

**From:** Linda Petrulias <acmwc@comcast.net>  
**Sent:** Tuesday, July 22, 2014 10:14 PM  
**To:** BDCP.Comments@noaa.gov  
**Subject:** Protect the Delta, Deny Twin Tunnels Permit

Dear Mr. Ryan Wulff,

I am writing to strongly oppose the "Twin Tunnels" project (aka Bay Delta Conservation Plan) that threatens to dewater the Sacramento-San Joaquin Delta for the benefit of a few water contractors and agribusinesses.

These tunnels would sharply reduce water flow throughout the delta and harm thousands of sensitive aquatic species, including chinook salmon, steelhead trout, smelt, and green and white sturgeon. The tunnels would also wipe out food sources and habitat for migratory birds and other wildlife that depend on a functioning delta ecosystem to survive.

The project's heads justify this killing by proposing future habitat restoration even as they readily admit uncertainty about where and how to make such a plan work. Further, the \$25-\$60 billion tunnels will rely on taxpayers to fund most of this restoration. Water is a public trust resource, and taxpayers shouldn't have to shoulder the burden of this project while water contractors turn a profit from exporting the delta's water.

California's water crisis is best solved by adopting a combination of water conservation, efficiency, reuse and desalination strategies for both cities and farms. The state and nation should invest in these proven strategies, instead of wasting tax dollars and sacrificing our precious natural resources. Please -- protect the delta and deny this project's permit.

Sincerely,

Linda Petrulias  
23 Silvia Drive  
Cazadero, CA 95421  
US

**From:** Warmuth, Judith M. <jmwarmuth@stoel.com>  
**Sent:** Tuesday, July 22, 2014 4:03 PM  
**To:** bdcg.comments@NOAA.gov  
**Cc:** Henry, Thomas  
**Subject:** Comments re BDCP Draft Environmental Impact Report/Statement  
**Attachments:** BDCP Comments Draft EIR - 7-22-14.PDF

Attached are comments on behalf of Vintage Production California LLC regarding the above matter. If you have any questions, please contact Mr. Henry.

**Judith M. Warmuth** | Practice Assistant to Thomas A. Henry  
**STOEL RIVES LLP** | 500 Capitol Mall, Suite 1600 | Sacramento, CA 95814  
Direct: (916) 319-4752 | Fax: (916) 447-4781  
[jmwarmuth@stoel.com](mailto:jmwarmuth@stoel.com) | [www.stoel.com](http://www.stoel.com)

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BDCP 1529

500 Capitol Mall, Suite 1600  
Sacramento, CA 95814  
main 916.447.0700  
fax 916.447.4781  
www.stoel.com

July 22, 2014

THOMAS A. HENRY  
Direct (916) 319-4667  
tahenry@stoel.com

**VIA FEDERAL EXPRESS AND  
E-MAIL: BDCP.COMMENTS@NOAA.GOV**

BDCP Comments  
Ryan Wulff, NMFS  
650 Capitol Mall, Suite 5-100  
Sacramento, CA 95814

**Re: Bay Delta Conservation Plan Draft Environmental Impact Report/Statement**

Dear Mr. Wulff:

Thank you for providing us with the opportunity to comment on the Draft Environmental Impact Report/Environmental Impact Statement ("Draft EIR/EIS") for the Bay Delta Conservation Plan (the "Plan" or alternatively, the "Project"). We submit these comments on behalf of Vintage Production California LLC ("Vintage"), the owner and operator of several oil and gas wells, the owner of surface and mineral estates, and lessee under several oil and gas leases, within the Plan area. As set out below, the Draft EIR/EIS is fundamentally flawed such that certification of the Draft EIR/EIS, in its current condition would, as a matter of law, violate the California Environmental Quality Act ("CEQA"). (Pub. Resources Code § 21000 *et seq.*) The primary issues with the Draft EIR/EIS identified in this letter relate to the insufficiency of the proposed mitigation measures and the lack of analysis contained in Chapter 26, the Mineral Resources section.

For the following reasons, the Draft EIR/EIS must be revised and recirculated:

1. Mitigation Measures MIN-5 and MIN-6 do not effectively address the impacts of inundation in restoration areas pursuant to Conservation Measures 2-22;
2. The Draft EIR/EIS misstates the ease and likelihood of relocating access to mineral resources;
3. The impacts of the Project to natural gas distribution lines are not fully analyzed under CEQA.

Vintage recognizes that Alternative 4 is the preferred alternative and this letter focuses on the insufficiencies contained in that alternative, but the comments set out herein also equally apply



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to the eight other alternatives analyses. However, where applicable, this letter will identify insufficiencies in other alternatives analyses that are not discussed in Alternative 4, with the understanding that the preferred route may be altered or amended prior to certification of the EIR/EIS.

By way of background, Vintage currently owns or leases over 130,000 gross mineral acres of the full 857,258 acres of the Plan study area and over 60,000 gross mineral acres of the 182,146 acres of the restoration opportunity areas. The potential impact to Vintage's current and proposed operations is tremendous and the Draft EIR/EIS must be revised to fully analyze the potential impact of the Project to these important resources.

**I. Mitigation Measures Min-5 and Min-6 Fail to Address the Impacts of Inundation in Restoration Areas Pursuant to Conservation Measures 2-22.**

The Draft EIR/EIS states that implementing certain conservation measures may result in permanent flooding and inundation of natural gas wells and eliminate access to natural gas fields. Nevertheless, the Draft EIR/EIS concludes that natural gas wells and access to natural gas fields can remain productive in flooded areas because access will be replaced using conventional or directional drilling at a location outside of the inundation zone. (Draft EIR/EIS pp. 26-77 through 26-79.)

The Draft EIR/EIS acknowledges that if a large number of wells have to be abandoned and could not be redrilled adequately and effectively, there would be a locally adverse effect. (Draft EIR/EIS pp. 26-78 - 26-79.) As a result, the Draft EIR/EIS concludes that: a) MM MIN-5 and MM MIN-6 are available to address the permanent elimination of a substantial portion of a county's active natural gas wells and access to natural gas fields; and b) the impact to locally significant wells and access to natural gas fields is significant and unavoidable because MM MIN-5 and MM MIN-6 cannot assure that all or a substantial portion of a county's existing natural gas wells and natural gas fields will remain accessible after implementation of the alternative. (Draft EIR/EIS pp. 26-77 - 26-79.)

Mitigation Measure MIN-5 states:

During final design of Conservation Measures 4, 5, and 10, the BDCP proponents will avoid permanent inundation of or construction over active natural gas well sites where feasible to minimize the need for well abandonment or relocation. This





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mitigation applies to three conservation measures: *CM4 Tidal Natural Communities Restoration*, *CM5 Seasonally Inundated Floodplain Restoration*, and *CM10 Nontidal Marsh Restoration*.

Mitigation Measure MIN-6 states:

During final design of Conservation Measures 4, 5, and 10, the BDCP proponents will consider the location and amount of inundation of natural gas fields and will identify means to maintain feasible drilling access to them. These measures could include maintaining non-inundated locales overlying or near individual gas fields and ensuring that inundation zone design provides feasible access to natural gas fields from adjacent and nearby non-inundated lands. This mitigation applies to CM4, CM5, and CM10. This mitigation measure will ensure that drilling access to natural gas fields is maintained to the greatest extent practicable.

(*Id.*)

Simply concluding that permanent inundation of, or construction over, active, natural gas wells will be avoided and deferring the means to maintain feasible drilling access to natural gas fields are improper mitigation measures under CEQA. Public Resources Code section 21002 requires agencies to adopt feasible mitigation measures (or feasible environmentally superior alternatives) in order to substantially lessen or avoid otherwise significant impacts. (Pub. Resources Code, § 21002, 21081 (a).) Feasible mitigation measures must be specific, commit to specific measures, and should not be too speculative, vague, or noncommittal. (*See Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1188-89; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794.) If, however, a mitigation measure is deferred, there must be a thorough analysis of alternatives to be considered, analyzed, and possibly incorporated into the mitigation plan. (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1118.)

The mitigation measures described in MM MIN-5 and MIN-6 simply defer mitigation until after the final design plan period without providing any details or committing to any specific measure, and do not analyze the feasibility of avoiding natural gas wells and fields.

While we understand that the specific areas that will be affected by Conservations Measures 4, 5, and 10 have not been determined, in order to comply with CEQA, the Draft EIR/EIS needs to



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analyze the feasibility of avoiding permanent inundation and provide mitigation measures that specifically identify means to mitigate the potential impacts to access to wells and natural gas fields. The mitigation measures should also describe how displacement of wells will be avoided and how access to oil and gas fields will be maintained.

One way to accomplish this requirement would be to have the mitigation measures require certain modifications, including construction of a protective cage and platform above the well. Another example is requiring construction of drill pads and access roads in such a way that provides access to minerals in cooperation with the oil and gas rights owners. As part of that analysis, the impacts of constructing the drill pads, access routes to the drill pads, and the dimensions of these pads should be considered. For example, Vintage's gas wells are located on drill pads that are accessed by a drilling rig using a closed-loop system via an access road that is 22-feet wide. The closed-loop system is approximately 720 feet x 250 feet and is enlarged to approximately 900 feet x 400 feet, if a pit sump is placed on the drill pad. This type of location size allows for simultaneous drilling and completion operations, and could be feasible with the mitigation measure incorporated into the Project.

The Draft EIR/EIS makes a cursory conclusion without sufficient facts or analysis to support its conclusion of significance, nor do the mitigation measures properly analyze the potential impacts of inundating the natural gas wells and fields. Therefore, the Draft EIR/EIS should be revised and recirculated to include this information.

## **II. The Draft EIR/EIS Misstates the Ease and Likelihood of Relocating Access to Mineral Resources.**

The Draft EIR/EIS examines the accessibility of natural gas wells and gas fields and concludes that the alternatives do not pose a substantial loss of existing production because active wells and natural gas fields can be accessed using conventional or directional drilling techniques. (Draft EIR/EIS pp. 26-21; 26-24; 26-25; 26-77 - 26-79.) Accordingly, the Draft EIR/EIS concludes that no mitigation is required. (*Id.* at pp. 26-31; 26-32.)

There is a complete lack of analysis regarding the possibility or availability of conventional and directional drilling and the Draft EIR/EIS fails to acknowledge that feasibility of access is contingent on the availability of adjacent drilling sites and whether the operator will have the legal rights to directionally drill.<sup>1</sup> Certain considerations such as price, technology, future

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<sup>1</sup> In short, an owner or lessee on one parcel of property is not entitled to access those minerals from an adjacent parcel unless it has the right to do so (e.g., obtained pass through rights).



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provable production, and the feasibility of leasing or accessing adjacent lands should also be considered to determine whether conventional or directional drilling techniques are available to natural gas operators in the Plan area.

The Draft EIR/EIS also concludes that production in 2005-2009 from natural gas wells and fields located in the Plan area were “small” compared to the total annual natural gas production in the county where the well and field are located,<sup>2</sup> and therefore, the Project will have no adverse effect on natural gas wells and production from natural gas fields and the impact is less than significant. (Tables 26-4 & 26-5; Draft EIR/EIS pp. 26-25; 26-27; 26-28.) This is an inappropriate and impermissible standard and comparison to establish a level of significance. In making conclusions of significance, the lead agency must submit substantial evidence in the record to support its conclusions. (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal. 4th 415, 435; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 566.) “Substantial evidence” includes, “reasonable assumptions predicated upon facts, and expert opinion supported by facts.” (14 C.C.R. § 15384.) In other words, an EIR must explain the basis of its conclusions, a bare conclusion without an explanation of its factual and analytical basis is insufficient for an EIR. (*Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.* (1988) 47 Cal. 3d 376, 404.) Simply because the percentage is a small number does not support the conclusion that the impact will be small. There must be a thorough analysis of the factual and scientific data to support this conclusion.

Natural gas production is contingent on fluctuating market prices, and providing production numbers from 2005 - 2009 is not an accurate evaluation of the availability of resources. A comparison to the overall production in the county that the well is located is also misleading because it does not accurately reflect whether the resource may be available to the operator from a different location if the well is displaced and relocated. A more appropriate benchmark is provable production data from the Department of Conservation, Division of Oil, Gas, and Geothermal Resources, to determine the true potential for future loss.

The Draft EIR/EIS inaccurately concludes that the impacted wells, either those within the path of the tunnels or those inundated, can be simply relocated. (Draft EIR/EIS, p. 26-32.) Relocating a well is a difficult process requiring complicated engineering plans at great expense to the operator over a number of months, and which can result in loss of production while the wells are shut-in. There also may be legal hurdles that will prevent the operator from relocating its wells and pipelines and also could result in a potentially significant and permanent loss of mineral

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<sup>2</sup> These percentages range from less than 1% to 6% depending on the county.



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resources if replacement wells are not able, for a number of geologic or construction-related reasons, to access the hydrocarbons that the existing wells now are able to produce.

Notwithstanding the logistical impacts of relocating wells and gaining new access to natural gas fields, the analysis regarding the potential hazardous impact to the wells and natural gas fields is also insufficient. Chapter 24, the Hazards and Hazardous Materials section, concludes that

“[t]he potential for disturbing oil and gas fields during excavation or tunneling activities is minimal because these fields are typically located at depths greater than 3,000 feet...Implementation of pre-construction surveys, and then utilizing avoidance or relocation if necessary, would minimize any potential disruption and hazardous effects due to disruption.”

(Draft EIR/EIS p. 24-51.)

Again, deferring this mitigation and failing to establish specific measures and/or specific performance criteria, without a thorough analysis of alternatives to be considered, is a violation of CEQA. (*Gray v. County of Madera*, 167 Cal.App.4th at 1118.)

Furthermore, if relocation is not possible, the operator will be forced to abandon the wells. Abandoning wells for purposes of a public use raises eminent domain issues and the Draft EIR/EIS must acknowledge that potential takings may occur and consider the potential impacts to natural gas resources.

Vintage has firm plans to further develop the Plan area and this problem will only worsen as time goes on. These types of considerations must be analyzed in the revised Draft EIR/EIS.

### **III. The Impacts of the Project to Natural Gas Distribution Lines Are Not Fully Analyzed Under CEQA.**

As noted in the Draft EIR/EIS, certain alternatives include proposed electric transmission lines that “could conflict with existing natural gas wells or gas distribution lines.” (Draft EIR/EIS, p. 26-19.) But the Draft EIR/EIS concludes that the transmission lines in these areas of additional analyses are not expected to have any effects on natural gas wells, natural gas fields, or natural gas distribution pipelines because these resource features could *easily be avoided or accommodated*. (Draft EIR/EIS, p. 26-20, emphasis added.) Therefore, no adverse effects are anticipated, and this issue is not addressed further in the Draft EIR/EIS. The Draft EIR/EIS also



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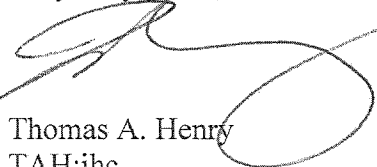
states that natural gas distribution lines are small in diameter (approximately 2 inches) and shallowly buried (approximately 2 - 3 feet) and their relocation would not impact the production from their associated natural gas wells. (*Id.*)

Such an analysis is superficial and inappropriate to meet the required significance threshold. (*See* 14 C.C.R. § 15384.) There is no consideration of the possibility that Vintage or any other natural gas operator may not have the appropriate legal authority to relocate its distribution lines. Furthermore, the Draft EIR/EIS completely avoids analyzing the potential adverse environmental impacts of relocating these lines.

## VII. Conclusion

Vintage does not oppose the construction and development of the Bay Delta Conservation Plan. However, Vintage's concerns and the Project's impacts on resources vital to Vintage's operations have not been adequately addressed in the Draft EIR/EIS. We request that the appropriate agencies comply with CEQA and NEPA and accommodate the highly productive mineral resource development within the Plan Area. For these reasons, the Draft EIR/EIS must be revised and recirculated.

