
From: Torneden, Roger <RTorneden@uclaextension.edu>
Sent: Friday, July 25, 2014 11:19 AM
To: BDCP.comments@noaa.gov
Subject: Bay Delta Plan is Missing a Most Important Component

Despite well-intended efforts producing results from "ineffective" to "effective" our conservation, ground water pumping, brown water recycling and Bay Delta plans cost \$Billions and produce wholly inadequate amounts of water for California's growth, if not, survival. We need new water sources and new sources are achievable.

Currently, an ocean submerged fresh water pipeline is under construction between Turkey and Cyprus (pipe is made of composite material and will lay at a 900 foot depth); an additional ocean submerged fresh water pipeline is planned between Turkey and Israel.

NASA/JPL has conducted preliminary feasibility studies of an ocean submerged pipeline from the Columbia River to the Shasta Reservoir...approximately 1% of Columbia River water flow dumping into the Pacific Ocean would create about 2 million acre feet of new fresh water for California.

This is as high a priority as the Bay Delta project.

Roger

Roger L. Torneden, Ph.D., CFP®
Director of Business, Management and Legal Programs
UCLA Extension
10995 Le Conte Avenue, Suite 515
Los Angeles, CA. 90024-1333
(310) 206-1720

From: Gjestson David <davegjestson@comcast.net>
Sent: Friday, July 25, 2014 11:49 AM
To: BDCP.comments@noaa.gov
Subject: Document Request

Dear Sirs:

Please provide me with a PDF copy of the BDCP as soon as possible to facilitate my review.

Sincerely,

David L. Gjestson

davegjestson@comcast.net

From: Michelle Powell <Map117@comcast.net>
Sent: Friday, July 25, 2014 11:15 AM
To: BDCP.Comments@noaa.gov
Subject: No Twin Tunnels!

Dear Mr. Ryan Wulff,

I'm personalizing this letter because I'm not just a forwarder of other people's text...I am strongly opposed to the twin tunnels and hope that you will deny the permit. the Delta ecosystem should not be destroyed for the sake of Agricultural interests in the South. There are citizens in the northern half of the state who depend on the health of the Delta for their livelihoods, and they should be represented as well. Destroying the food supply for wildlife affects the lives of the humans in the area too. Please deny the permit and let's look for a better design that will share an already over-subscribed water supply more equitably.

sincerely,
Michelle Powell

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,

Michelle Powell
36966 Niles Blvd.
Fremont, CA 94536
US

County of Placer Board of Supervisors

175 FULWEILER AVENUE
AUBURN, CALIFORNIA 95603
530/889-4010 • FAX: 530/889-4009
PLACER CO. TOLL FREE # 800-488-4308

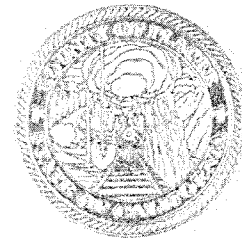
JACK DURAN
District 1

ROBERT M. WEYGANDT
District 2

JIM HOLMES
District 3

KIRK UHLER
District 4

JENNIFER MONTGOMERY
District 5



July 22, 2014

BDCP Comments

Ryan Wulff, National Marine Fisheries Service
650 Capitol Mall, Suite 5-100
Sacramento, CA 95814
BDCP.comments@noaa.gov

Subject: Comments on Draft Bay Delta Conservation Plan (BDCP) and associated BDCP Draft EIR/EIS

Dear Mr. Wulff:

Thank you for providing Placer County the opportunity to comment on the BDCP and associated BDCP Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS).

GLOBAL COMMENT

The "Project" is purported to be a Comprehensive Conservation Plan for the Sacramento San Joaquin Delta, meeting the requirements of a Habitat Conservation Plan (HCP) and Natural Community Conservation Plan (NCCP), and analyzed in the present EIR/EIS. However, the County is concerned that the emphasis in the analysis of the objective of a new diversion and conveyance system reveals itself as the actual "project" that is being analyzed in this EIR/EIS. This is particularly evident in the alternatives analysis that includes massive export bypass conveyance features as a common feature to all alternatives of an HCP/NCCP for the Delta. Bypass facilities to continue water exports to serve junior water rights is not a fundamental requirement for species recovery in the Delta but it is for a water bypass project. This diversion and conveyance system/bypass project, if approved, would allow the State Water Project (SWP) and Central Valley Project (CVP) to bypass the Delta for water export operations. By not identifying the true nature of the "project" within the project description of this EIR/EIS and instead characterizing it as a HCP/NCCP, the draft EIR/EIS violates the California Environmental Quality Act (CEQA) and National Environmental Protection Act (NEPA). By failing to provide and analyze: 1) an accurate purpose and need (P&N) statement, 2) a full without-project (WOP) conditions analysis, 3) a full range of alternatives, 4) disclosure of the full scope of impacts of the actual "project", and 5) identification of all feasible mitigation these documents do not fulfill the statutory obligations of CEQA or NEPA.

