1 are necessary.

COMMENT 3 – INSUFFICIENT INCORPORATION OF OTHER MAJOR PROGRAMS, PLANS, AND PROJECTS

The DEIR/EIS asserts that it has addressed cumulative impacts on the environment as a result of implementation of the BDCP and its conservation measures in combination with other past, present, and reasonably foreseeable projects. However, this analysis is incomplete. Exclusion of some projects inaccurately alters the impact analyses and relative significance of the BDCP. California is working

[4] It is not apparent that the new water diversion and delivery facilities are legitimately a conservation measure.

[5] State CEQA Guidelines § 15126.4(a)(2); *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261.

aggressively to plan adaptation and mitigation strategies to address impacts of climate change, and these various activities should be acknowledged and accounted for in the evaluation (page 6-43, lines 3-15).

The Department of Water Resources (DWR) System Reoperation Program was authorized under State Bill X2 1 in 2008 and includes development of a revised plan of operations for the coordinated State Water Project (SWP)/Central Valley Project (CVP) in order to address flood control, water supply, and ecosystem concerns. The DWR System Reoperation Program includes strategies to address climate change mitigation and adaptation. This program was erroneously omitted from the DEIR/EIS. The No Action Alternative, action alternatives, and the cumulative impact analyses are incomplete and the System Reoperation Program should be described and included as a reasonably foreseeable program.

The DEIR/EIS includes the Folsom Dam Safety and Flood Damage Reduction Project in the No Action Alternative and Cumulative Impacts analyses in name only (Attachment 3D-A, page 3D-99), and does not provide any adjustment in operations of Folsom Lake under the new spillway and Water Control Manual operations in the CALSIM II modeling. This project will be operational in 2015 and should have been considered more thoroughly in revised reservoir operations in the modeling analysis. The analysis is incomplete and should be revised to include the current projected revisions to operations.

The North Bay Aqueduct Alternative Intake Project is described in the DEIR/EIS as part of Mitigation Measure WQ-5 and an environmental commitment that the project proponents may support. However the design and construction of this facility are specifically excluded from this DEIR/EIS. DWR issued a Notice of Preparation for this project in 2009, but its status is uncertain. It appears that the proposed long-term operation of such an intake was not included in the evaluations and analyses conducted as part of this DEIR/EIS, since Attachment 3D-A on page 3D-52 indicates that it was not included in the No Action Alternative nor the Cumulative Analysis. If the operation of the intake is intended to be included in this DEIR/EIS, then the flow and quality analyses and evaluations are incomplete and must be expanded.

The DWR System Reoperation Program, Folsom Dam Safety and Flood Damage Reduction Project, and the North Bay Aqueduct Alternative Intake Project must be included in the impacts assessment in a manner the adequately characterizes the cumulative impacts and the accounts for simultaneous operation of all project components. Attachment 1 provides specific comments related to the sufficiency of incorporation of related programs, plans, and projects.

COMMENT 4 – INSUFFICIENT WATER QUALITY ANALYSIS TO SUPPORT CHARACTERIZATION OF WATER QUALITY IMPACTS

The DEIR/EIS asserts that is has conducted a comprehensive review and analysis of the effects of the proposed Delta conveyance alternatives on water quality (BDCP DEIR/EIS Highlights, page 5); however, it is incomplete. There are numerous errors and omissions in the evaluation. The focus of the study was largely limited to select locations and did not sufficiently assess the impacts to water quality below the major reservoirs and upstream of the Delta, as well as the areas in the vicinity of the CM1 intakes and CM2 diversion. The water quality impacts described in Chapter 8 of the DEIR/EIS have the following inadequacies:

- Insufficient characterization of water quality impacts in the Lower Sacramento River from Veterans Bridge to Emmaton.
- Insufficient use of available computational models to assess impacts on constituent concentrations rather than just hydrodynamics.

- Insufficient characterization of several key constituents.
- Inadequate summaries of water quality impact findings for all alternatives.