Very truly yours,



Thomas A. Henry  
TAH:jhc

cc: R. Michael Viayra, Jr., Managing Counsel, Vintage Production California LLC  
Russell P. Ledbetter, California Minerals Manager, Occidental Oil and Gas Corporation

**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,

**Jim Peifer**  
City of Sacramento, Department of Utilities  
1395 35<sup>th</sup> Avenue  
Sacramento, CA 95822

Telephone: (916) 808-1416



BDCP1530

OFFICE OF THE  
MAYOR

CITY OF SACRAMENTO  
CALIFORNIA

KEVIN JOHNSON  
MAYOR

July 22, 2014

BDCP Comments

Ryan Wulff, NMFS

650 Capitol Mall, Suite 5-100

Sacramento, CA 95814

Dear Mr. Wulff:

Thank you for accepting public comments from the City of Sacramento (Sacramento) regarding the Bay Delta Conservation Plan (BDCP) and associated draft Environmental Impact Review/Environmental Impact Statement (EIR/EIS). You will be receiving comments separately from Sacramento City staff which raise significant concerns with the BDCP and the EIR/EIS. As the comments will point out, we have lingering concerns regarding water supply assurances, governance, and financing. It is our desire to work with Governor Brown's Administration to develop a comprehensive long term water plan that addresses water supply and environmental challenges faced by all of the residents of California.

The BDCP attempts the laudable goal of improving the water supply reliability to regions in Southern California, San Joaquin Valley and a portion of the Bay Area while trying to improve the Delta ecosystem. However, the proposed BDCP likely will result in continued conflict while not providing the reliability to the export regions or other regions of California. An example of potential conflict is providing water supply assurances to the BDCP proponents in the form of long-term operating permits without a clear understanding of how the BDCP will affect the Delta ecosystem. In our view, these assurances would result in the North State having to provide water or funding if the goals of the BDCP are not met.

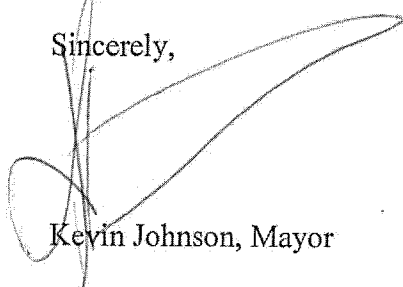
We stand ready to help craft a solution that provides water supply reliability for all residents of California. We need a statewide water plan that does not sacrifice one region of the state to benefit another. The solution must protect, restore, and enhance the Delta ecosystem. As the most innovative state in the nation, we can find solutions to address the many water challenges before us, including increasing California's water supply rather than simply redistributing existing supplies. The solution

must include modern water management strategies including increased conservation, recycled water, desalination, investments in technology and managing surface water and ground water conjunctively. And lastly, a solution must provide a long-term governance role for stakeholders throughout the state, including local government. The solution must not pre-empt local control.

Leaders in the Sacramento region are committed to working with the Governor, our local partners and statewide water interests to find common sense solutions. We need ways to add water supply into the system and improve the fragile Delta habitat and species while maintaining a high quality of life and ensuring economic opportunities for future generations.

If you have any questions or require additional information please contact Randi L. Knott, Intergovernmental Relations Officer at (916) 808-5771.

Sincerely,



Kevin Johnson, Mayor



Angelique Ashby, Mayor Pro Tem  
Chair, City Council Water Ad Hoc Committee

cc: Governor Edmund G. Brown, Jr.  
Mr. John Laird, Secretary, California Natural Resources Agency  
Honorable Dianne Feinstein  
Honorable Barbara Boxer  
Honorable Doris Matsui  
Honorable Darrell Steinberg  
Honorable Richard Pan  
Honorable Roger Dickinson  
Ms. Sally Jewel, Secretary of the Interior  
Mr. Mark Cowin, Director, Department of Water Resources  
Mr. Lowell Pimley, P.E., Acting Commissioner, Bureau of Reclamation



**From:** Dave Ford <spruceflydave@comcast.net>  
**Sent:** Wednesday, July 23, 2014 3:46 PM  
**To:** BDCP.Comments@noaa.gov  
**Subject:** Comment on the Bay Delta Plan:

Comment on the Bay Delta Plan: I see little discussion of the impact of the proposed twin tunnels on the lower American River fishery. My concern is the potential need to use larger quantities of water from Folsom Lake to counter saline intrusion in the Delta. Being the closest major water storage facility to the Delta, Folsom stored-American River Water is the first "line of defense" against saline intrusion in the Delta. American River water can reach the Delta in a day, while water from the other reservoirs in the Sacramento river system take a minimum of three days to reach the Delta.

The American River currently maintains a run of threatened American River Steelhead Trout, and supports a large run of Chinook Salmon. Cold water from Folsom Dam storage is a necessary ingredient to the successful reproduction of American River Steelhead and Salmon. If the "twin tunnels divert flows of water from through the Delta to the under" the Delta, it is highly likely to sharply increase requirements for water quality (salinity) releases from the American and reduce the quantity of cold water needed to protect American River Steelhead and Salmon spawning.

This is of major concern to all who fish, be they American /River or are fishers off shore commercial Salmon fishermen, and there is an associated economic impact on them.

David C. Ford

8450 Erika Jean Way

Fair Oaks, CA

95628

**From:** Robert Franklin <fishwater@hoopa-nsn.gov>  
**Sent:** Wednesday, July 23, 2014 4:34 PM  
**To:** BDCP.comments@noaa.gov  
**Cc:** director@hoopa-nsn.gov; hupafish@hoopa-nsn.gov  
**Subject:** Comments of Hoopa Tribal Fisheries Department  
**Attachments:** Comments BDCP Draft EISEIR.pdf

To Whom It May Concern:

Formal comments of the Hoopa Tribal Fisheries Department, fisheries management agency of the Hoopa Valley Tribe, are in the attached file.

These comments, referencing the Draft EIS/EIR for Bay Delta Conservation Plan, are being submitted prior to the July 29, 2014 deadline shown on your website <http://baydeltaconservationplan.com/PublicReview/HowtoComment.aspx>

Robert Franklin, M.S.  
Water Division Lead  
Hoopa Tribal Fisheries  
PO 417 Hoopa, CA 95546  
(530) 784-7636 cell



Hoopa Valley Tribal Council  
Natural Resources Division  
Fisheries Department  
Post Office Box 417 • Hoopa, California 95546  
(530) 625-4267 • FAX (530) 625-4995



BDCP1532

July 24, 2014

## Comments of Hoopa Tribal Fisheries regarding Bay Delta Conservation Plan Environmental Documents

**General Comments** – Development of the Draft EIS/EIR (Draft) for the Bay Delta Conservation Plan (BDCP) has gone forward despite severely limited participation by the Hoopa Valley Tribe (Tribe). A consequence has been to substantially disregard the Tribe in spite of its position as holder of senior water rights in the Trinity River Basin. Those rights reserve from diversion to the Central Valley all water necessary for conservation of fisheries of the Klamath-Trinity Basin including salmon, steelhead, lamprey and sturgeon on which the Tribe has depended for millennia. Restoration of Trinity River fisheries is unlawfully long overdue as a result of delays since the signing of the Trinity River Mainstem Fisheries Restoration Record of Decision in 2000. Now, plans to increase conveyance of water to areas south of the Delta are moving forward, encouraged by the Governor of California and those contractors who would benefit from increased trans-Delta exports.

In regards to the analyses that underpin the Draft, brief technical meetings between Tribal Fisheries staff and federal/state partners have taken place on two occasions. However, Hoopa Tribal government has not been directly engaged, and requirements for government-to-government consultation between the Hoopa Valley Tribe and the federal government have not been met as required under federal policies (see White House-Indian Affairs Executive Working Group, Consultation and Coordination Advisory Group, January 2009<sup>1</sup>). A government-to-government consultation must be completed prior to any further federal action, such as contemplated under BDCP alternatives.

Funding requested under the Tribe's Annual Funding Agreement with Reclamation to support participation in BDCP compliance was denied. Consequently, the Tribe has not been able to take part in distant public scoping meetings, negotiations, and technical briefings. Also, it has been impossible for

1

While the statutory language of NEPA does not mention Indian tribes, Section 40 CFR 1501.2(d) (2) requires that Federal agencies consult with Indian tribes "early in the NEPA process".



PACIFIC LAMPREY



STEELHEAD



GREEN STURGEON

the Tribe's scientists to undertake comprehensive technical reviews of the numerous Habitat Conservation Plan and Draft EIS/EIR documents available online – amounting to hundreds of pages of text and figures.

The Draft reflects the lack of Tribal participation in its grossly inadequate consideration of tribal fishing and water rights, and abundant inaccuracies regarding the practice and significance of tribal fisheries relative to potential environmental impacts.

Environmental impacts to the Trinity River and its fishery, including impacts attributable to climate change are shown in the analyses: both water supply and water temperature impacts are anticipated. The analysis falls short of fundamental requirements under NEPA, as best available information is ignored or misinterpreted in regards to the law of the Trinity River, and as relates to the biology of Trinity River trust resources. In sum, the analyses provide a basis unsuitable for interpreting impacts to tribal fishery assets held in trust by the United States.

Requirements of the 2000 Record of Decision and 2000 Biological Opinion for coho salmon are not accounted for in CALSIM, as is also the case for the 1959 water contract between Humboldt County and the Federal Government for annual releases of 50,000 acre feet. In addition, water releases foreseeably required to mitigate fish kills in the lower Klamath flows are ignored. Modeling of flows in several alternatives shows decreases in Lewiston releases from ROD-required rates. Minimum carryover storage behind Trinity Dam drops below required levels and minimum flows required by the Record of Decision in Trinity are modeled – erroneously - as equivalent in priority to instream flow targets for other CVP waters. A result of modeling errors is to overestimate volumes of water available for diversion to the Central Valley. In years where both the annual contract water (50TAF) and the lower Klamath supplemental flow volumes (36taf+) would be required, this overestimate exerts a powerful bias on modeling output, misleading users of the document. Both reliability and volume of water supplies are overstated.

Impacts described as primarily the result of climate change and future water demand, and therefore not attributable to effects of the alternatives, are nonetheless of great significance to the Tribe as we strive to restore fisheries. Rising water temperatures, shifting hydrologic patterns and changes (depletions) in carryover storage behind Trinity Dam combine to threaten Trinity River fish habitat and fish populations. While diversions to the CVP from Trinity do not vary among the alternatives, failure to prevent diversion of water needed to provide adequate (cool) water temperatures in Trinity River leads inevitably to

negative impacts. Timing and magnitude of diversions to CVP need to be altered within the planning models in order to mitigate impacts of climate change.

Coho salmon are included in the list of species found in Trinity River. However, the draft is silent on impacts to Coho, leading to piecemeal analysis of environmental impacts. This species is of particular significance to the Hoopa Valley Tribe, and is listed under the federal Endangered Species Act.

In regards to Pacific lamprey, it is worthy of note that these do not home on their natal streams and as such impacts throughout the zone of analysis exert influence on stocks of Pacific lamprey harvested by the Tribe. A comprehensive analysis of impacts throughout CVP streams and rivers is essential to full disclosure.

## **Chapter 11 Fish and Aquatic Resources**

11.0.1.1 Coho salmon not listed among species for which impacts are analyzed in this chapter. The ESA listed Southern Oregon Northern California Coho inhabit the Trinity River downstream from CVP facilities (Trinity River Division's Trinity and Lewiston dams

Page 11-35 Discussion of Alternative 2a describes "Flow reductions on several waterways, including ... Trinity...when compared to Existing Conditions, could affect lamprey rearing and migration habitat, although the differences would also not be significant or adverse." There is no description as to how flow reductions affecting lamprey habitat have been judged as neither significant nor adverse.

Page 11-46 Discussion of Alternative 3 describes "Flows generally improve and are beneficial in the Trinity River..." We do not see the accompanying analysis, only this conclusion.

Page 11-59 Discussion of Alternative 5 describes "substantial" impacts to Trinity River lamprey as not significant as they are primarily the result of climate change and future water demand, and therefore not attributable to effects of alternatives. This statement would apply equally to all alternatives under analysis, but we do not see this statement in all sections (i.e. in discussion of effects of each alternative)

We believe that the reason modeling of flows in the Trinity show demand-related reductions has to do with improper weighting/model logic. The model "sees" minimum flow requirements in Trinity River as equivalent in weight to other minimum flow requirements, and as such reducible in the face of demand. However Trinity flows are protected by the Record of Decision signed jointly by the Hoopa Valley Tribe and Secretary of the Interior in 2000. The effect of the ROD is to quantify flow requirements under

federal law. Trinity minimum flow requirements stand as superior to minimum flows established for other CVP-impacted streams and rivers. The modeling employed by the EIS/EIR (CALSIM II) is blind to this distinction; a simple adjustment to the model, requiring release of ROD volumes whenever physically available is in order.

Page 11-99 "Trinity River" Description includes the recreational fishery "major recreational activity on the Trinity River throughout the year" but makes no mention at all of tribal harvest. The Hoopa Valley Tribe holds a fully-vested property right to its share of harvestable surpluses, and authorizes each year harvest of fish by tribal members. Failure to acknowledge the tribal fishery and the Federal Government's trust duty to protect the fishery illustrates a fundamental shortcoming.

Page 11-99 The name "Clair Engle Lake" is no longer in use, having been officially dropped in favor of "Trinity Lake" some years ago.

Page 11-100 Description of changes in habitat consequent to construction and operation of Trinity River Dam fails to include changes in abundance and distribution of large wood within the channel and floodplain.

Page 11-100 "Harvest and Hatchery Management" fails to describe harvest management under federal, state and tribal authorities. Also fails to describe TRH hatchery Co-Management Memorandum of Agreement, detailing tribal role in operations alongside federal and state partners.

Pages 11-578 to 579 Analysis of water temperature-related effects of Alternative 1a on Pacific lamprey ammocoetes describes exposure to temperatures above 71.6 °F "in the Trinity River at Lewiston". Such temperatures are in violation of established regulatory requirements. Also, the analysis indicates "increased stranding risk" for lamprey redds in Trinity River. Such effects could only be seen if operations were to vary outside established legal requirements. Together these highlight essential problems within the CALSIM II model, which fails to align with requirements under the Record of Decision of 2000 and federal Endangered Species Act.

Page 11-682 Table 11-1A-102 shows increased incidence of sub-floor carryover (750taf) at Trinity Reservoir. Simulation of years 1922-2003 shows 11 for existing conditions rising to 19 for Alt 1 LLT, and 16 for NAA. We find this information does not square with the analysis shown in Appendix 29C at page 29C-6 where water temperature exceedences below Lewiston Dam are analyzed as not likely to exceed water temperature criteria for summer periods or during October/November spawning. Reclamation's

own analyses predict temperature exceedences will be more frequent when carryover drops below 750taf, or perhaps 1,000taf.

## Appendix 5a.2

Page 5A.2.0-2 The analysis shows, at Figure 5.A.2.5-6, violations of established Trinity River water temperature criteria in 17 of the 40 years modeled. Spring Chinook spawners are the fish most threatened by these late-September through early-October violations.

Page 5A2-22 "Water temperatures in rivers below the CVP and SWP reservoirs are expected to increase and exceed water temperature criteria, except in the Trinity River." This conclusion is at odds with discussion of modeling output for years with Trinity Reservoir storage below 1Maf.

Page 5A.2-47

"It therefore does not appear likely that the simulated increase in average air temperature of 2°F would be sufficient to cause the Trinity River temperatures to exceed the water temperature criteria for summer rearing or fall-run Chinook salmon spawning in October and November." This analysis ignores Spring Chinook in Trinity River, which hold from July through September each year and then commence active spawning by mid-September.

Page 5A.2-52 - Figure 5A.2.5-6. Reclamation Temperature Model-Simulated Lewiston Dam Release Temperatures for the EBC2 Climate Change Cases for WY 1963–2003. Figures show multiple Lewiston release excursions above 55 degrees for late long term condition. We are very concerned at these projected impacts, which are associated with descent into and recovery from dry period, with Trinity storage dropping into sub-1Maf levels. Rules internal to CALSIM model should align with legal requirements to protect Trinity River water temperatures; this would most likely lead to reductions in diversions to CVP during onset of dry periods, as greater carryover storage would be needed to maintain the coldwater pool for downstream temperature control.