Placer County's recommendations for revisions to address the above deficiencies are provided as follows:

1. The P&N should be re-written to state that the true purpose of the Project is to facilitate a sustainable water supply future for export customers through a bypass system, if this is the true purpose of the proposed project.

2. The without-project (WOP) conditions should focus on water supply and habitat in the future in all of the affected physical areas: 1) each of the watersheds feeding the Delta, 2) the Delta itself, and 3) export areas. WOP conditions should be based on the present set of operating rules, regulations, agreements, and water rights, and in the presence of climate change and growth projections. As written, the WOP analysis in the public review draft ignores a number of senior and area of origin water rights, Federal Energy Regulatory Commission (FERC) permit conditions, and fisheries flow and temperature requirements on the American River, the Yuba River and Bear River where Placer County has both participatory license obligations (American) and water contracts (Yuba and Bear via Pacific Gas & Electric water rights).
3. As currently drafted, the WOP analysis is presented in such a way that it is not possible to understand the impacts of the project alternatives. A full range of project alternatives that would meet the revised P&N should be investigated. This must include one or more alternatives that would reduce exports, and one alternative that would eliminate exports, in favor of regional supply development (including ocean desalting), and right-sizing agricultural operations to their water availability. Exports are supported by junior water rights on the system, so it is not unreasonable to expect them to be cut back in shortage situations. In fact, long-standing appropriative water rights law would demand that. As presented, the range of alternatives is inadequate.
4. Impacts to *all* affected areas should be identified and analyzed. Specifically, for Placer County's interests and concerns, all potential impacts to the American River watershed and its jurisdictions including Placer County, and the cities and water agencies within Placer County, should be identified and analyzed. The public review Draft EIR/EIS currently does not analyze impacts to the American River watershed, its stakeholders, or its ecosystems. Because of the lack of an analysis and disclosure of potentially significant impacts, the County does not know the scope of impacts to Placer County. The County does know that its water rights, FERC covenants, and fisheries requirements have not been considered in the WOP analysis.

Once impacts are identified to the Placer County region, all feasible mitigation measures must be identified and implemented. These mitigation measures need to be developed for affected watersheds and affected parties.

These changes warrant a comprehensive re-write and re-circulation of the Draft EIR/EIS.

OTHER COMMENTS

If the County's assumptions of the true nature of the "project", as articulated above, are incorrect the County of Placer also provides the following comments on the proposed "HCP/NCCP" project:

1. If, upon re-formulation of this project, the Proponents still propose an HCP/NCCP for the Delta, they must not transfer habitat impacts to other regions. On the American River, for example, the document demonstrates that Folsom Reservoir will reach dead pool in 10% of the years under the BDCP operating assumptions (Appendix 29C-17a Folsom Reservoir storage). This would dry and over-warm the Lower American River and imperil salmon and steelhead runs.
2. The Folsom Reservoir dead pool issue must be addressed. It is presented in the Draft EIR/EIS as a WOP condition, which is flawed. Senior water rights, FERC permit conditions, and American River

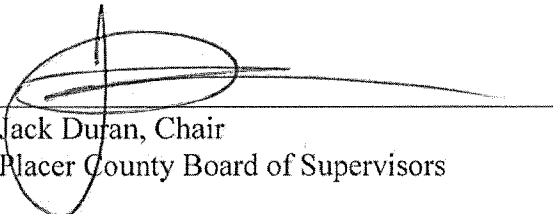
ecosystem requirements trump Delta and export requirements under both WOP and with-project conditions. Many of the water agencies reliant on those senior water rights do not have a second supply of water, so continually running Folsom Reservoir to dead pool would threaten the health and safety of a substantial population; over 500,000 in Placer County alone. Several of the agencies in Placer County are underlied by solid bedrock, so groundwater is not available or sustainable in many parts of Placer County. Long-standing area of origin water rights protections provide for increased diversions to American River stakeholders, gradually decreasing the amount available for others on the SWP and CVP systems, including exporters. That has always been the understanding under which the CVP and SWP were constructed and licensed.