Adequate water quality assessments must be performed to correct these insufficiencies and inadequacies so that the impacts can be correctly understood, which is fundamental to determining whether the proposed mitigation is adequate to minimize impacts to water quality. Attachment 1 provides specific comments related to the sufficiency of the water quality analysis and supporting evaluations.

Sample Locations and Analysis of Impacts

The evaluation in Chapter 8 needs to be expanded to provide an accurate and more complete assessment. Chapter 8 primarily bases water quality impact conclusions on a limited number of sample locations and does not perform a detailed analysis of impacts in the area around the proposed North Delta intake on the Sacramento River, specifically between Emmaton and Veterans Bridge.

Computational Models and Water Quality Evaluation

The DEIR/EIS states (page 8-130, lines 28-30) that the analysis is quantitative only where "modeling tools were developed and were available, and qualitatively assesses effects where appropriate modeling tools were unavailable". Many such computational models exist for many of the constituents and river reaches not evaluated in the DEIR/EIS. A project of this scope and potential impact has the resources to develop and utilize these tools necessary for adequate analyses.

The water quality evaluation presented in Chapter 8 of the DEIR/EIS, and supported by numerous appendices, was insufficient in several ways:

- Inadequate definition of constituents of interest and collection of inadequate data (36 constituents with drinking water standards were not included in the Screening Analysis),
- Inadequate assessment of contributions from various sources in the watersheds,
- Insufficient representation of all areas impacted by BDCP operations (specifically the areas upstream of the Delta and on the Sacramento River up to all major water intakes), and
- Inadequate consideration of impacts of reservoir operations, specifically storage volume, on downstream water quality (related to metals and turbidity).

In addition, the water quality analysis methodology utilized inappropriate data evaluation procedures, and the supporting water supply modeling was flawed in numerous assumptions, such as not including the hydrodynamic impacts of CM2 on the water quality of the Lower Sacramento River.

Inadequate Summaries of Water Quality Impact Findings for Baselines and Alternatives

DEIR/EIS Section 8.1.6 refers to two different baselines (the CEQA and NEPA baselines), and the evaluation of water quality impacts in 2060 yields information that is extremely difficult to understand or verify. A simple analysis of near term water quality changes from existing ambient water quality is needed to provide the public with understandable information, to provide context/grounding for the long term impacts that are presented, and to allow a proper assessment of compliance with state and federal antidegradation policies.

The BDCP Chapter 5 Effects Analysis and its appendices are difficult to review due to organization problems, inconsistencies, and inadequate cross-referencing. For example, Chapter 5 includes many

cross-references to other large documents without specific page numbers and sections. It is then a significant effort to review thousands of pages of appendices to try to find the referenced information with little assurance that it is the correct reference. The chapter makes the interpretation of net effects of BDCP implementation difficult at best. The Independent Panel charged with review of the Effects Analysis has stated that it "universally believes that by itself, Chapter 5... inadequately conveys the fully integrated assessment that is needed to draw conclusions about the Plan..." [Delta Science Program Independent Review Panel Report (DSP-IRP Report), BDCP Effects Analysis Review, Phase 3, March 2014, page 5]

Selected Constituents with Insufficient or Erroneous Assessments in BDCP DEIR/EIS

The specific technical issues with the findings for the preferred alternative (Number 4) impact assessment on water quality (Chapter 8) for nine constituents, or classes of constituents, is discussed below.