## Appendix 11C CALSIM Modeling used in Analysis of Fisheries Impacts

The analysis shows an abundance of impacts to Trinity River flows below Lewiston including flow reductions under Below Normal, Dry and Critical water supply conditions. In some instances such as the

A5\_LLТ scenario, flow depletions occur even in the Above Normal water supply condition. Such results illustrate how CALSIM model logic fails to align with the legal requirement – to provide for Trinity in-basin fishery needs at the expense of trans-basin diversions, even under conditions of high demand within CVP. The CALSIM-based analyses provide a foundation unsuitable for interpreting impacts to tribal fishery assets held in trust by the United States.

## **Appendix 29 Climate Change and the Effects of Reservoir Operations on Water Temperatures in the Study Area**

Page 29C-3 Discussion of Trinity River summer temperature objectives (60 °F) within text referring to rearing for steelhead and Chinook is misleading. Instead, adult spring Chinook holding below Lewiston Dam are the priority for maintenance of temperatures at this level in summertime.

Page 29C-5 Discussion of warming in Lewiston Reservoir of water released from Trinity Dam is inaccurate. The statement “Because the Trinity River flow is controlled at 300 cfs in most months...” is off. During the summer period, flows are controlled at a minimum of 450cfs.



**From:** Annie Alexander <aalexander@ylwd.com>  
**Sent:** Thursday, July 24, 2014 11:38 AM  
**To:** bdcplcomments@noaa.gov  
**Cc:** Steve Conklin; kseckel@mwdoc.com  
**Subject:** YLWD Comments Regarding Draft BDCP Plan and Related Documents  
**Attachments:** 2014-07-24 - BDCP Comments.pdf

Hello Mr. Wulff:

Attached please find a copy of Yorba Linda Water District's comments regarding the Draft BDCP Plan and related documents.

If you could please confirm receipt I'd greatly appreciate it.

Thank you,

Annie Alexander | Executive Secretary



**YORBA LINDA WATER DISTRICT**  
Phone: 714-701-3021  
Fax: 714-701-3028  
[www.ylwd.com](http://www.ylwd.com)



# Yorba Linda Water District

*Reliable and Trusted Service  
for More Than 100 Years*

BDCP1533

July 24, 2014

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

RE: Comments on the Draft Public Review Bay-Delta Conservation Plan (BDCP), Draft Environmental Impact Report/Environmental Impact Statement and Draft BDCP Implementing Agreement

Dear Mr. Wulff,

Yorba Linda Water District (YLWD) is a retail water provider in north Orange County that is governed by a publicly elected Board of Directors. The District is proud of its history of over 100 years of providing high quality water to our 70,000 customers in the City of Yorba Linda, and portions of the cities of Placentia, Anaheim and Brea. We have worked diligently over many years to build and maintain a premier water system that has the dual capability to provide and deliver groundwater and import water to our customers.

In spite of the world-class efforts of Orange County to provide greater water supply certainty for eight percent of California's population and the \$200 billion economy they represent, Orange County remains dependent on imported water to meet approximately 45 percent of its average annual demand, with the State Water Project (SWP) deliveries from the Delta meeting approximately half of those needs. The Delta ecosystem and water supply conveyance problems have long been recognized, and have remained in a continuing state of degradation, conflict, and stalemate.

Many years and hundreds of millions of dollars have been spent on study efforts while the Delta system continues to be used for water conveyance in a manner for which it was not intended. The longer it takes to begin the resolution, the more expensive it will become. This stalemate has been punctuated by droughts, floods, economic losses, environmental degradation and litigation every decade since the construction of the SWP in the 1960s. We can no longer delay action in the Delta, and urge the State and federal government to quickly move forward with the Preferred Alternative. Failing to act and move forward is not an acceptable alternative.

In recent years the endangered species biological opinions for protection of Delta and Longfin Smelt and Chinook Salmon have resulted in massive cutbacks in exports by over 1.5 million acre-feet per year and without the BDCP further cuts



R. Wulff  
July 24, 2014  
Page 2

of another 1.0 million acre-feet per year could occur with new endangered species listings according to the BDCP briefing documents. This situation is untenable and a solution must be found to stop this hemorrhaging of this critical foundational water supply to southern California. The BDCP is the best hope we have and it must be approved and implemented in a timely and cost-effective manner.

We offer the following specific comments on the BDCP:

1. Yorba Linda Water District strongly supports the BDCP Preferred Alternative (No. 4) and oppose the No Action Alternative: It is critical to the state's economy and environment that both the State and federal government expeditiously follow through with the decision for adopting and implementing the BDCP.
2. Co-Equal Goals: The BDCP must be implemented in a manner consistent with the co-equal goals adopted by the State. Preferred Alternative (No. 4) is consistent with the Delta Reform Act of 2009's co-equal goals.
3. New Facilities and In-Delta Operational Flexibility: The modernization of the Delta conveyance system is essential in order for habitat restoration and conservation to have its intended effect; Preferred Alternative (No. 4), which incorporates the 9,000 cubic feet per second (cfs) three intake, twin tunnel conveyance system, provides the best balance between operational flexibility and modernizing the conveyance system for environmental benefit and water supply reliability.
4. Reduced Future Reliance: The 2009 Delta legislation called for water agencies to reduce future reliance on the Delta, not to become 100 percent "self-reliant." While our major efforts in these areas will continue, it is important to note that "reduced reliance" does not equate to and was never intended to require a move to 100 percent "self-reliance" and the notion of co-equal goals was never intended to result in a future with significant reduction in exports from levels achieved before the 2008 bio-opinions.



R. Wulff  
July 24, 2014  
Page 3

5. Plan Implementation and Regulatory Assurance: The BDCP must provide the needed implementation and regulatory structure and assurances to help achieve the co-equal goals.
  - a. To us, this means that it is virtually impossible to predict the outcome of the BDCP habitat restoration efforts and endangered species population dynamics, and such a standard should not be required in the DEIR/DEIS.
  - b. Furthermore, this means that changed circumstances under the operation of the BDCP, including the potential for new species listing, be incorporated in such a manner to result in a minimum impact on future water supply exports.
6. Sound Science. It is critical that sound science is provided in order to assure the long-term success of the BDCP. We strongly support the inclusion of independent scientific investigation and research to be included in the BDCP process.
7. Cost Allocation: We support the "beneficiary pays principle" in cost allocation for all responsible parties and beneficiaries.
8. Implementing Agreement: The Implementing Agreement is a contractual, legally-binding agreement that spells out the commitments and assurances as well as the terms and conditions for on-going implementation of the BDCP. Clarity in this agreement is essential as well as the balance in implementation of the co-equal goals.
9. Economy, Environment and Water Management: The SWP is critically important to the Orange County economy, environment and water management. Implementation of the BDCP is critical to Orange County's future.
  - a. Orange County and YLWD have invested heavily to diversify our water portfolio but the SWP remains a critical source of low salinity water supply that is currently unacceptably jeopardized by the unsustainability of the current Bay-Delta system.



R. Wulff  
July 24, 2014  
Page 4

- b. Orange County relies on the SWP to support groundwater conjunctive use programs and water recycling programs - it is an essential part of our water reliability strategy that sustains our citizens and businesses.
- c. We support the 9,000 cfs twin tunnel Preferred Alternative (No. 4) provided reasonable assurances are included regarding governance and future decision-making in the process. We strongly advocate for a seat at the table for the water Permittees in the various oversight groups. The investment and decision-making must be structured to achieve a positive outcome for both the SWP and Permittees and the ecosystem restoration in a collaborative, partnership manner.

It is now time for the State and Federal government to adopt and move the BDCP to implementation in order that we can achieve the 2009 legislation's co-equal goals of improving water supply reliability and ecosystem restoration and improved function by implementing the BDCP Preferred Alternative (No. 4).

Thank you for your time and consideration of these comments.

Sincerely,

Steven R. Conklin, P.E.  
Acting General Manager

**From:** Mary Keitelman <mkeitelman@hotmail.com>  
**Sent:** Wednesday, July 23, 2014 7:41 PM  
**To:** BDCP.Comments@noaa.gov  
**Subject:** Protect Delta, JUST SAY NO to the Twin Tunnels Permit

Dear Mr. Ryan Wulff,

I urge you, protect the Sacramento-San Joaquin Delta: DENY the "Twin Tunnels" permit.

The Delta is a resource for all of the citizens of California; the fish and wildlife that the Delta supports are everyone's heritage.

The "Twin Tunnels" permit will enable devastating and irreparable damage to the environment for the wildlife the Delta supports, including salmonid fish Chinook and the Steelhead Trout, and Sturgeon, local and migratory birds and other wildlife.

The proposed tunnels would greatly reduce water flow throughout the delta: WILDLIFE CAN NOT SURVIVE THE DROUGHT. Without the water the fishes will not survive.

Other aquatic species too -- will just die.

Wildlife that relies on these species will either never be born, or die also.

Because the drought is long-term, the proposal is to create mass-death in the Delta - cutting populations at what will be all-time lows and/or extinctions if this tunnel proposal is implemented.

This water is for everyone -- not just for a few big businesses.

If the argument is made that this water grab in the form of the "Twin Tunnels" permit is for growing food to sell just -- well, it does not hold water.

Why? Because without this precious irreplaceable and defenseless wildlife - fish and all the other species - the Delta and the heritage for current and future California residents - is forever destroyed.

These animals will just die -- so quickly -- we will not be able to save the massive amounts of wildlife that Big Agriculture and Water Contractors are proposing to kill with their "Twin Tunnels" permit request.

This is not a temporary or transient 1- or 5-year drought. This is here to stay, and it's going to get worse.

This drought is historic, and we are only at the beginning. According to the Union of Concerned Scientists, the entire American West will become dryer and dryer over the coming decades - so that it is more like Australia, and less like an irrigated desert. Get the details here:

[http://www.ucusa.org/news/press\\_release/ca-drought-emergency-0388.html](http://www.ucusa.org/news/press_release/ca-drought-emergency-0388.html)

This water is for everyone -- not just BIG BUSINESS.

PLEASE, I urge you, JUST SAY NO: Deny the "Twin Tunnels" permit.

Thank you for the opportunity to comment on this vital issue.

BDCP1534

Sincerely,

Mary Keitelman  
7 Acacia Court  
Pacifica, CA 94044  
US

---

**From:** Gena Kraft <gena.kraft@gmail.com>  
**Sent:** Wednesday, July 23, 2014 7:46 PM  
**To:** BDCP.comments@noaa.gov  
**Subject:** Plan Comments

I am providing my feedback and opinion on the BDCP and the tunnel project. I am very concerned that the diversion of water from the North Delta via the proposed tunnels will have a negative effect on the wildlife and water quality downstream.

I am also concerned that property owners will be obligated to pay for this expensive project without putting the project to a public vote. This tunnel project is a fiasco. We need to explore all other options for providing water to central and southern California before we simply decide to build tunnels that will forever change the salinity in the Sacramento Delta.

How did we get from determining whether this is even the right course of action, all the way to funding this project. Let's step back to the analysis of what we're trying to achieve and if that still makes sense, the best way to address Southern California's water needs. Forever altering the saline level in the Sacramento Delta may not be the best course of action. Thirsty So Cal may need to look at other options. With \$20 to \$25 Billion to spend on the problem, how about putting it towards desalination of ocean water? Coming up with a viable product could help many thirsty people around the globe, not just So Cal...

Regards,

Gena Kraft



**From:** Friends of the River <info@friendsoftheriver.org> on behalf of William OSullivan <info@friendsoftheriver.org>  
**Sent:** Thursday, July 24, 2014 9:56 AM  
**To:** BDCP.Comments@noaa.gov  
**Subject:** I oppose all alternatives in the BDCP that propose construction of new diversions and tunnels under the Delta

Jul 24, 2014

Mr. Ryan Wulff, NMFS  
650 Capitol Mall, Suite 5-100  
Sacramento, CA 95814

Dear Mr. Wulff, NMFS,

Thank you for receiving public comments in response to the Draft BDCP Plan and Draft EIR/EIS.

I oppose all alternatives in the BDCP that propose construction of new diversions and tunnels under the Delta. I oppose the project because:

It is too costly (up to \$54 billion with interest and other hidden costs) and the general public should not have to cover any of this outrageous, including habitat restoration costs. These should be paid by those who receive the water (since the Delta diversions degraded the habitat in the first place).

Operation of the diversions and tunnels threaten to dewater major upstream reservoirs in northern California and reduce downstream river flows, to the detriment of fish, wildlife, recreation, and other public trust values.

Diversion and tunnel facilities would adversely impact too much Delta farmland and habitat, harm Brannan Island State Park, infringe on the Stone Lakes National Wildlife Refuge, and degrade other essential conservation lands.

You cannot restore Delta habitat without first determining how much fresh water the Delta needs to survive and thrive. Restoration of fresh water flows from the San Joaquin River in the south Delta are particularly important.

The tunnels will need more upstream storage facilities to feed fresh water into them. These include raising Shasta Dam, building the Sites Reservoir, and possibly reviving the Auburn Dam on the American River and the Dos Rios Dam on the Eel. The environmental, cultural, and financial impacts of these controversial projects are a significant foreseeable but ignored impact of the BDCP.

[This project is absolutely ridiculous. Save the delta! Stop the Tunnels!]

I believe that the BDCP should include, and I would support, an alternative that significantly reduces Delta exports and focuses instead on restoring habitat and threatened and endangered species in the Delta, improves Delta water quality by providing sufficient fresh water inflow from both the Sacramento and San Joaquin Rivers, and that includes a pragmatic plan to sustainably meeting California's water needs. This can be done by increasing agricultural and urban water use efficiency, capturing and treating storm water, recycling urban waste water, cleaning up polluted groundwater, and reducing irrigation of desert lands in the southern Central Valley with severe drainage problems. We don't need to build more dams or tunnels. ]

Thank you for considering my comments.

BDCP1536

Sincerely,

Mr. William OSullivan  
5268 Trophy Dr  
Fairfield, CA 94534-4055  
(650) 393-3117

# **L # 1537**

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☐ Out of Scope

☐ Other: \_\_\_\_\_

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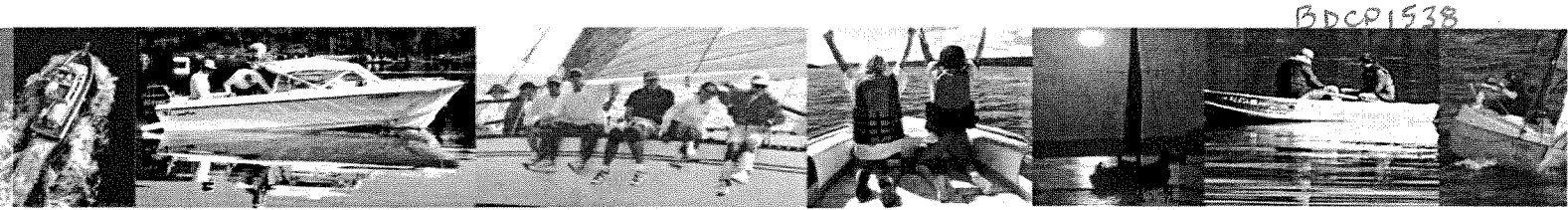
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**From:** Jerry Desmond Jr. <jerry@desmondlobbyfirm.com>  
**Sent:** Thursday, July 24, 2014 9:46 AM  
**To:** BDCP.comments@noaa.gov  
**Subject:** BDCP Comments - Recreational Boaters of California  
**Attachments:** RBOC BDCP Comment Letter and Enclosures 7 24 14.pdf

Attached please find the comments of Recreational Boaters of California [RBOC].

Best –

Jerry Desmond, Jr., Esq.  
Director of Government Relations  
**Recreational Boaters of California**  
[www.RBOC.org](http://www.RBOC.org)  
DESMOND & DESMOND  
925 L Street, Suite 260  
Sacramento, CA 95814  
p 916.441.4166  
f 916.441.3520  
e [jerry@DesmondLobbyFirm.com](mailto:jerry@DesmondLobbyFirm.com)  
[www.DesmondLobbyFirm.com](http://www.DesmondLobbyFirm.com)



BDCP1538



**RBOC**  
Protecting your boating interests.

925 L Street • Suite 260  
Sacramento CA 95814  
916.441.4166  
[www.rboc.org](http://www.rboc.org)

July 24, 2014

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

**RE: Bay Delta Conservation Plan**

This is to provide the comments of Recreational Boaters of California [RBOC] on the Bay Delta Conservation Plan.