3. Granting a 50-year operating and incidental take permits to the SWP would place the full burden of future changes to climate, habitats, threatened and endangered species populations, regulations, and adaptations, on the shoulders of the other water users in the watershed, nearly all of which are senior to the SWP in priority.
4. Other alternatives exist which result in a sustainable water supply for exporters. Agricultural interests can and should right size their operations to the sustainable water yield available to them. In addition, urban exporters have affordable alternatives, including recycled water, conjunctive use of local storm and floodwater, and seawater desalting. Export curtailment is a reasonable alternative and must be investigated to meet the intent of CEQA and NEPA.
5. Placer County and the incorporated cities within Placer County have approved General Plans that reflect the current conditions and projected growth that also meets the Sacramento Area Council of Governments (SACOG) Blueprint conditions as the accepted balance of growth for the region's future. Numerous legal agreements that reflect those growth plans have been executed based on the assumed accessibility of the senior water rights and capabilities to deliver water during all types of years. The BDCP objectives and the environmental analysis are inconsistent with these adopted plans and agreements. If the BDCP water conveyance facilities are built as proposed in the draft EIR/EIS, it is likely to be very detrimental to the quality of life, economic vitality, and public health conditions of Placer County.
6. The effect of draining Folsom Reservoir would place Placer County in the position of using more groundwater than expected, where it is available in the western part of the County. The County has, for decades, relied upon the use of treated surface water for urban and suburban development, even in the western portion of the County and with the County's available water rights, anticipated that the County could continue to grow by primarily relying upon surface waters. The results of more groundwater use would be to overdraft the County's basin. In addition, other adjacent regional groundwater basins would also have to pump more groundwater, which would increase the likelihood of the potential for contaminated groundwater at the former McClellan AFB site to leak into Placer's healthy basin.
7. Missing from the list of impacts is 1) the loss of the Middle Fork American River Project's (MFP) ability to generate power during times required by the California Independent System Operator, such as peak times in summer, and 2) the loss of power revenues needed to ensure operations of the MFP are stable during low water years.

The County has coordinated the scope of its comments with other Placer County and American River watershed stakeholders, who will be submitting more detailed and/or technical comments. The County specifically incorporates by reference the comments submitted by the Placer County Water Agency on the BDCP Draft EIR/EIS. The County also reserves the right to reference any and all comments submitted by other Placer County and American River watershed stakeholders in subsequent Placer County correspondence on this matter.

Once again, Placer County appreciates the opportunity to provide comments on the draft EIR/IES. The County looks forward to working cooperatively with the Proponents, stakeholders, and regulatory agencies to resolve the County's concerns stated herein.

Sincerely,



Jack Duran, Chair
Placer County Board of Supervisors

cc. Placer County Board of Supervisors
Brett Storey, Senior Management Analyst

From: Beverly Roberts <BRoberts@placer.ca.gov>
Sent: Friday, July 25, 2014 11:46 AM
To: Ryan Wulff
Cc: David Boesch; Holly Heinzen; Michele Kingsbury; Allison Carlos; Brett Storey
Subject: FW: Placer County Comment on Draft Bay Delta Conservation Plan (BDCP) and associated BDCP Draft EIR/EIS...
Attachments: BDCP Comments RWulff 2014 July 22 JDuran BStorey br.pdf

Good Afternoon Mr. Wulff,

I accidently mistyped your e-mail address! So sorry!

Please see below and of course the attached.

Take care,

*Beverly A. Roberts
Executive Assistant to the CEO
Placer County Executive Office
175 Fulweiler Avenue
Auburn, CA 95603
(530) 889-4031
broberts@placer.ca.gov*

From: Beverly Roberts
Sent: Friday, July 25, 2014 11:36 AM
To: 'BCCP.comments@noaa.gov'
Cc: David Boesch; Holly Heinzen; Michael Johnson; Allison Carlos; Brett Storey
Subject: Placer County Comment on Draft Bay Delta Conservation Plan (BDCP) and associated BDCP Draft EIR/EIS...

Good Morning,

Please see the attached letter from Supervisor Jack Duran as approved by the Placer County Board of Supervisors and as noted above. The original has been placed in the USPS for delivery.

Respectfully,

*Beverly A. Roberts
Executive Assistant to the CEO
Placer County Executive Office
175 Fulweiler Avenue
Auburn, CA 95603
(530) 889-4031
broberts@placer.ca.gov*



July 21, 2014

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

Mr. Wulff:

I am the Mayor of the City of Kingsburg. I am writing to demonstrate that I support the goals of the Bay Delta Conservation Plan (BDCP). The San Joaquin Valley's economy and that of the state depend on water. Many of my constituents work in the Agriculture industry and our entire region is at a critical juncture.

I agree with the co-equal goals of securing reliable water supplies through a new Delta conveyance system, and restoring the Sacramento-San Joaquin Delta ecosystem. The Bay Delta Conservation represents the best opportunity to provide a long-term solution to California's water needs. I encourage the state and Federal governments to move this important plan forward.

Sincerely,

Chet Reilly
Mayor
City of Kingsburg

From: Chet Reilly <chet@payality.com>
Sent: Friday, July 25, 2014 1:44 PM
To: BDCP.comments@noaa.gov
Subject: Mayor of Kingsburg comments
Attachments: BDCP Letter of Support Kingsburg.pdf

Please see the attached letter regarding the draft BDCP and BDCP Draft EIR/EIS.