Pesticides and Herbicides

Assessment Type	CEQA Assessment Finding for Alternative 4	
Qualitative	CM1 (WQ-21)	Less than significant
	CM13 (WQ-22)	Significant and Unavoidable

Technical Issues with Finding

Insufficient analysis of sources affecting Delta aquatic life

Page 8-83 lists a number of sources to the Delta, but it does not evaluate the relative contribution from these sources and the fate and transport of pesticides and herbicides in the Delta. The Weston, *et. al.* research cited in the DEIR/EIS primarily examines urban tributaries and locations near urban runoff outfalls and POTW effluent. Data collected by the City with the SSQP show significant concentration decreases of pyrethroids from the source to the Delta, such that river concentrations are lower than known effect levels. This is also consistent with the Department of Pesticide Regulation (DPR) findings in similar work.[6]

Inaccurate time period characterization

In several instances (page 8-83 line 40, Table 8-23, Table 8-24, Table 8-25, page 8-86 lines 12-19, page 8-164 lines 8-11), organophosphate (OP) pesticides data used for analysis are from samples collected prior to the 2005 California use ban. The use of this data can lead to inaccurate characterization of current concentrations, and more recent data (i.e., 2005-2014) should be used to provide accurate representation of existing conditions. It is not sufficient to state that pyrethroid pesticides will affect aquatic species in the same way as OP pesticides, since it is known that their environmental toxicity, half-life, and transport modes are different.

Inaccurate and insufficient characterization of available data

[6] http://www.cdpr.ca.gov/docs/emon/surfwtr/presentations/ensminger_2014_jan_13_pyrethroid_trends.pdf

Page 8-85 states that "Limited data and studies are available for characterizing the existing conditions of pesticide concentrations in the study area," which is misleading and inaccurate. This statement is repeated elsewhere and is not substantiated nor investigated further (page 8-163, lines 35-37, page 8-165 lines 8-9). Data gaps should be clearly stated and prioritized such that they can be addressed through better research or collected as part of the BDCP Adaptive Management.

This inaccurate and insufficient characterization is reinforced by the readily available data from a number of public sources. For example, the City collects Sacramento River data through the Coordinated Monitoring Program, USGS has an active Delta pesticide monitoring program[7], DPR also has active monitoring programs and available data in and around the Delta[8], and areas upstream of the Delta are monitored through the Regional Water Quality Control Board's Irrigated Lands Regulatory Program[9].

Failure to recognize the role of the California Department of Pesticide Regulation and EPA in regulating pesticide usage

Page 8-84 lines 23-33 describe DPR activities, but do not recognize that DPR and EPA approve pesticides for usage that local agencies have no legal authority to restrict.

State of knowledge regarding pesticide effects on the Pelagic Organism Decline (POD)

The DEIR/EIS summary of the Johnson, et. al. report (2010) omitted a key finding regarding contaminants and the Pelagic Organism Decline (POD):

> *Consequently, the results of the six comparisons for chemistry, toxicity, and histological data were placed into a weight of evidence context. The conclusion that is drawn from the analyses is that while contaminants are unlikely to be a major cause of the POD, they cannot be eliminated as a possible contributor to the decline.* [10]

While this conclusion is not specific to pesticides, pesticides were the focus of the evaluation and predominate the robust dataset. Furthermore, it is inaccurate to characterize the state of knowledge on pesticides as insufficient for the purposes of the DEIR/EIS. Certainly, there are adequate data and information to make meaningful and quantitative assessments. Even the "dynamic state of the pesticide market" (page 8-164, line 23) can be well-quantified with detailed use, sales, and application rates that are reported every year.

Inaccurate and insufficient assessment of impact of SWP and CVP on pesticide use

Any changes in the available water for agriculture will change the timing and extent of pesticide application. Moreover, Impact WQ-21 (page 8-275 lines 26-29, page 8-463 lines 11-23, etc.) is considered a non-adverse impact though there is no evaluation of how decreases in flow (see Appendix 8L, Table 2) in the upstream areas may concentrate pesticides.

Insufficient assessment of additive toxicity

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[7] http://ca.water.usgs.gov/projects/PFRG/CurrentProjects.html

[8] http://www.cdpr.ca.gov/docs/emon/surfwtr/surfcont.html

[9] http://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_lands/water_quality_monitoring/index.shtml

[10] http://www.waterboards.ca.gov/rwqcb5/water_issues/delta_water_quality/comprehensive_monitoring_program/contaminant_synthesis_report.pdf