RBOC is the nonprofit governmental advocacy organization that works to protect and enhance the interests of the state's recreational boaters before the legislative and executive branches of state and local government. RBOC is in its 46th year as a statewide organization, and since 1968 it has continued its commitment to promoting the enjoyment, protection, and responsible use of our waterways.

The Bay Delta Conservation Plan (BDCP or Delta Plan or plan) is a Habitat Conservation Plan (HCP) and a Natural Communities Conservation Plan (NCCP) developed by the U.S. Bureau of Reclamation and the California Natural Resources Agency. The plan proposes to dramatically and forever alter the flow and level of water through existing Delta waterways. The plan proposes to address this through a host of different proposed alternative measures and actions. The purpose of the plan being to endeavor to mitigate a host of existing endangered species impacts caused by the existing operational practice of exporting Delta water to other locations in California.

RBOC has monitored the BDCP planning process and representatives of RBOC have attended innumerable meetings and has submitted comment letters since July of 2006 when the current plan commenced.

RBOC reiterates the previous comments we have submitted including our September 24, 2013 correspondence expressing concerns to each entity that was preparing a joint EIR/EIS for the Bay Delta Conservation Plan (BDCP) based upon the currently available draft Consultant Administrative Draft Environmental Impact Report (EIR) / Environmental Impact Statement (EIS). Those comments are attached here and are incorporated by reference.

The BDCP with a companion Environmental Impact Report/Environmental Impact Study (EIR/EIS) of upwards of 40,000 pages were released by the State of California for review on December 13, 2013 with a 120-day comment period ending June 13, 2014 [and subsequently extended to July 29, 2014].

It is evident to RBOC from review of the BDCP that implementation of the proposed actions and measures set forth in the plan and EIR/EIS will result in major short-term and long-term alternations and impacts to existing Delta waterways utilized by all types and sizes of recreational boats. Depending upon which actions and measures are implemented, there will be adverse impacts that constrain and in many instances even prohibit recreational boaters accessing and utilizing existing Delta waterways. This includes not only adverse impacts during the estimated decade-long construction period but thereafter as well depending upon which action measures and/or alternatives or segments of any are implemented at any time.

The plan in many ways results in irreversible changes to the Delta itself as well as to access and enjoyment of Delta waterways relevant to recreational boating and marinas and boat ramps visited by boaters and the general public. Unless mitigated to RBOC's satisfaction, the actions by BDCP and EIR/EIS to modify any Delta waterway is opposed by RBOC.

**Karen Rhyne**  
President

**Greg Gibeson**  
Vice President – North

**Ralph Longfellow**  
Vice President – South

**Otis Brock**  
Secretary – Treasurer

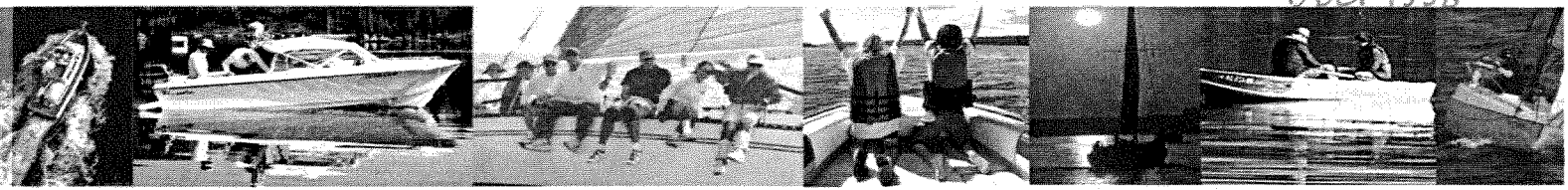
**Jack Michael**  
Past President

Legislative Advocates  
**Jerry Desmond**  
Executive Vice President

**Jerry Desmond, Jr.**  
Director of  
Government Relations

Mail donation checks to  
**RBOC**

c/o Otis Brock  
1253 Yuba Avenue  
San Pablo, CA 94806

**RBOC LETTER - BDCP****July 24, 2014**

Page Two

The BDCP needs to fully mitigate-for and to guarantee assurances-of reliable access to all Delta waterways proposed to be altered in any manner under the plan. This must include, for example, constructing boat locks wherever Delta waterways are proposed to have any barriers or gates – whether short-term or long-term - and that all boat locks be constructed and operated at no cost or charge to recreational boaters.

RBOC's position is based upon the fact that the burden of producing a comprehensible HCP under federal law, supporting analysis and funding rests not on recreational boaters that navigate Delta waterways but that it is an obligation that rests solely upon the BDCP project proponents. The BDCP and EIR/EIS also are intended to serve as a NCCP under California law. In this regard, again RBOC asserts its objections to the BDCP and EIR/EIS as the plan fails to meet the provisions of NCCP.

Further concerns of RBOC that are not mitigated include, but are not limited to:

- The BDCP states that it will need authorizations of the Rivers and Harbors Act of 1899 (RHA) to perform many of its proposed actions to alter existing Delta waterways. The RHA requires authorization from Congress or the California state Legislature, and in addition to that of the U.S. Corps of Engineers in certain cases. The BDCP is defective as it does not specify when or how such authorization will occur and leaves to speculation whether it can attain necessary authorizations and permits for what it proposes to construct (in as much as the plan has such a wide variety of alternative measures and actions with no known specificity of outcomes).
- The BDCP's effects on Delta flows and water levels: Changes in Delta flow and water levels as proposed in the plan have the potential to have a very significant and highly negative impact upon boats, marinas and boat ramps and other access point to the waters of the Delta. No analysis appears to exist in the BDCP or EIR/EIS as to operational impacts and the mitigations for having altered and reduced Delta water levels. Thus no analysis exists as to the severity this impact will have upon recreational boating, marinas and other water-based recreational uses of the Delta. Also, it is clear that if there are reduced water levels in the Delta this will also – from time to time - occur and have negative impact upon marinas and boats and access points along the Sacramento River and American River.

Thank you for this opportunity to provide RBOC's comments on the BDCP.

I can be reached at 949.553.1223, or please feel free to contact RBOC's Director of Government Relations, Jerry Desmond, Jr., in Sacramento at 916.441.4166.

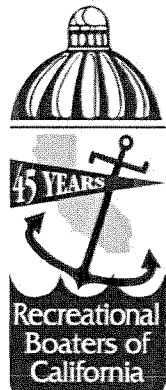
Sincerely,

*Karen Rhyne*

Karen Rhyne, Esq.,  
RBOC President



BDCPI538



**RBOC**  
Protecting your boating interests.

925 L Street Suite 260  
Sacramento CA 95814  
916.441.4166  
www.rboc.org

September 23, 2013

California Department of Water Resources  
Mark Cowin, Director, P.O. Box 942836, Sacramento, CA 94236

United States Bureau of Reclamation  
Michael L. Connor, Commissioner, 1849 C Street NW, Washington DC 20240

United States Fish and Wildlife Service  
Dan Ashe, Director, 1849 C Street NW, Washington DC 20240

National Oceanic and Atmospheric Administration's National Marine Fisheries Service  
Edward Horton, Chief Administrative Officer, 1401 Constitution Avenue NW, Room 5128, Washington, DC 20230

California Department of Fish and Game  
Charlton H. Bonham, Director, 1416 Ninth Street 12<sup>th</sup> Floor, Sacramento, CA 95814

United States Environmental Protection Agency  
Gina McCarthy, EPA Administrator, 1200 Pennsylvania Avenue, NW, Washington DC 20460

United States Army Corps of Engineers  
Lieutenant General Thomas P. Bostick, Commanding General and Chief of Engineers, 441 G Street, NW, Washington DC 20314

**Re: Bay Delta Conservation Plan**

**DRAFT Consultant Administrative Draft Environmental Impact Report (EIR)/Environmental Impact Statement (EIS)**

This is to present the concerns of Recreational Boaters of California (RBOC) to each entity that is preparing a joint EIR/EIS for the Bay Delta Conservation Plan (BDCP) based upon the currently available draft Consultant Administrative Draft Environmental Impact Report (EIR) / Environmental Impact Statement (EIS).

RBOC is the nonprofit governmental advocacy organization that works to protect and enhance the interests of the state's recreational boaters before the legislative and executive branches of state and local government. RBOC is in its 45th year as a statewide organization, and since 1968 it has continued its commitment to promoting the enjoyment, protection, and responsible use of our waterways.

- Continued

Jack Michael  
President

Karen Rhyne  
Vice President - South

Greg Gibeson  
Vice President - North

Otis Brock  
Secretary - Treasurer

Cleve Hardaker  
Past President

Legislative Advocates  
Jerry Desmond  
Executive Vice President

Jerry Desmond, Jr.  
Director of  
Government Relations

Mail donation checks to  
RBOC  
c/o Otis Brock  
1253 Yuba Avenue  
San Pablo, CA 94806



It is the policy of RBOC to advocate for the preservation of recreational boating access to navigable California Delta waterways:

- RBOC advocates to protect the rights of recreational boaters to assure access for continued navigation by recreational boats in the waters of the California Delta wherever any “control structure” (such as, but not limited to gates or barriers whether temporary or permanent) is planned for placement across a navigable Delta waterway.
- RBOC seeks assurances that as any changes are contemplated which further alter Delta navigable waterways that alternatives are identified and implemented to the satisfaction of boaters that will best preserve and sustain recreational boat passage at each location.
- RBOC seeks to have operable boat locks installed as an integral design component to mitigate the placement of any control structure across any navigable Delta waterway. All control structures and boat locks or other alternatives satisfactory to boaters for recreational boat passage are to be installed, maintained and operated without cost or expense to recreational boaters.

RBOC is greatly concerned that there are proposals in the DRAFT Consultant Administrative Draft EIR \ EIS (“draft”) that would upset the delicate balance that enables the Delta to be a vigorous recreational opportunity of statewide and national significance. These impacts are not adequately addressed by either mitigations or other plans set forth in the draft. Negative impacts would occur in the immediate construction phase, as well as in the post-construction phase.

It is important to recognize that boat owners with boats at marinas pay property taxes, both recreational boaters and marina owners have a direct and mutually vested interest in the impacts and the mitigations upon Delta recreation - and especially so relevant to whichever BDCP alternative is selected.

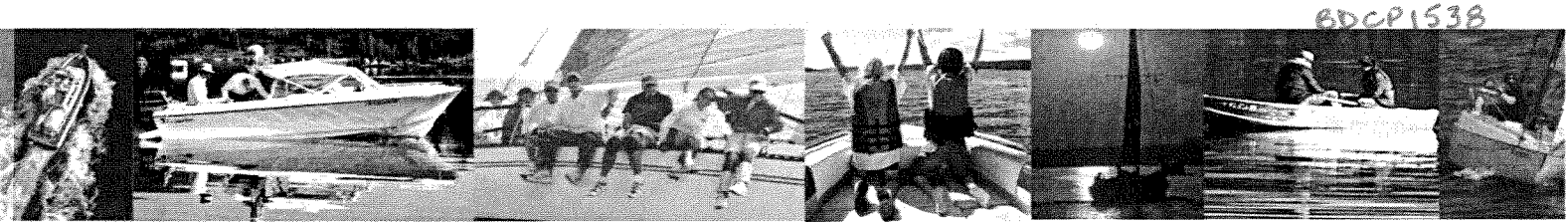
In addition, RBOC’s concerns with the draft with regard to recreational boating and access to Delta waterways extends to alternative 4 both during its construction and thereafter.

RBOC’s comments here are subject to potential revision since the California Department of Water Resources (DWR) on August 15 announced significant changes to the proposed water conveyance system in the Delta. There is insufficient information at this time for RBOC to assess the impacts of the changes on recreational boating.

The negative impacts of the currently available draft include a significant reduction in the extent of navigable waterways available to boaters, as well as a permanent alteration of boat navigation, including but not limited to:

- **Barriers** - at Consumnes River Preserve, Boathouse Marina, Landing 63, Deckhand’s Marina Supply, Walnut Grove Dock, Boon Dox Dock, Dagmar’s Landing, Brannan Island State Recreation Area, Sherman Island, and Bullfrog Landing Marina.
- **Gates** - at Mokelumne River, Snodgrass Slough, Georgiana Slough, Connection Slough, Railroad Cut, Woodward Canal, Fisherman’s Cut, Old River, Meadow Slough, Victoria Canal and Three Mile Slough.





- **Fish screens without boat passage** - at Boathouse Marina, Walnut Grove Public Guest Dock, Boon Doo guest dock, Delta Cross Channel, San Joaquin River, Middle River, Victoria Canal \ North Canal, and Old River.
- **Lock** – on Old River.

These are in addition to the temporary construction effects that will detrimentally impact recreational boating including: temporary channel closures, fish screens, gates, cofferdams, large waterborne equipment including cranes, piers or temporary barge unloading facilities, boat passage obstructions, siphons, congestion, channel modifications, dredging activities, reduced speed limits and traffic delays.

Enclosed with this letter are:

- A document with illustrative examples of the boating impacts in the draft, with specific references to the draft.
- The six pages of maps in the draft for the Through Delta \ Separate Corridors proposal, with locations of specific boating impacts.

Based on the recent experiences with major state construction projects, the draft's projected duration, costs and impacts can reasonably be expected to be overly optimistic and to grossly understate the real timeframe, costs and impacts that will be realized.

Similarly, there are optimistic statements in the draft that conservation measures, once implemented, could benefit recreational boating by expanding the extent of navigable waterways available to boaters. This statement is speculative and does not provide adequate mitigation to the negative impacts set forth in the draft.

From the provisions set forth in the draft, it is clear that the BDCP will have a severely detrimental effect on the navigable waters of the United States and recreational boating in particular in the Delta. The boating experience will become unpleasant, difficult, and in some instances dangerous to boaters in the Delta. Barriers to access (even with locks), the effects of fish screens, siphons, dredging, and moving channels will be detrimental to boating. The presence of working heavy duty equipment and barges during construction will be a dangerous, noisy and dirty annoyance to the recreational enjoyment of boaters.

The draft's provisions will adversely affect the public's right to use waterways, which is an important entitlement that is recognized in the United States Constitution, the California State Constitution, the California Public Trust Doctrine, as well as our state's laws set forth in the Public Resources Code, Civil Code, Harbors and Navigation Code and well-established case law.

Cumulatively, these impacts will essentially destroy the unique and enjoyable recreational boating experience as it has been enjoyed in the past in the Delta.

The negative impact to Delta recreation and tourism will be significant. According to the 2012 Delta Protection Report "Economic Sustainability Plan for the Sacramento-San Joaquin Delta":

Recreation is an integral part of the Delta economy, generating roughly 12 million visitor days of use annually and approximately \$250 million dollars in visitor spending in the Delta each year. Of the roughly 12 million visitor days spent in the Delta each year, approximately 8 million days are for resource-related activities (e.g., boating and fishing), 2 million days are for right-of-way related and tourism activities (e.g., bicycling and driving for pleasure), and 2 million days are for urban parks-related activities (e.g., picnicking and organized sports).



Boating and fishing have the biggest economic impact, and are estimated to generate nearly 80 percent of the recreation and tourism spending in the Delta, including significant expenditures on lodging, meals, supplies, marina services, and fuel. In addition to visitor spending, non-trip spending such as boat purchases and marina rentals are estimated at roughly \$60 million annually for total recreation-related spending of \$312 million annually in the Delta. As seen in Table A above, Delta recreation and tourism supports over 3,000 jobs in the five Delta counties. These jobs provide about \$100 million in labor income and a total of \$175 million in value added to the regional economy. Across all of California, Delta recreation and tourism supports over 5,300 jobs, and contributes about \$353 million in value added.

The 1,000 miles of Delta waterways are populated by 100 marinas and waterside resorts and 50 boat launching ramps. The probable decline of boating will have a severe economic impact. Marinas already have empty slips due to the economic downturn. Trailerable boats will likely be removed from marinas and larger boats will likely move to marinas outside the Delta or be sold. Boat repair and maintenance companies, restaurants and other businesses providing services to boaters would therefore decline or go out of business. Housing values will plummet, especially water front property homes. Because construction will take a long period of time (6-10 years or more), it is unlikely that the Delta economy would ever recover.