Chet Reilly
Mayor
City of Kingsburg
559-634-1001
chet@payality.com

From: Michael Seaman <michaeljseaman@gmail.com>
Sent: Friday, July 25, 2014 11:33 AM
To: BDCP.Comments@noaa.gov
Subject: Public comment letter on BDCP
Attachments: MyBDCPcommentltr.pdf

Enclosed is my comment letter on the BDCP. In a nutshell, fisheries agencies should reject the plan due to its failure to provide a financial commitment. The tunnels project is an environmental and economic disaster-in-waiting. There are better ways to manage California's water supply. Thank you for your attention to these comments.

--

Michael Seaman
Arden Arcade CA 95825
Energy efficiency 1st in the loading order.
Take a ski or snowboard lesson from a Pro.

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

July 25, 2014

RE: BDCP Comments

Dear Mr. Wulff:

NMFS and other state and federal agencies should refuse to issue permits that will allow the Bay Delta Conservation Plan (BDCP) and its ill-conceived twin tunnels to go forward. The BDCP is a blueprint for taking water from an already over-committed system with a wide variety of significant, adverse effects upon the Delta ecosystem, involved fisheries and the regional economy. Funding to implement the BDCP scheme is speculative. Despite the best efforts of the BDCP's proponents to keep the public at arms length from knowledge about those serious flaws, people are becoming aware and not liking what they see.

The fundamental problems with the BDCP are: the premise that removing most of the inflow to the Delta is somehow good for the Delta, San Francisco Bay, and fisheries (it isn't); the notion that water supplies are improved by the project (which provides no new water and creates winners among the takers and losers throughout the Delta); and the totally foolish idea that Californians are happy to pay billions upon billions of dollars (including possible rate increases and property tax hikes), despite the lack of secured financing for an expensive public works project for the essentially exclusive benefit of few Corporate Welfare Queens.

Before take permits can be issued under a habitat conservation plan, it must be shown that there is sufficient funding for all proposed activities, with identification of all financial contributors and planned allocation of funds. Beware of the Implementing Agreement that BDCP planners eventually submit, because they have not provided the public a reasonable amount of time to evaluate the funding proposal

before the close of the EIR/EIS comment period. This means all public comments are made on a plan for which there is no financing commitment.

The State and federal water contractors are adamant that the diversion tunnels should be built because they have spent a quarter of a billion dollars promoting it (via the draft BDCP and environmental documents) Yet the engineering for the actual tunnels is only 10% complete. This is a poor basis for estimating the cost of building the tunnels that are the centerpiece of the plan. Further, the emerging consensus among the state's water stakeholders, including purveyors at the receiving end, is that the project will wind up in court for years, if not decades (and perhaps even beyond the 50-year window of a "take" permit). That will add enormous costs at the risk of considerable uncertainty.

It is no surprise that water users that would be the beneficiaries of BDCP are balking at paying for a massively expensive project which does not guarantee more water. With the effects of prolonged drought now in plain sight, it is obvious to users that the tunnels will not result in a more reliable supply of less water, despite suspensions of water protections for fish and upstream users. Metropolitan Water District (MWD) member agencies in Southern California are seeking their own water supply alternatives. They could opt out of taking water from the state water project, resulting in MWD failing to meet its financial obligations to the BDCP. Similarly, agricultural users in the San Joaquin Valley have clarified that they will not be able to pay for the cost of water delivered by the tunnels. When contractors fail to meet their financial obligations for the project, taxpayers will get stuck with the bill. Taxpayers, particularly those who see no direct benefit from the project, will feel a strong aversion to participating. The speculative financing for the BDCP is thus a fatal flaw.

The water contractors have redefined ecosystem work as a public benefit in the hopes of getting someone else to pay for

the habitat restoration portions of the BDCP. They are looking to federal assistance and public bonds to cover the plan's habitat restoration (while overlooking the habitat destruction brought on by the infrastructure investments). There is no guarantee whatsoever that California voters will approve a water bond in 2014 or later years, or that any bond they might approve will include BDCP funding. Furthermore, it is highly doubtful that Congress will fund \$4 billion toward a habitat conservation plan for California as assumed by the BDCP.

The massive list of significant and unavoidable adverse impacts (Table 31-1 of the BDCP) is a clue that "habitat restoration" is a code word for an environmental disaster. It demonstrates that the 2009 Delta Reform Legislations' intent to protect the Delta as an evolving place (CA Water Code 85020(b)) is not met. California voters have proven over and over again they are reluctant to be stuck with the bill for large, expensive public works projects with questionable benefits, particularly projects that promise both environmental and financial mayhem.