RBOC urges the governmental agencies responsible for this project to consider the significant detrimental impacts this project will have on boating and recreation in the Delta as identified in the draft BDCP EIR \ EIS, and to incorporate project revisions that will eliminate or at least substantially reduce these impacts.

Thank you for this opportunity to express the concerns of RBOC with this draft document. Please contact me at 209-402-5530, or RBOC's legislative advocate Jerry Desmond, Jr. at 916-441-4166, with any questions.

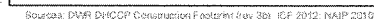
Sincerely,

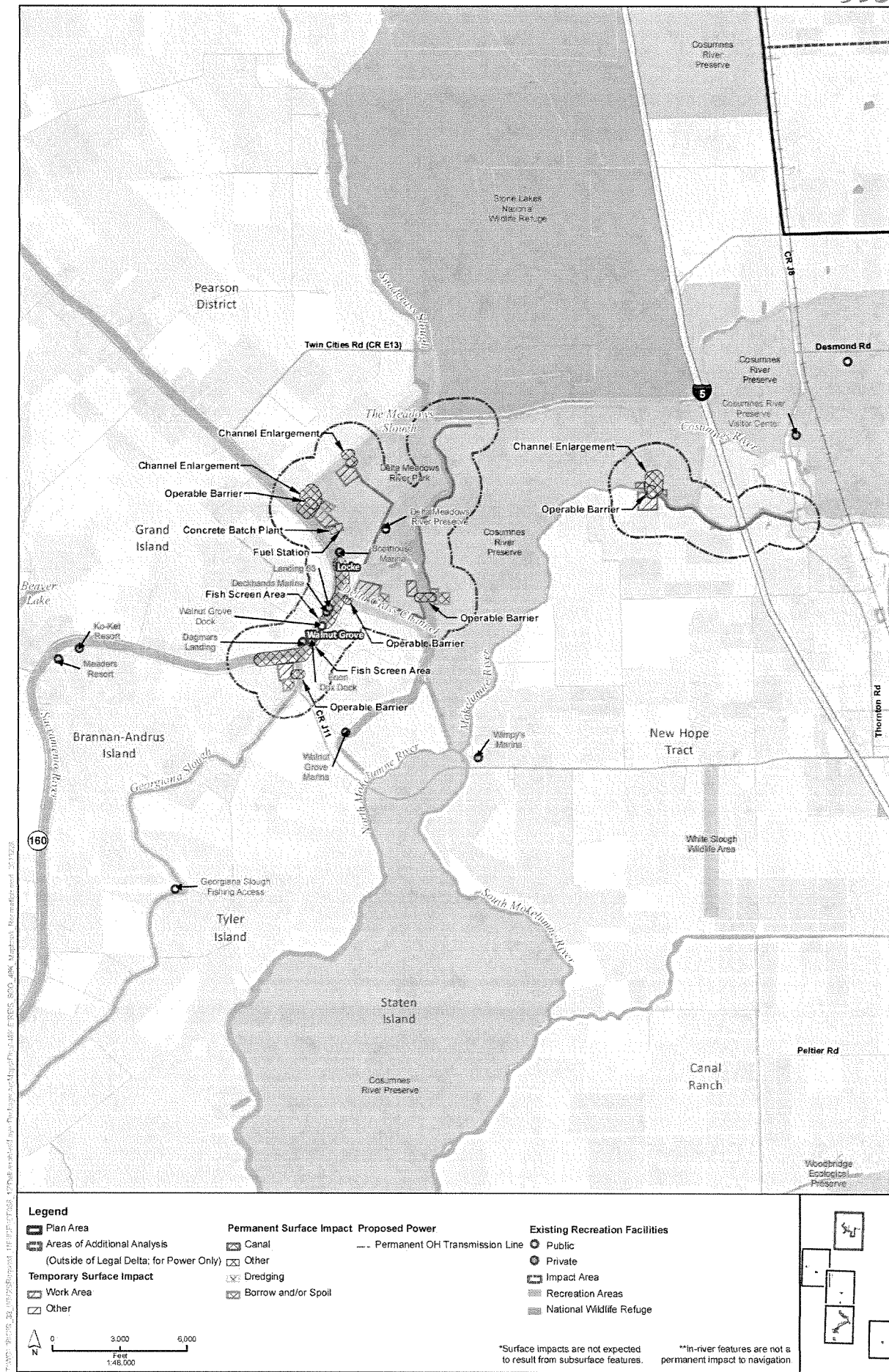
*Jack Michael*

Jack Michael, President

C: The Honorable Jerry Brown, Governor  
The Honorable Diane Feinstein, United States Senate  
The Honorable Barbara Boxer, United States Senate  
John Laird, Secretary, California Natural Resources Agency  
Gerald Meral, Deputy Secretary, California Natural Resources Agency  
Lauren Bisnett, Delta Landowner Liaison, Bay Delta Conservation Plan, Department of Water Resources  
Rebecca Nicholas, Consultant, Bay Delta Conservation Plan  
Phil Isenberg, Chair, Delta Stewardship Council  
The Honorable Darrell Steinberg, Senate President pro Tempore  
The Honorable John Perez, Assembly Speaker  
The Honorable Fran Pavley, Chair, Senate Committee on Natural Resources and Water  
The Honorable Anthony Cannella, Vice Chair, Senate Committee on Natural Resources and Water  
The Honorable Lois Wolk, Chair, Senate Select Committee on the Delta  
The Honorable Anthony Rendon, Chair, Assembly Committee on Water, Parks and Wildlife  
The Honorable Frank Bigelow, Vice Chair, Assembly Committee on Water, Parks and Wildlife

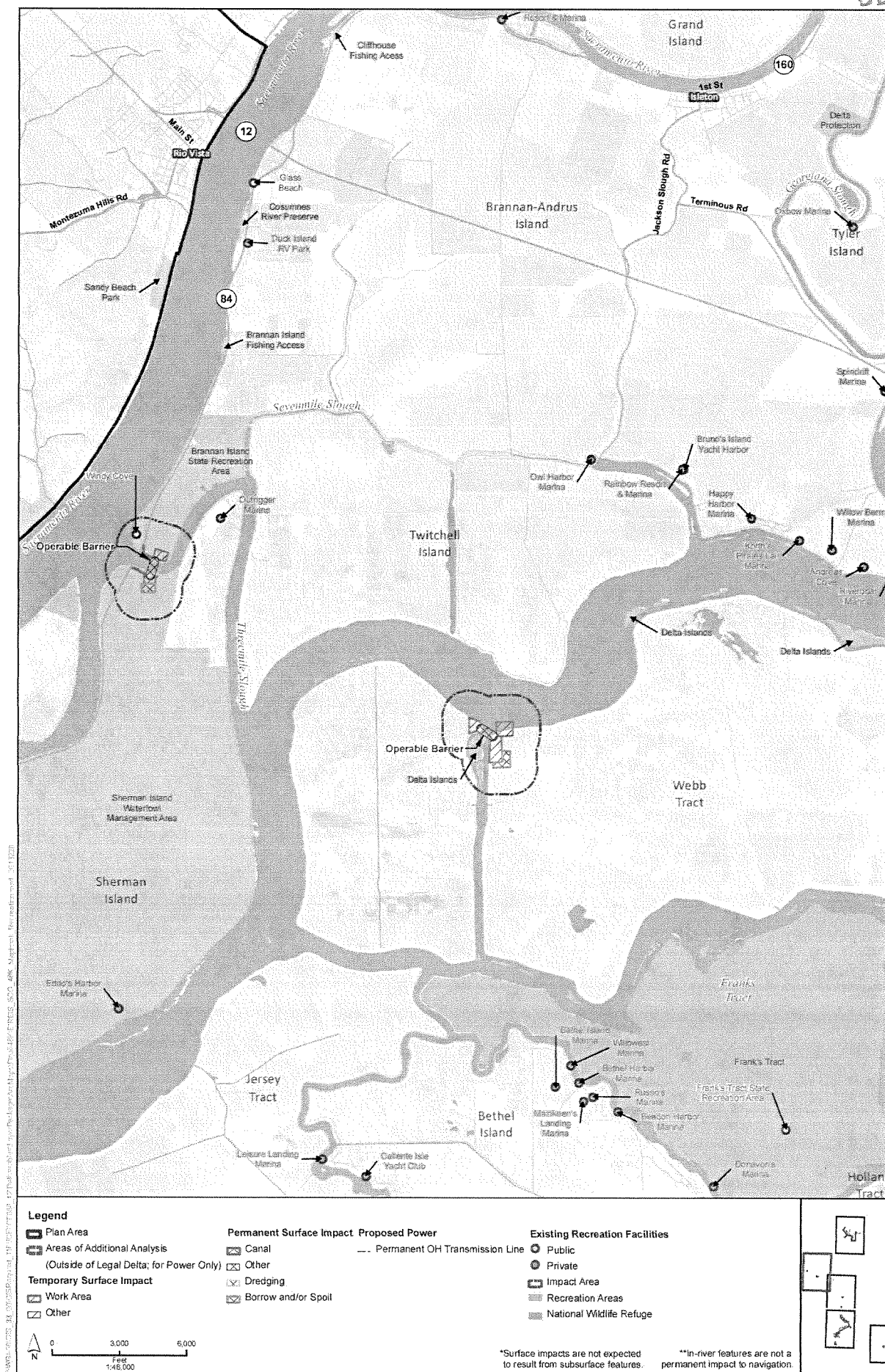
Enclosures

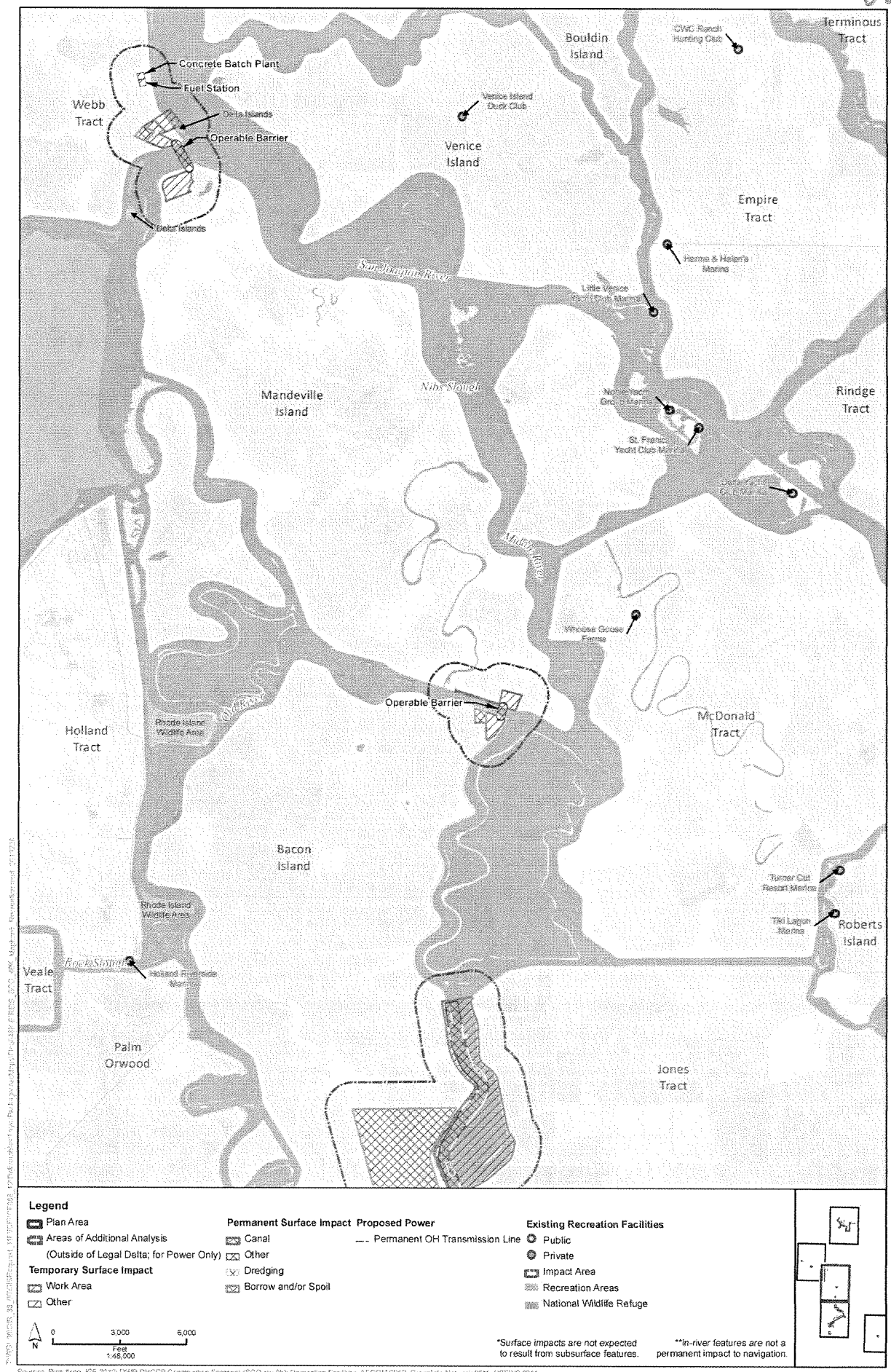




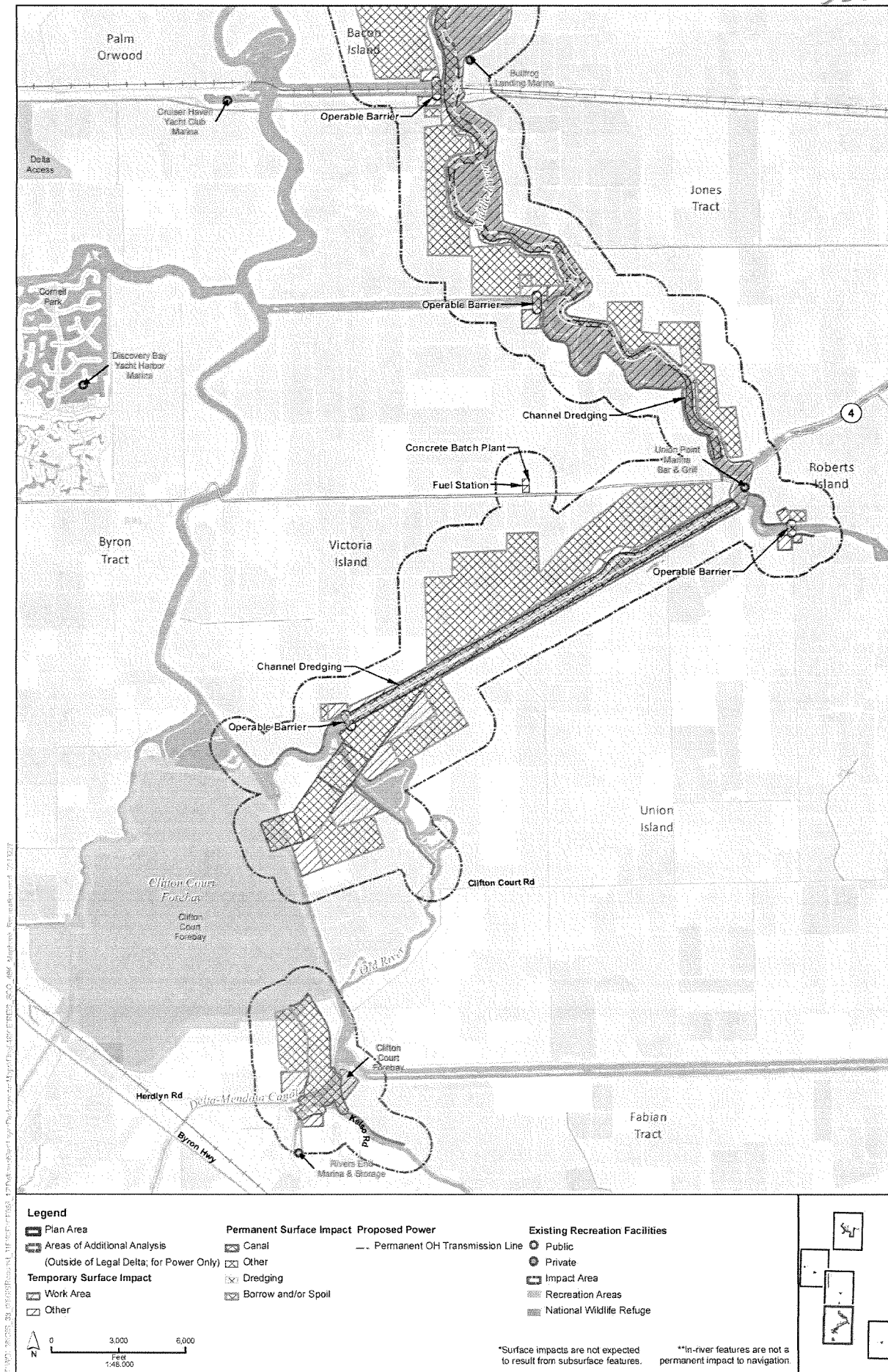
Sources: Plan Area: ICP 2012; DWR/DHQP Construction Footprint (SCO rev 3b); Recreation Facilities: AECOM 2012; GreenInfo Network 2011; USFWS 2011

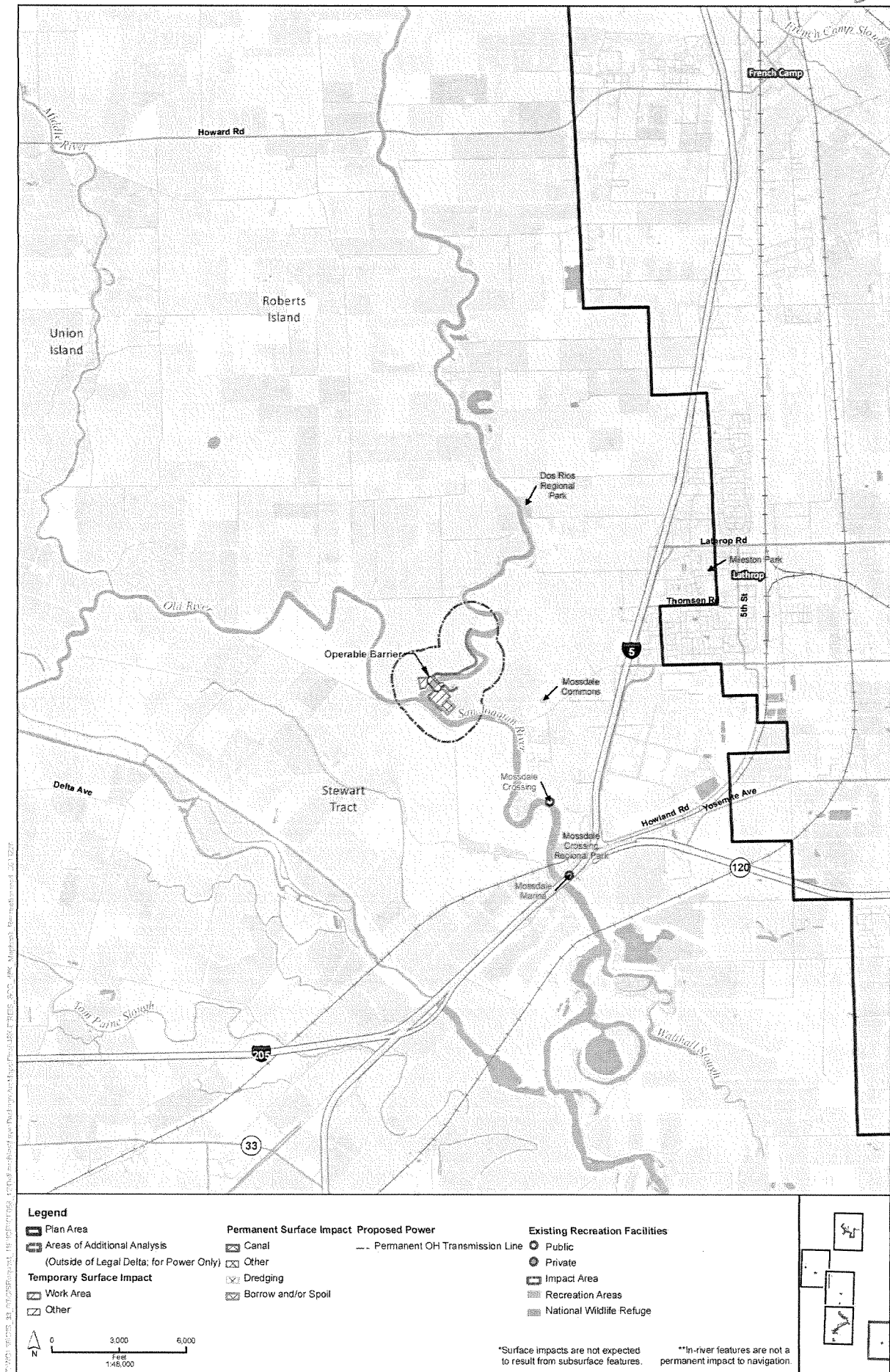






Source: Plan Area, ICF 2012; DHWR DHCCP Construction Footprint (BOD rev 3b); Recreation Facilities, AECOM 2012; GreenInfo Network 2011; USFWS 2011







## Examples of Boating Impacts DRAFT BDCP DELTA PLAN EIR – EIS

### Draft Chapter 15 – Recreation

#### Alternative 9: Through Delta / Separate Corridors (p.415-452)

#### p. 415 Table 15-16 Recreational Sites Potentially Affected During Construction of Alternative 9

##### Operable Barrier

Consumnes River Preserve	p. 420
Boathouse Marina	
Landing 63	
Deckhand's Marina Supply	p.420
Walnut Grove Dock	p. 420
Boon Dox Dock	
Dagmar's Landing	
Brannan Island State Recreation Area	
Sherman Island	
Bullfrog Landing Marina	p. 420

##### New Channel

##### Rivers End Marina and Storage

p. 416: "Permanent displacement of existing well established public use or private commercial facility available for public access as a result of the location of the proposed water conveyance facilities."

"Permanently displaced by placement of fish screen and intakes at the Delta Cross Channel and Georgiana Slough:

1. Boathouse Marina (p. 416)
2. Walnut Grove Public Guest Dock (p. 417)
3. Boon Dox guest dock in Walnut Grove (p. 417)

CEQA Conclusion p. 417: "Construction of Alternative 9 fish screens and intakes would result in the direct permanent loss of (these) well established recreation facilities."

p. 417 Temporary construction effects:

1. Delta Meadows River Park (p. 418)
2. Brannan Island State Recreation Area (p. 419, operable gate on Three Mile Slough)
3. Sherman Island (p. 419)

p. 422 "...in river construction would be primarily limited to June 1 through October 31 each year." "...construction may..last up to 9 years."

CEQA Conclusion p. 423-424: "...use of all the facilities within the construction impact area would be maintained. Nonetheless, construction of Alternative 1A intakes and related water conveyance facilities would result in temporary short-term (i.e, lasting 2 years or less) and long term (i.e., lasting over 2 years) impacts on well established recreational opportunities..."

"...impacts would be temporary, but may occur year-round."

**p. 426 – 430: Impact REC – 3: Result in long-term reduction of recreational navigation opportunities as a result of constructing the proposed water conveyance facilities**

p. 426 "Adverse changes to boat passage and navigation, including obstructions to boat passage and boat traffic delays, would occur during the construction of Alternative 9. Temporary channel closures may also be required that could impede boat movement. Construction of fish screens, operable gates and boat passage facilities would include the installation of cofferdams in the waterways and the use of barges, barge-mounted cranes or other large waterborne equipment. Piers or temporary barge unloading facilities could also be located at the fish screens, gate sites, or spoil/dredged material disposal areas. Construction equipment, such as barges and dredges, could obstruct boat passage or cause congestion in high traffic areas, as could the placement of cofferdams or barge unloading facilities. Channel obstructions and potential congestion may pose navigational and safety hazards to boaters. Reduced boat speed limits could cause further boat traffic delays in the vicinity of the construction sites."

**Operable Gates and Fish Screens (p.426)**

Sacramento River near Locke and Walnut Grove  
Georgiana Slough

**Siphons (p.427)**

Old River and West Canal  
Coney Island  
Rivers End Marina & Storage  
Victoria Canal/North Canal and Woodward Canal

Channel Modifications (p. 427)

Meadow Slough  
Old River and Delta-Mendota Canal  
Rivers End Marina & Storage

Dredging Activities (p. 428)

Middle River between Empire Cut and Victoria Canal/North Canal  
Woodward Cut

Temporary Barge Unloading Facilities (p. 429)

Fishermen's Cut at San Joaquin River  
Old River at San Joaquin River  
Railroad Cut at Middle River  
Woodward Cut at Middle River

CEQA Conclusion p. 430: ... "In areas where construction is occurring boats would be unable to use the portion of the waterways and be required to navigate around obstructions within the channel and observe speed restrictions."...

p. 439 – 440: **Impact REC – 10: Result in long-term reduction of recreational navigation opportunities as a result of construction the proposed water conveyance facilities**

p.439 ... "Implementing the conservation measures could result in an adverse effect on recreation by reducing the extent of navigable waterways available to boaters. Once implemented, the conservation measures could benefit recreational by expanding the extent of navigable waterways available to boaters."

"...construction of a genetic refuge and research facility at the former Army Reserve near Delta Marina Yacht Harbor could result in construction-related effects on boaters at this site."

CEQA Conclusion p. 440: "Channel modifications and other activities associated with implementation of some habitat restoration and enhancement measures and other conservation measures would limit some opportunities for boating and boating-related recreation by reducing the extent of navigable water available to boaters. Temporary effects would also stem from construction, which may limit boat access, speeds, or excessive noise, odors, or unattractive visual scenes during periods of implementation. However, BDCP conservation measures would also expand the geographic extent of navigable water in various locations throughout the study area, leading to an enhanced boating experience."

**p.445- 451 Impact REC –14: Permanent alteration of recreational boat navigation as a result of operating the water conveyance facilities**

(Note: The list on p. 415 – 417 are sites potentially affected during **construction**. These lists regarding sites affected by **operation**.)

p. 446: Table 15 – 17. Waterways Affected by Construction and Maintenance of Alternative 9 Conveyance Facilities

(Note: The title of this Table is misleading. The text describes the affects on the sites during **operation**.)

**Operable Gate with Boat Passage Facility**

Mokelumne River downstream of Lost Slough  
 Snodgrass Slough upstream of Delta Cross Channel p. 446  
 Georgiana Slough at Sacramento River  
 Connection Slough at Middle River  
 Railroad Cut at Middle River  
 Woodward Canal at Middle River  
 Fisherman's Cut at San Joaquin River  
 Old River at San Joaquin River p. 446  
 Meadow Slough p. 447  
 Victoria Canal at Old River

p. 446 - 447 "The rate at which boats could be passed through the passage facility would depend in part on the capacity of the passage facility chamber and other design factors. The skill of boat drivers at negotiating the passage facilities and the diversity of boat types and sizes using the facilities would also be factors in determining traffic flow and thus length of delays.....At gate locations where boaters would be delayed longer than 30 minutes, there would be an adverse effect on boating recreation."

**Operable Gate without Boat Passage Facility – Boat Passage When Gate Open**

Three Mile Slough near Sacramento River

p. 445: "...passage here would be restricted for several hours twice per day."

p. 447: "...The gate would operate tidally which means that the gate would be closed on the incoming or outgoing tides, depending on the operational objective (fish migration control or salinity control)..." "...If Three Mile Slough were closed to boat passage, boaters wanting to travel between the Sacramento River and the

San Joaquin River would be required to make a detour of 20 miles to the west of Sherman Island..” “....the gate does not provide space sufficient for a large number of boats to wait for the gate to open, and the Sacramento River in this area has strong winds and currents making it an unsuitable place for most boats to moor. For these reasons, this change to boat navigation would have an adverse effect on boating recreation.”

### **Fish Screen and Operable Gates without Boat Passage**

#### **Delta Cross Channel at Sacramento River (Fish Screen)**

p.447 “A new connection for boaters would be created with the construction of a channel and boat passage facility between the navigable portion of Meadow Slough and the Sacramento River. When the Delta Cross Channel gate is closed, the expectation would be that most of the traffic that now uses the Delta Cross Channel would be transferred to this location. The new connection may become the preferred route between the Sacramento River and Meadow Slough, Snodgrass Slough, and the Mokelumne River when the Delta Cross Channel is closed.” “The fish screen would occupy a portion of the Sacramento River channel along the east bank of the river, restricting the width of the channel available for boat passage and potentially increasing congestion in this area. For these reasons, this change in boat navigation would have an adverse effect on boating recreation.”

#### **San Joaquin River downstream of Old River**

p. 448 “the operable gate planned for the San Joaquin River north of the head of old River would prevent boaters who launch at downstream locations on the San Joaquin River from traveling on the San Joaquin River beyond Old River or into Old River because no boat passage would be provided....The nearest marinas and boat ramps in the Stockton area are more than 13 miles downstream.”

#### **Middle River upstream of Victoria Canal**

p. 448 “The operable gate planned for Middle River just upstream of Victoria Canal would primarily prevent boaters navigating downstream on Middle River and waterways connecting Middle and Old Rivers from traveling upstream because no boat passage would be provided. “

## **Dredging / Channel Reconfiguration**

### **Middle River between Empire Cut and Victoria Canal (dredging)**

p. 449 “Although the dredging is not intended to widen the channel, the deepening of the channel would eliminate shallow areas and reduce areas where aquamarine vegetation could become established. This would have a beneficial effect on boat navigation.”

### **Victoria Canal / North Canal (dredging)**

p.449 “Dredging....terminating at an operable gate at the west end of the canals. ....would eliminate the narrow, vegetated berm that separates the two canals...” “boaters may consider the berm separating the two canals to be desirable because it provides a separation for the boat traffic on the two canals and facilitates the normal traffic patter...The berm also serves to reduce boat wakes from traffic on the adjacent canal, which improves water skiing conditions....Overall, loss of the central berm from dredging would have an adverse effect on boating recreation.”

### **Old River at Delta-Mendota Canal (reconfigured channel)**

p. 449 “....planned to close off the inlet from Old River...A new Old River channel would be cut across the tip of Fabian Tract. This new channel would allow boaters to continue to pass between the Rivers End Marina & Storage ....and Old River to the north of Fabian Tract....The effect on boat recreation would be beneficial.”

### **p. 449 Changes in Flow Velocity during Gate Operations**

“.....boaters would no longer have unimpeded passage through the waterway.”

p. 450 “Because of the permanent loss of boat passage and navigation and the delays associated with operable gates, these effects are considered adverse.”

## **Invasive Aquatic Vegetation (IAV) Control**

p.430 ...”BDCP proponents would also commit to partner with existing programs operating in the Delta (including DBW, U.S. Department of Agriculture – Agriculture Research Service, University of California Extension Weed Research and Information Center, California Department of Food and Agriculture, local Weed Management Areas, Resource Conservation Districts, and the California Invasive Plant Council) to perform risk assessment and subsequent prioritization of treatment areas to strategically and effectively reduce expansion of the multiple

species of IAV in the Delta. This risk assessment would dictate where initial control efforts would occur ...The funds will be transferred prior to, or concurrent with, commencement of construction of the BDCP."

### **Legal Compliance**

p. 444 "The BDCP would be constructed and operate in compliance with regulations related to boat navigation jurisdiction rules, and regulations enforced by local, state (including the California Department of Boating and Waterways), and federal (including the U.S. Coast Guard) boating law enforcement. The alternative would be compatible with California State Land Commission regulations related to recreational piers or marinas."

**From:** Annette H. Tijerina <atijerina@laocbuildingtrades.org>  
**Sent:** Thursday, July 24, 2014 10:05 AM  
**To:** BDCP.comments@noaa.gov  
**Cc:** Ron Miller; Anne-Marie Otey  
**Subject:** Bay Delta Conservation Plan  
**Attachments:** Bay Delta CP (Wulff).pdf

To whom it may concern:

Please be advised of the attached Letter of SUPPORT for the Bay Delta Conservation Plan.