The BDCP documents are supposed to enable the public to comment. But the documents are inadequate because the public is kept in the dark about how the scheme will be paid for and whether it can be implemented successfully. This does not make sense. Because the BDCP does not provide a financing commitment and since no one wants to pay for the boondoggle that is the BDCP, fisheries agencies should refuse to issue permits that would enable it to go forward.

Thank you for your attention to these comments.

Michael Seaman
Arden Arcade, CA



July 25, 2014

BDCP Comments

Ryan Wulff, National Marine Service
650 Capitol Mall S-100
Sacramento, CA 95814

Re: Bay Delta Conservation Plan Comments:

We are pleased to support the advancement of the Bay Delta Conservation Plan (BDCP). The BDCP is an important step in addressing California's water challenges.

The Sacramento-San Joaquin Delta ("Delta") supplies water for 25 million Californians and the economies of the San Francisco Bay Area, the Central Valley, and Southern California. The current system employs dirt levies that are more than 100 years old to separate vital fresh water from San Francisco Bay salt water. Should these levies be breached, fresh water in the Delta could be rendered useless for a year or more.

The plan, which will build two tunnels to transport fresh water under the Delta, is an important step in protecting California's drinking water, environment, and economy. The underground tunnels will provide much greater security in the face of geologic or climate change related events.

The BDCP will help mitigate decades of environmental damage by proliferating diverse wildlife restoration, improving vegetation and fostering adaptation to effects of climate change. Restoring declining species will likely ease the burden of federal water delivery restrictions and increase the availability of water for drinking and agriculture. The protection of the Delta environment will have an immediate impact on water volume, distribution and quality, which will provide significant economic benefits in addition to the aforementioned environmental improvements.

The water delivered by the plan will fuel significant portions of California's construction and agriculture industries, and will bring over 155,000 jobs to Sacramento, San Joaquin and Contra Costa counties alone. The improvements resulting from the BDCP will contribute to the creation and protection of nearly one million full-time equivalent jobs through immediate construction, secondary and tertiary uses over its 50 year implementation period.

We are facing the worst droughts in California's history without an effective conservation strategy. As a result, the Delta's ecosystem is at its breaking point. Supporting this common sense, cost effective project will help ensure safe and reliable drinking water for future generations. After eight years of review and debate, it is time to finalize the Bay Delta Conservation Plan. We urge you to join us in supporting this important project.

Please do not hesitate to contact Dan at 916-941-2921 if you have any questions regarding this letter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Dan Engel', written over a light blue horizontal line.

Dan Engel
VP Commercial Development-Western Region

From: Daniel E Engel <dan.engel@cemex.com>
Sent: Friday, July 25, 2014 1:59 PM
To: BDCP.comments@noaa.gov
Subject: BDCP Comments
Attachments: BDCP.072514.pdf



Dan Engel

Vice President-Commercial Development, California/ Northern Nevada - United States of America

Office : +916(941)2921 Fax: +916(405)4154 Mobile: +916(934)9926

Address: 5180 Golden Foothill Pkwy. Suite 200 El Dorado Hills, CA 95762

e-Mail: dan.engel@cemex.com

www.cemexusa.com



PARTNER OF THE YEAR



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IRVINE RANCH WATER DISTRICT

15600 Sand Canyon Avenue • P.O. Box 57000 • Irvine, California 92619-7000 • (949) 453-5300 • www.irwd.com

July 24, 2014

VIA EMAIL

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

RE: Comments on the Draft Implementing Agreement for the Bay Delta Conservation Plan

Dear Mr. Wulff:

Thank you for the opportunity to review and comment on the Draft Implementing Agreement for the Bay Delta Conservation Plan (Draft IA). As a water purveyor which remains partially dependent on imported supplies, the Irvine Ranch Water District (IRWD) has a vested interest in California's water supply reliability, and the implementation of a solution in the Sacramento-San Joaquin Delta (Delta). IRWD has supported the joint state and federal effort to develop and implement a Bay Delta Conservation Plan (BDCP), which includes a set of water system and ecosystem improvements in the Delta that will serve as the foundation for achieving the legislatively established coequal goals of high-quality water supply reliability and ecosystem restoration. IRWD offers the following comments on the Draft IA for your consideration as the document is finalized.

As discussed in our comment letter on the BDCP and its associated environmental documents, IRWD is an independent special district that provides high-quality drinking water, reliable wastewater management, ground-breaking recycled water programs, and environmentally-sound urban runoff treatment to more than 340,000 residents in Central Orange County. Over the last two decades, the District has diversified its water supply to reduce its reliance on imported water sources. Despite these efforts, IRWD remains partially dependent on imported water.

As a water purveyor partially dependent on the Delta, IRWD is interested in seeing the adoption and successful implementation of the BDCP, and its balance of the coequal goals. Achieving the co-equal goals in the Delta is essential to ensuring a sustainable water supply for millions of Californians and the protection of the Delta as a unique natural asset. The Implementing Agreement, as the legal instrument governing the implementation of the BDCP, should clearly establish the roles, responsibilities and obligations of the various parties involved in implementing the BDCP. It should provide for the high level of regulatory certainty— particularly in reference to covered species and water operations— needed for the successful implementation of the BDCP.

Comments on the Draft Implementing Agreement

A. SIGNATORIES (Section 1.0, Page 1):

The Draft IA states that the Implementing Agreement is being entered into by “the State of California, acting through the California Department of Water Resources (DWR) and the California Department of Fish and Wildlife (CDFW) of the State of California Natural Resources Agency, certain State Water Project and Central Valley Project contractor water agencies (SWP/CVP Contractors), and the United States, acting through the Fish

Irvine Ranch Water District: Comments on the Draft Implementing Agreement for the Bay Delta Conservation Plan

July 24, 2014

Page 2

and Wildlife services (USFWS) of the United States Department of the Interior and the National Marine Fisheries Service (NMFS) of the United States Department of Commerce.” *Draft IA, Section 1.0, Page 1.* It further states that the level of agency signatory has not been determined and will be considered further.

IRWD suggests that the Governor, Secretary of the Interior, and the Secretary of Commerce be the signatories for the California Department of Fish and Wildlife (CDFW), U.S. Fish and Wildlife Service (USFW), and the National Marine Fisheries Service (NMFS), respectively. Having the Governor and the Secretaries sign on behalf these state and federal agencies helps ensure that the United States and the State of California live up to their obligations under the Implementing Agreement. Furthermore, having these individuals sign the Implementing Agreement ensures that the correct level of agency signatory is obligating the United States and the State of California for commitments made beyond those of the Authorized Entities (DWR and SWP/CVP Contractors).

B. BUREAU OF RECLAMATION’S ROLE (Section 1.0, Page 1 & Section 5.0 Page 15):

Section 1.0 also states that the Bureau of Reclamation will not be a party to the Implementing Agreement, and that there are no obligations established on behalf of the Bureau of Reclamation in the Implementing Agreement. Section 5.0 of the Draft IA provides that the Bureau of Reclamation will instead “enter into a Memorandum, or similar agreement, with the Parties that sets out Reclamation’s roles and responsibilities pursuant to the BDCP.”

The entered-into memorandum or similar agreement should be attached to the Implementing Agreement as an exhibit and should be incorporated by reference into the final Implementing Agreement. References to the exhibit should be added to both Section 1.0 and Section 5.0. Likewise, the memorandum or similar agreement should attach the Implementing Agreement as an exhibit and incorporate it by reference. This cross-referencing will ensure that all of the agreements establishing the parties’ responsibilities and obligations under the BDCP are linked.

C. DEFINITION OF “ADAPTIVE MANAGEMENT TEAM” (Section 3.1, Page 5)

IRWD has been an advocate that the BDCP must incorporate a collaborative, science-based approach built on independent, unbiased research including a clearly articulated conservation strategy that reflects the impact and responsibility of all Delta stressors. The Draft IA defines the Adaptive Management Team as the entity responsible for establishing performance measures and monitoring of the BDCP’s biological objectives and Conservation Measures. The Adaptive Management Team is also to solicit independent scientific reviews, and develop proposals to modify Conservation Measures, biological objectives and other actions. This is an appropriate role for the Adaptive Management Team; however, the definition should make clear that the Adaptive Management Team is to select specific, measurable, achievable, relevant and time-bound performance measures. The definition should also state that the Adaptive Management Team is to take a science-based approach when making its decisions on the effectiveness of the biological goals and Conservation Measures, and that any proposed modification to the goals or measures should be based on independent, unbiased research.

Additionally, the Draft IA, in Section 3.1, lists the SWP/CVP Contractors as voting members of the Adaptive Management Team. Given the team’s role in understanding the effectiveness of the BDCP’s ecosystem improvements and Conservations Measures, it is appropriate that the SWP/CVP Contractors, who hold extensive responsibility for funding and implementing the BDCP, are included as voting members on the Adaptive Management Team. This arrangement should be maintained in the final Implementing Agreement.

D. DEFINITION OF "COVERED SPECIES" (Section 3.20, Page 7):

Section 3.20 of the Draft IA defines "Covered Species" and states that a list of the Covered Species, both listed and non-listed species, is provided in Exhibit "A". Exhibit "A" is important to understanding the species for which take may be authorized and to understanding the risk being undertaken by the Permittees. Additionally, those species listed in Exhibit "A" link directly to the species for which the Permittees have been given "no surprises" protection. Given the importance of Exhibit "A" to understanding the roles and responsibilities of the various parties implementing the BDCP, the exhibit should be released for public review before the Implementing Agreement is finalized. All known species in the plan area should be included in Exhibit "A".