Best,

*Annette Tijerina*

*Administrative Assistant to:*

**Ron Miller**, *Executive Secretary*

**LA/OC Building Trades Council**

1626 Beverly Blvd., L.A., CA 90026

(213) 483-4222 Fax (213) 483-4419

[atijerina@laocbuildingtrades.org](mailto:atijerina@laocbuildingtrades.org)





RON MILLER  
Executive Secretary

# Los Angeles / Orange Counties Building and Construction Trades Council

Affiliated with the Building & Construction Trades Dept., AFL-CIO

BDCP1539

1626 Beverly Boulevard  
Los Angeles, CA 90026-5784  
Phone (213) 483-4222  
(714) 827-6791  
Fax (213) 483-4419



July 24, 2014

Ryan Wulff, NMFS  
650 Capitol Mall, Suite 5-100  
Sacramento, CA 95814

Dear Mr. Wulff,

As the Executive Secretary of the Los Angeles/Orange Counties Building and Construction Trades Council, I represent 140,000 members within 50 affiliated local unions for 14 Trades.

We strongly support the Bay Delta Conservation Plan (BDCP) and its goal of protecting the water supply that serves 26 million Californians, businesses and 3 million acres of farmland. This water supply is essential to the entire state, fueling jobs and our economy.

Our Council represents unions that provide good, middle-class careers, with benefits and retirement security. We literally cannot get a construction project permitted without proving it has an adequate water supply. This is one of the many ways in which a water shortage has wide-ranging effects, not just in lawns that turn brown or restaurants not filling glasses.

This shortage will attack and devastate the guts of our economy.

The water that so many depend on moves through the Sacramento-San Joaquin Delta and is protected today only by a maze of 100-year-old levees that are vulnerable to failure. Experts say that when a major earthquake hits the Bay Area, those levees could collapse, allowing saltwater from the San Francisco Bay to contaminate freshwater. It could take up to a year to re-establish this water as a usable supply. Southern California would lose a third of its water supply.

Building a modern water delivery system as proposed in the BDCP is essential. Construction of two tunnels that route a portion of water underneath, rather than through, the fragile Delta would protect water supplies in a seismic event.

In addition, it's estimated the BDCP would create and protect more than 1 million jobs, including 155,000 in construction.

The cost of BDCP, spread among water users from the Bay Area to San Diego, is roughly \$5 per household per month phased in over the course of 10 years. It's an insurance policy worth buying. The price of inaction is even greater.

As we continue to face one of the worst droughts in our state's history, we need to ensure we are preparing for future generations. The local water supply projects being developed must be coupled with a solid statewide foundation. After eight years of development, refinement and review, it's time to get BDCP across the finish line. We urge you to join us in supporting this important process.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Miller". The signature is fluid and cursive, with the first name "Ron" being more prominent than the last name "Miller".

Ron Miller  
Executive Secretary

# L # 1540

- ☐ Unused
- ☒ Duplicate of 1779
- ☐ Out of Scope
- ☐ Other: \_\_\_\_\_

(replace original)

---

**From:** Ryan Wulff - NOAA Federal <ryan.wulff@noaa.gov>  
**Sent:** Thursday, July 24, 2014 10:45 AM  
**To:** bdcf comments - NOAA Service Account  
**Subject:** Fwd: BDCP Comments (Delta Conservancy)  
**Attachments:** BDCP Comments Letter to R.Wulff (7-23-14).pdf

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

From: **Hoover-Flores, Rhonda@SSJDC** <[Rhonda.Hoover-Flores@deltaconservancy.ca.gov](mailto:Rhonda.Hoover-Flores@deltaconservancy.ca.gov)>  
Date: Thu, Jul 24, 2014 at 10:44 AM  
Subject: BDCP Comments (Delta Conservancy)  
To: "[Ryan.Wulff@noaa.gov](mailto:Ryan.Wulff@noaa.gov)" <[Ryan.Wulff@noaa.gov](mailto:Ryan.Wulff@noaa.gov)>

Hello Ryan,

Please see the electronic version of the BDPC comment letter to you, hard copy is in the mail.

This was signed at our board meeting yesterday.

Thanks,

Rhonda

**Rhonda Hoover-Flores**

Executive Assistant

*Sacramento-San Joaquin Delta Conservancy*

1450 Halyard Drive, Suite 6

West Sacramento, CA 95691

916.375.2084 direct

916.375.4948 fax

*"A partner for balanced ecosystem restoration and economic development in the Delta."*

BDCP1541

[www.deltaconservancy.ca.gov](http://www.deltaconservancy.ca.gov)



SACRAMENTO - SAN JOAQUIN

**DELTA CONSERVANCY**

A California State Agency

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*U.S. Army Corps of  
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**Michael Villines**  
*Central Valley Flood  
Protection Board*

July 23, 2014

BDCP Comments

Ryan Wulff, NMFS

650 Capitol Mall, Suite 5-100  
Sacramento, CA 95814

Dear Mr. Wulff:

Thank you for the opportunity to comment on the Bay-Delta Conservation Plan Draft EIR/EIS. The Delta Conservancy was established by the Delta Reform Act of 2009 to be a lead agency for ecosystem restoration in the Delta and to support efforts that advance environmental protection and the economic well being of Delta residents. In this capacity, we anticipate that we will be actively involved in the coordination and integration of the many ongoing and future restoration efforts in the Delta. Additionally, we anticipate that we will be the lead for some ecosystem restoration projects depending on funding availability. The Conservancy's Economic Development and Education and Outreach Programs are currently engaged in many projects that would intersect with proposed BDCP activities.

The Board of the Conservancy, listed in the left margin, was specifically designed to allow for local input in the governance of the organization and in project development, evaluation and funding decisions. This local input is invaluable in gaining local support and fostering a trusted and transparent long term restoration effort. Moving forward, it is imperative that the State work with the Conservancy to develop projects in a manner that incorporates the local perspective. Further, it is vital that proposed conservation measures be compatible with Delta communities and agriculture. This will be critical for maintaining the viability of the region. Representatives to the Board from the Natural Resources Agency and the Department of Finance, abstain from this action, and this letter in no way implies a recommendation or position from the Governor.

The attached table lists the Conservancy's twelve mandates as found in our enabling legislation and a description of our current initiatives.

Sincerely,

Jim Provenza

Delta Conservancy Board Chair

## Delta Conservancy's Legislative Mandates and Initiatives

Conservancy Legislative Mandates	Current Conservancy Initiatives
Protect and enhance habitat and habitat restoration.	<ul style="list-style-type: none"> <li>Delta Restoration Network—A voluntary effort to coordinate and integrate restoration actions.</li> <li>Arundo Control and Restoration Program—noxious and non-native weed control project.</li> <li>Enhancement of Channel Margin Habitat—aims to improve the extent of functioning channel margin habitat.</li> <li>Support for near-term projects identified by the Coalition to Support Delta Projects—vets near-term Delta projects with multiple Delta stakeholders and agencies and holds a list of projects with widespread support.</li> </ul>
Protect and preserve Delta agriculture and working landscapes.	<ul style="list-style-type: none"> <li>Habitat Enhancement of Working Landscapes Coalition—goal is to work collaboratively with Delta landowners to improve habitat value of working landscapes.</li> <li>Delta Farmbudsman—assist local farmers in navigating local, state, and federal permits and regulations as they pertain to agriculture.</li> <li>Delta Agricultural Infrastructure Study – develop a clearer understanding of the state of agricultural infrastructure in the Delta and identify ways to strengthen and improve the infrastructure.</li> <li>Internal land management policies and procedures—vet policies and procedures to prepare the Conservancy for the potential management and ownership of land.</li> </ul>
Provide increased opportunities for tourism and recreation	<ul style="list-style-type: none"> <li>Delta Marketing Grant—develop and implement a Delta-wide marketing campaign in partnership with the Delta Protection Commission.</li> <li>Agri-tourism support—assist local agri-tourism organizations find interns and support for projects and administrative activities.</li> </ul>
Promote Delta legacy communities and economic vitality in the Delta in coordination with the Delta Protection Commission.	<ul style="list-style-type: none"> <li>Delta Marketing Grant— develop and implement a Delta-wide marketing campaign in partnership with the Delta Protection Commission.</li> </ul>
Increase the resilience of the Delta to the effects of natural disasters such as floods and earthquakes, in coordination with the Delta Protection Commission	<ul style="list-style-type: none"> <li>BOR-WEF Grant—with a grant from the Bureau of Reclamation, the Conservancy and Water Education Foundation will engage in outreach to Delta-residents in preventing contaminants from entering the waterways during floods.</li> </ul>

Delta Conservancy's Legislative Mandates and Initiatives

Protect and improve water quality.	<ul style="list-style-type: none"> <li>Delta Watershed Initiative Network — water quality monitoring coordination with local groups, education and outreach, waterway cleanups.</li> </ul>
Assist the Delta regional economy through the operation of the conservancy's program.	<ul style="list-style-type: none"> <li>Delta Marketing Grant - develop and implement a Delta-wide marketing campaign in partnership with the Delta Protection Commission.</li> </ul>
Identify priority projects and initiatives for which funding is needed.	<ul style="list-style-type: none"> <li>The Conservancy continuously works with the Delta community to identify funding priorities, and locate funding to complete projects.</li> <li>The Conservancy participates in the Coalition to Support Delta Projects, a large stakeholder effort to promote near-term priority projects and funding needs.</li> </ul>
Protect, conserve, and restore the region's physical, agricultural, cultural, historical, and living resources.	<ul style="list-style-type: none"> <li>CSUS oral history project—partnership with CSUS' graduate public history program to gather oral histories of Delta pear farmers.</li> <li>McCormack-Williamson Recreation Plan—partnership with UC Davis' Landscape Architecture department to develop a recreation plan for the McCormack-Williamson Tract.</li> </ul>
Assist local entities in the implementation of their habitat conservation plans (HCPs) and natural community conservation plans (NCCPs).	<ul style="list-style-type: none"> <li>No current efforts</li> </ul>
Facilitate take protection and safe harbor agreements under the federal Endangered Species Act and the California Endangered Species Act for adjacent landowners and local public agencies	<ul style="list-style-type: none"> <li>BOR-WEF Grant – the Conservancy helped organize two workshops on adjacent landowner protections and safe harbor agreements. A white paper on the subject was written and distributed.</li> </ul>
Promote environmental education	<ul style="list-style-type: none"> <li>Delta Waterway Cleanups—Raises awareness about good environmental stewardship and involves the community in Waterway Cleanup events.</li> <li>Delta WIN— water quality monitoring coordination with local groups, education and outreach, waterway cleanup.</li> <li>BOR-WEF Grant—Grant from Bureau of Reclamation to conduct public outreach programs with the Water Education Foundation related to water supply reliability, water quality, and Delta restoration efforts.</li> </ul>
Governor's Order S-13-08 2009 California Climate Adaptation Strategy	<ul style="list-style-type: none"> <li>Delta Conservancy Climate Change Policy</li> </ul>



**From:** Bob Wright <BWright@friendsoftheriver.org>  
**Sent:** Thursday, July 24, 2014 11:10 AM  
**To:** BDCP.Comments@noaa.gov  
**Subject:** BDCP comment letter  
**Attachments:** 7-28-14 short BDCP comment letter.pdf

Dear BDCP comment letter site:

Please accept the attached comment letter as comments on the Draft BDCP Plan and Draft EIR/EIS and confirm receipt by your reply.

Thanks you,

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



# FRIENDS OF THE RIVER

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

916/442-3155 • FAX: 916/442-3396 •

WWW.FRIENDSOFTHERIVER.ORG

July 24, 2014

The Honorable Sally Jewell  
Secretary of the Interior  
Washington DC

Eileen Sobeck  
Assistant Administrator, NOAA Fisheries  
Silver Spring, MD

John Laird  
Natural Resources Agency Secretary  
Sacramento, CA

Mark Cowin  
Director, Calif. Dept. of Water Resources  
Sacramento, CA

Gina McCarthy  
Administrator, U.S. EPA  
Washington DC

Chuck Bonham  
Director, Calif. Dept. of Fish and Wildlife  
Sacramento, CA

Will Stelle  
Regional Director, NMFS  
Seattle, WA

David Murillo  
Regional Director, Bureau of Reclamation  
Sacramento, CA

Ren Lohoefer  
Regional Director, U.S. Fish and Wildlife Service  
Sacramento, CA

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

*Additional Addressees at end of letter*

## **Re: Comment Letter on Profoundly Disturbing Abuses of the BDCP Process**

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

Before the close of the comment period Friends of the River will submit detailed comments on the Bay Delta Conservation Plan (BDCP) Draft Plan, Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) and Draft Implementing Agreement (IA). Our purpose here is to summarize several profoundly disturbing abuses of the BDCP National Environmental Policy Act ((NEPA), California Environmental Quality Act (CEQA), and Endangered Species Act (ESA) processes being carried out by your agencies.

### **The Deliberate Omission of any True BDCP Alternatives**

The BDCP Draft EIR/EIS alternatives chapter and Draft Plan alternatives- to- take chapter fail to include any real alternatives, let alone the required range of reasonable alternatives to the new water conveyance upstream from the already imperiled San Francisco Bay-Delta—the BDCP Water Tunnels. The Water Tunnels would divert enormous quantities of water from the Sacramento River near Clarksburg, California. As a result of this massive diversion, enormous quantities of water that presently flow through designated critical habitats in the Sacramento River and sloughs to and through the Bay-Delta would not reach the Delta. Flows would be reduced in the Sacramento River, sloughs and Delta to the detriment of listed and other fish species. All of the so-called

project alternatives set forth in the Draft Plan and Draft EIR/EIS are simply different versions of the same project. They all create a capacity to divert more water by way of new conveyance upstream from the Delta. And they do so in the face of the ESA Section 7 command prohibiting federal agency actions that “result in the destruction or adverse modification of [critical] habitat of [listed] species.” 16 U.S.C. § 1536 (a)(2)

The failure of the BDCP Drafts to include so much as one alternative reducing exports seems at first blush astonishing. After all, a claimed purpose of the BDCP Plan is “Reducing the adverse effects on certain listed [fish] species due to diverting water.” (BDCP Draft EIR/EIS Executive Summary, p. ES-10). As the National Academy of Sciences warned back in May 2011-- in commenting on an earlier version of the BDCP Plan-- “Scientific reasons for not considering alternative actions are not presented in the plan.” (Report in Brief, p. 2, May 5, 2011). More than two years ago, the Environmental Water Caucus (EWC) (a coalition of over 30 organizations including Friends of the River) pointed out to the California Resources Agency Deputy Secretary:

*The absence of a full range of alternatives, including an alternative which would reduce exports from the Delta. It is understandable that the exporters, who are driving the [BDCP] project, are not interested in this kind of alternative; however, in order to be a truly permissible project, an examination of a full range of alternatives, including ones that would reduce exports, needs to be included and needs to incorporate a public trust balancing of alternatives. (April 16, 2012, letter, p. 2).*

There has been a complete failure to develop and evaluate alternatives reducing diversions/exports including the EWC Reduced Exports Plan transmitted to the California Resources Agency in December 2012 as well as the more detailed Responsible Exports Plan developed in May 2013.

In fact, this BDCP process ignoring and concealing obvious and direct alternatives that would reduce the “adverse effects on certain [listed] fish species due to diverting water” is not astonishing. It is a deliberate, bad faith, end run on the alternatives analysis requirements of NEPA, CEQA, and the ESA. The exporters have money, lobbyists and power. They are driving the project. They do not want the public including environmental organizations, Indian tribes, Northern California, and San Francisco Bay-Delta interests to have a BDCP alternative that they could support. This concealment and silencing of any alternatives that would reduce exports as opposed to all of the current BDCP alternatives that increase the capacity for exports is calculated to increase the likelihood of the BDCP proponents getting what they want. This bad faith omission of alternatives reducing exports skews the debate in favor of new conveyance and against reducing exports since no other alternatives are presented.

The current BDCP Draft’s omission of the range of reasonable alternatives required by law requires the preparation of a new Draft Plan and Draft EIR/EIS and a new public review period to attempt to cure this fatal flaw.