E. DEFINITION OF "UNFORESEEN CIRCUMSTANCES" (Section 3.59, Page 10):

Section 3.13 of the Draft IA defines "Changed Circumstances" as meaning "changes in circumstances affecting a species or the geographic area covered by the BDCP that have been reasonably anticipated by the Parties and that have been planned for in the BDCP." (Emphasis added) It also defines "Changed Circumstances" as meaning a "reasonably foreseeable circumstances that could affect a Covered Species or the Plan Area." (Emphasis added) Section 3.13 further states that "Changed Circumstances and planned responses to those circumstances are described in Chapter 6.4.2. Changes in circumstances that are not identified as Changed Circumstances will be treated as unforeseen circumstances." (Emphasis added) Section 14.0 of the Draft IA also states that "The BDCP identifies changes in circumstances that are reasonably foreseeable and that could adversely affect reserve system lands or waters in the Plan Area, consistent with the "changed circumstances" provision of the ESA regulations and in the NCCPA." This means that Unforeseen Circumstances, by definition, are those circumstances that were not reasonably anticipated or reasonably foreseeable, and were not planned for in the BDCP.

The definition of "Unforeseen Circumstances" provided in Section 3.59 of the Draft IA clearly states that Unforeseen Circumstances are those changes in circumstances affecting a Covered Species or the geographic area covered by the BDCP that could not reasonably have been anticipated at the time of the BDCP's negotiation and development. It does not include the second criteria contained in the Changed Circumstances definition referencing Unforeseen Circumstances—that the circumstances were not planned for in the BDCP. Since the reasonably foreseeable changes in circumstance have been included in the BDCP, the definition should be modified as follows:

"Unforeseen Circumstances" means (a), in the context of the ESA, changes in circumstances affecting a Covered Species or geographic area covered by the BDCP that could not reasonably have been anticipated, and were therefore not included in the BDCP, by the Permittees, USFWS or NMFS at the time of the BDCP's negotiation and development, and that result in a substantial and adverse change in the status of a Covered Species (50 C.F.R. §§17.2 and 222.102), and (b), in the context of the NCCPA, changes affecting one or more species, habitats, natural communities, or the geographic area covered by a conservation plan that could not reasonably have been anticipated at the time of Plan development, and were therefore not included in the BDCP, and that result in a substantial adverse change in the status of one or more Covered Species (Fish & Game Code § 2805(k)).

Of the many assurances to be provided for, the Implementing Agreement should provide strong protections from unforeseen circumstances and prohibit new requirements from being placed on water conveyance operations for impacts to newly impacted species or species covered by the plan. The holistic approach to the Delta ecosystem envisioned in the BDCP should account for all of the probable impacts to species in the Delta.

F. OBLIGATIONS OF AUTHORIZED ENTITIES & FISH AND WILDLIFE AGENCIES (Section 7.1, Page 11 & Section 7.2, Page 16):

Section 7.1 properly lists one of the obligations of the Authorized Entities as funding a portion of the Conservation Strategy, and Section 7.2 properly lists one of the obligations of the Fish and Wildlife Agencies as funding a portion of the Conservation Strategy. These sections of the Draft IA should be amended to provide greater specificity around which portion of the Conservation Strategy is to be funded by the Authorized Entities and which portion is to be funded by the Fish and Wildlife Agencies. Providing greater specificity around this point will provide clarity on which portions of the Conservation Strategy will be borne by the state and federal governments, and which will be borne by the SWP/CPV Contractors.

G. TAKE AUTHORIZATIONS ISSUED TO OTHER AUTHORIZED ENTITIES (Section 8.2, Page 18)

The Draft IA recognizes that certain third parties may seek take authorizations under the BDCP for ongoing operation of water diversions that are not associated with the SWP/CVP Contractors. These parties are to be considered Other Authorized Entities. A sentence should be added to Section 8.2 of the Draft IA clarifying that the SWP/CVP Contractors shall not be held liable or be asked to take actions by USFWS, NMFS or CDFW as a result of Other Authorized Entities violating the terms and conditions of any take authorization issued by the Department of Water Resources. Also, the section references Exhibit "C", which has not been released. Exhibit "C" should be released for public review prior to the Implementing Agreement being finalized.