### **The Deliberate BDCP Website Suppression of Comments**

After the 40,000 pages of BDCP project advocacy called the Draft Plan and Draft EIR/EIS were released in December 2013 for public review and comment, the BDCP website was closed to the posting of comments and correspondence from the public. Consequently, an organization or individual attempting to wade through the 40,000 pages of self-interested project advocacy to spot

the issues and figure out the truth is unable to learn from the comments and correspondence from other organizations and individuals who are not project proponents. The public's ability to be informed regarding this project including cons as well as claimed pros would have been facilitated by having access to comments and correspondence made by others during the review process. Instead, the BDCP agencies have done their very best to keep the public in the dark about issues spotted by those who are not project proponents.

This blinding of the public to critical environmental information even extends to comments by sister agencies. Here are just a few of the many possible examples of comments from public agencies that the citizen using the BDCP website does not get to see. "The BDCP is based upon this misrepresentation: that a massive new twin tunnel system, which would greatly reduce the natural flow of water through the Delta, qualifies as a 'conservation' project to restore the Delta ecosystem and protect species already verging on extinction." (County of San Joaquin comments, p. 1, July 9, 2014). Another example is: "Chapter 8 of the current BDCP does not provide the detailed information necessary for potential participating agencies to evaluate individual agency cost-benefit (or feasibility) of the proposed project." (San Diego County Water Authority, p. 2, June 2, 2014). There is the June 24, 2014, comment letter from the Delta Stewardship Council. The public trying to understand the project is not informed that the State agency responsible for ultimately determining whether the BDCP is consistent with the Delta Plan has found that the BDCP EIR: should "Identify the water available for export and other beneficial uses under alternative flow criteria considered in the draft EIR/S" (Letter p. 1), "The benefits of tidal marsh restoration to Delta smelt are likely overstated" (p. 2), "Water quality impacts are compared to SWRCB water quality objectives with little regard to specific water quality needs of aquatic species of concern" (*Id.*), "San Francisco Bay should be included in the scope of the analysis, especially for water quality" (p. 12), and so forth.

This is a double attack on the truth and on informed public review of the proposed project. The BDCP agencies have refused, as shown above, to identify, develop, or consider in the Draft Plan and Draft EIR/EIS any alternatives that would reduce exports. At the same time, the agencies have also shut down the BDCP website to the posting of public comments and correspondence to prevent independent organizations and individuals from informing the public about alternatives and critical information that the exporters do not want the public to see.

The government agencies would not be blinding themselves and the public to alternatives reducing exports while at the same time eliminating public comment and correspondence from the BDCP website if the agencies actually believed the BDCP proponents' claims about the asserted benefits of the project. The silencing of comments on the BDCP website is powerful evidence that the BDCP proponents are afraid of the facts and the truth.

Friends of the River objects to approval of the BDCP and is in favor of reducing exports. That said, Friends of the River also believes in the American tradition of democracy and informed, indeed spirited, public debate of important and controversial issues. Because of that, we have been seeking and obtaining copies of BDCP comment letters under the Freedom of Information Act beginning in February 2014 and posting them on our website at [www.friendsoftheriver.org/bdcpcomments](http://www.friendsoftheriver.org/bdcpcomments). We have been posting all comment letters we have obtained regardless of whether the particular comments oppose or favor the Water Tunnels. The government agencies should be doing what we have been forced to do. That is the American way.

## Misrepresenting Taking Water to be a “Conservation” Plan

The only difference between the BDCP and this same Governor’s “peripheral canal” that was rejected by a 2-1 statewide referendum vote in June 1982 is that the project proponents, their lobbyists, their lawyers, and their supporters inside the government have come up with the clever trick of calling this a “conservation” plan. That trick is Orwellian. War is not “peace,” lies are not “truth,” and a new water diversion is not “conservation.” The same interests at work now succeeded in essentially destroying the San Joaquin River decades ago by constructing the Friant Dam and diverting most of the water south. As a result, a 60 mile stretch of this once mighty river is dry almost all of the time. Having succeeded in greatly reducing the flows from the south through the Delta, the same interests now seek to reduce the flows through the Delta from the Sacramento River in the north by approving and operating the Water Tunnels. The Effects Analysis chapter (chapter 5) of the Draft Plan admits that the new upstream diversion would reduce flows but blames climate change as the most likely culprit for future salmon population extinctions. That chapter also claims that the adverse effects on listed species and habitats would be outweighed by various conservation measures having nothing to do with the Water Tunnels and that are to be paid for by the public rather than the exporters taking the water.

This massive new upstream diversion would include the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) tying their ESA hands behind their backs for 50 years by way of regulatory assurances and the “No Surprises Rule” included in the Implementing Agreement. The California Department of Fish and Wildlife (CDFW) would likewise give away its powers and responsibilities for the 50 year term of the proposed permit. In the face of admitted declining fish populations caused by water diversions and the admitted worsening future threats caused by climate change, this giveaway by the fishery agencies 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, 185 (1978). *This proposed 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 § 10 Habitat Conservation Plans 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 exporters.

The exporters also have nothing to do with proposed mitigation funding; mitigation would be paid for by way of bonds or other public funds. The public, meaning the taxpayers, would pay for the conservation measures as well as for attempting to mitigate adverse effects resulting from the new upstream conveyance with the exception of the project footprint itself. Habitat restoration on the ground is no substitute for taking away designated critical freshwater habitat. Consequently, there is no nexus between either the fish or the contractors and the BDCP mitigation and conservation measures.

Again, calling this a “conservation” plan is a clever trick. New upstream conveyance needs to be treated lawfully for what it really is-- a proposed new diversion project to take massive

quantities of freshwater away from the lower Sacramento River, sloughs, and the San Francisco Bay-Delta. New upstream conveyance is not properly or lawfully a “conservation” plan or part of a lawful Habitat Conservation Plan.

### **Secret BDCP Planning with the Exporters and their Consultants**

There are references throughout the BDCP Drafts including the “Effects Analysis” chapter of the Plan to the meetings with federal agency scientists “during the August 2013 workshops.” (Example, Plan ch. 5, p. 5. 1-32). There have been negotiations and meetings by the agencies with the exporters--the “water takers” -- who have had the seats that count on the inside of the process. Those interests are the “winners” in the BDCP processes. The ignored “water givers”-- the fish, the River, the Delta, Delta and Northern California agriculture, fishing, business, recreation and public interests have been excluded from the inside process.

The federal agencies are apparently trying to cover up issues that should have been resolved before the public Draft BDCP document review period commenced. These issues are instead being secretly planned to be decided in the Final BDCP Plan and EIR/EIS without being aired in new Draft documents and a new public review period. The close of the BDCP comment period in a few days affords time to only mention several examples since the subject documents were just obtained from the federal agencies under the Freedom of Information Act (FOIA). These examples come from something called the “BDCP Federal Open Issues Tracker:”

#### **“OPEN” ISSUES THAT WILL REQUIRE FURTHER REFINEMENTS BETWEEN DRAFT AND FINAL**

##### **1. ISSUES WITH CM 1 OPERATIONS**

1. Real Time Operations
- a. STATUS: Further work is needed on four issues: . . . ; 2) whether the High Outflow Scenario (HOS) draws from Oroville only or whether other COA [Coordinated Operations Agreement] “adjustments” will occur; 3) whether water transfer programs are part of meeting the HOS requirements, and if so, how to address their NEPA/CEQA-related effects; . . .
2. High Outflow Scenario (HOS) and Decision Tree
- a. STATUS: At present only the HOS appears to be permissible based upon the best available science. The Services will only authorize operations that meet permit issuance criteria. The State’s proposed project may therefore need to be changed at the time of permit issuance.
- b. The Plan needs to more clearly and specifically state the scientific work related to HOS/Decision Tree that will be carried out prior to operations with respect to salmonids.

##### **4. CVP Upstream Operations.**

- a. STATUS: Recent refinements to real-time operations state that meeting BDCP exports will require an (unspecified) accounting between the CVP and the State project. This accounting needs to be clarified and agreed upon.
- b. This change raises several fundamental issues of project operations and Project impacts and it may trigger additional NEPA/CEQA analyses. This change may also affect the scope

and timing of the ESA section 7 consultations associated with the BDCP. (PRELIMINARY WORKING DRAFT-FOR INTERNAL USE ONLY-MARCH 28, 2014).

These are just a few examples of critical issues that are being dealt with in secret with the project proponents being at the table while the public is relegated to trying to find out what is going on behind closed doors by Freedom of Information Act requests. The Effects Analysis chapter in the Plan represents over and over that the “only” changes in upstream operations will involve Oroville and the Feather River. It turns out that is not the case. Other upstream reservoir operations and upstream reaches of other rivers will also be affected. These critical issues of “adjustments” to other reservoir operations, water transfers, salmon survival questions, and change between the CVP and State project need to be aired openly in a new Draft Plan and Draft EIR/EIS circulated for a new public review and comment period. That is necessary to allow the public to have the opportunity to comment on the actual project as it is and will be as opposed to finding out those critical details after the horse is out of the barn and the public comment period is over.

### **The Deception and Delusion in the BDCP**

“[A]cross the globe, large infrastructure projects almost invariably arrive late, over-budget and fail to perform up to expectations. Cost overruns and benefit shortfalls of 50% are common; cost overruns above 100% are not uncommon.” Flyvbjerg, Garbuio and Lovallo, *Delusion and Deception in Large Infrastructure Projects*, 51 California Management Review 170, 171-2 (winter 2009). “The underlying reasons for all forecasting errors can usefully be grouped into three categories: delusions or honest mistakes; deceptions or strategic manipulation of information or processes; or bad luck.” (*Id.* at 172). [P]oliticians, planners, or project champions deliberately and strategically overestimate benefits and underestimate costs in order to increase the likelihood that their projects, and not their competition’s, gain approval and funding. These actors purposefully spin scenarios of success and gloss over the potential for failure.” (*Id.* at 173).

Large California infrastructure project proponents are masters of delusion and deception as evidenced by the explosion of the forecasted cost of the new San Francisco-Oakland Bay Bridge span from \$1 billion to \$6 billion.

Here, the BDCP project proponents are striving to be the all-time champions of carrying out “delusion and deception in large infrastructure projects.” The only true statewide benefit-cost study of the proposed Water Tunnels project conducted so far concluded two years ago that “We find the tunnels are not economically justified because the costs of the tunnels are roughly 2.5 times larger than their benefits.” Eberhardt School of Business, Business Forecasting Center, University of the Pacific, *Benefit-Cost Analysis of Delta Water Conveyance Tunnels* (July 12, 2012). “The recent recession is a powerful reminder that no amount of financial engineering can change the fundamental economics of an investment from bad to good.” (*Id.* at 13). “[I]t is clear that the Delta water conveyance tunnels proposed in the draft BDCP are not justified on an economic or financial basis.” (*Id.*). This helps explain the absence of information in the Draft Implementing Agreement about who is going to pay for what as well as the ongoing efforts of the exporters to quietly shift as many of the billions of dollars of costs as possible to taxpayers and to urban and suburban ratepayers.

Again, the deliberate omission of any alternative reducing exports and not including new upstream conveyance, coupled with the refusal to post correspondence and comments on the

BDCP website, aids and abets the deception of the public with respect to the environmental, economic, and financial risks and drawbacks of the Water Tunnels.

Finally, what could be more deceptive or delusional than falsely claiming or actually believing that taking more water away from the fish and their habitats will be good for them and is “conservation?”

### **The Adaptive Management and Decision Tree Bad Jokes on the Public**

Over and over again throughout the Draft Plan, Draft EIR/EIS and Draft Implementing Agreement adaptive management and the decision tree are referred to as the future procedures that will save the fish from all of the claimed “uncertainties” in the BDCP. If the exporters have the money, political power and influence to get the controversial Water Tunnels approved now, that would evidence the worthlessness of adaptive management and the “decision tree” in the future. Now, the billions of dollars to build the Water Tunnels have not been spent. After that investment is made and the Water Tunnels have been constructed and are ready for operation adaptive management and the decision tree will be puppets dancing to the tunes played by the exporters. The exporters would then have an additional argument for their lobbyists and lawyers to make-- that the exporters invested billions of dollars in the development of the Water Tunnels and cannot equitably be stopped from filling them with water. The same powerful interests that succeeded in destroying the once mighty San Joaquin River will not hesitate to turn the Delta into a salty, polluted, stagnant pond.

The exporters have already had sufficient control over the BDCP agencies to prevent the development and consideration of a BDCP reduced exports no new conveyance alternative. The exporters have had sufficient control over the BDCP agencies to exclude public comments and correspondence from the BDCP website. Given that successful track record of power and domination over the BDCP agencies, the so-called adaptive management and the decision tree will be no safeguards at all against the extirpation of listed fish species and the destruction of the Delta.

### **Corrective Actions**

The BDCP agencies will eventually have the opportunity, should they choose to steam full speed ahead in the face of red flags flying, to convince the courts that they proceeded in the manner required by NEPA, CEQA and the ESA. That is, the agencies can try to convince the courts that they really did not have to develop and consider a range of reasonable alternatives reducing exports; it was okay to suppress public comments and correspondence from the BDCP website; it was okay to misrepresent a new water diversion as a “conservation” plan; and it is okay to make significant changes or “adjustments” in proposed project operations without disclosing and assessing those changes and adjustments in a new Draft Plan and Draft EIR/EIS.

The BDCP agencies have the opportunity to instead take a different path. That is, the agencies can present a range of reasonable alternatives reducing exports in a new Draft Plan, Draft EIR/EIS and Draft Implementing Agreement. The agencies can welcome instead of ban public comment and correspondence on the BDCP website during a new public review period on new draft BDCP documents. The agencies can take the proposed new conveyance out of the Habitat Conservation Plan and deal with any such proposal in the normal, lawful project review process. The agencies can make sure that significant changes or “adjustments” in proposed project



operations are disclosed in Draft environmental documents out for public review periods rather than attempting to unlawfully insert them in Final NEPA and CEQA documents to evade public review and comment. And there is so much more the agencies can, indeed must, do to represent the public as opposed to only representing the water takers. The agencies can require ESA consultations and California public trust doctrine analysis to take place before rather than after the BDCP Draft NEPA and CEQA processes so that the public can actually be informed by the work of agency scientists as opposed to attempting to wade through thousands of pages of financially-interested project proponent advocacy. The agencies can either finally admit that the costs of the Water Tunnels would be 2.5 times larger than the benefits or require their own statewide benefit-cost study to be performed comparing the Water Tunnels with reduced export alternatives.

### CONCLUSION

The fish and the Delta are in peril. Extinction is forever. The 40,000 pages of BDCP project proponent advocacy are unworthy of the epic decisions to be made guiding the future of the fish, northern California Rivers, and the Delta. If this is not worth the environmental full disclosure required by law and the NEPA, CEQA and ESA required do-over, what is? Please call or email Robert Wright at (916) 442-3155 x207 or [bwright@friendsoftheriver.org](mailto:bwright@friendsoftheriver.org) with any questions you may have.

Sincerely,

/s/ E. Robert Wright

Senior Counsel

Additional Addresses, all via email

Maria Rea, Assistant Regional Administrator  
National Marine Fisheries Service

Michael Tucker, Fishery Biologist  
National Marine Fisheries Service

Ryan Wulff, Senior Policy Advisor  
National Marine Fisheries Service

Mike Chotkowski, Field Supervisor, S.F. Bay-Delta  
U.S. Fish and Wildlife Service

Lori Rinek  
U.S. Fish and Wildlife Service

Mary Lee Knecht, Program Manager  
U.S. Bureau of Reclamation

Patty Idloff  
U.S. Bureau of Reclamation

Deanna Harwood  
NOAA Office of General Counsel

Kaylee Allen  
Department of Interior Solicitor's Office

Tom Hagler  
U.S. EPA General Counsel Office

Tim Vendlinski, Bay Delta Program Manager, Water Division  
U.S. EPA, Region IX

Stephanie Skophammer, Program Manager  
U.S. EPA, Region IX

Erin Foresman, Bay Delta Coordinator  
U.S. EPA  
Sacramento, CA

Lisa Clay, Assistant District Counsel  
U.S. Army Corps of Engineers

cc:  
Congressman John Garamendi  
Third District, California

Congresswoman Doris Matsui  
Sixth District, California