H. TAKE AUTHORIZATIONS FOR NON-LISTED COVERED SPECIES & FULLY PROTECTED SPECIES (Section 8.5, Page 19 & Section 8.6, Page 19)

Section 8.5 and Section 8.6 of the Draft IA outline the take that will be authorized by the Fish and Wildlife Agencies. Section 8.6 provides that the CDFW agrees "the BDCP includes measures that are intended to avoid, to the maximum extent practicable, the take of any Full Protected Species as a result of the implementation of Covered Activities." A similar statement should be added to Section 8.6 that indicates CDFW, USFWD, and NMFS agree that the BDCP includes measures that are intended to avoid, to the maximum extent practicable, the take of Covered Species (both listed and non-listed) and agreeing to grant the take authorization in the state and federal permits.

I. DECISION TREE PROCESS (Sections 10.2.1-10.2.1.5, Pages 24-27)

The provisions related to Decision Tree Process include a reference to the permit terms and conditions regarding flow criteria. Specifically, Section 10.2.1.1 states that "It is expected the USFWS, CDFW, and NMFS will issue Permits for the proposed project, which may include as permit terms and conditions the operational and flow criteria related to the high-outflow scenario in the application." It is important that the Decision Tree Process equally and fully evaluate with sound science all outflow scenarios before a decision is made. The high outflow scenarios should not be predisposed as being the outcome that should be included in the permits' terms and conditions. The statement in Section 10.2.1.1 should be amended to reflect this.

J. REAL TIME ADJUSTMENTS (Section 10.2.2, Pages 27-29)

One of the goals of the BDCP and the Implementing Agreement should be to reduce unanticipated interruptions and restrictions on pumping. Real time operation decisions should be water supply neutral and should not compromise the discretion of the Project Operators to maximize water supply benefits provided the requirements of BDCP are being met. The Implementing Agreement should provide certainty as to the process

through which real time operations decisions will be made, and the SWP/CVP Contractors should be part of the decision process.

Given the SWP/CVP Contractors' vested interest and expertise in water operations, one SWP Contractor and one CVP Contractor should serve as voting (not non-voting) members on the Real Time Operations Team. If one SWP Contractor and one CVP Contractor are not added as voting members of the Real Time Operations Team, the voting members of the Real Time Operations Teams should not be permitted to expand the membership of the team without the consent of the SWP/CVP Contractors.

K. RESERVE SYSTEM (Section 11.4, Page 42):

In its comments on the BDCP, IRWD noted that the maintenance requirements for the tunnels have not yet been finalized, and recommended that the costs be examined more thoroughly in the final BDCP and EIR/EIS. The District also recommended that before implementation of the BDCP is begun, the cost and cost allocation for the Preferred Alternative (Alt. No. 4) should be fully understood and agreed to by the various parties responsible for funding the BDCP. Additionally, IRWD has held the position that the final parameters of the conveyance system must be reflected in contractual agreements with high quality supply delivery assurances to provide certainty that investments in the conveyance facilities reap adequate returns for investors.

The cost and cost allocations for funding the obligations of the various parties under the Implementing Agreement should also be understood before the Implementing Agreement is finalized. With regards to the funding of the reserve system, the Draft IA should be amended to state the amount required for the non-wasting endowment discussed in Section 11.4.1. Section 11.4.1 should also be amended to clearly state each party's obligation to fund the endowment.

L. CHANGE CIRCUMSTANCES (Section 12.0, Page 44):

As identified in Section 12.0 of the Draft IA, "Ecological conditions in the Delta are likely to change as the result of future events and circumstances that may occur during the course of the implementation of the BDCP." Like other sections of the Draft IA, Section 12.0 should include a "no surprises" statement guaranteeing the Permittees that the Fish and Wildlife Agencies will not require of the permit holder any additional land, water, or financial compensation nor impose additional restrictions on the use of land, water or other natural resource without their consent provided the Implementation Office acts are required in Section 12.1.

Also there is not a clear division of responsibility between the Authorized Entities and the state and federal governments for implementing responses to Changed Circumstances. This should be addressed in the final Implementing Agreement.

M. INADEQUATE FUNDING (Section 13.2, Page 47)

In recognition of the fact that the BDCP is a comprehensive plan that provides significant benefits to the public, the Draft IA appropriately provides that the State of California and the United States will be responsible for funding portions of the BDCP that are not otherwise funded by the Authorized Entities. Additionally, the Draft IA appropriately includes provisions that provide the Permittees with assurances and protections. These assurances and protection are unfortunately minimized by Section 13.2.

Section 13.2 states that "In the event of a shortfall in State or federal funding, a Fish and Wildlife Agency(ies) shall not suspend or revoke the State and/or Federal Permits or invalidate Reclamation's take statement if the

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shortfall in funding is determined to be likely to have no more than a minimal effect on the capacity of the Plan to advance the biological goals and objectives.” This language allows the Permittees’ permits to be revoked as a result of something outside of their control. Consistent with the “no surprises” assurances provided to the Permittees, the Implementing Agreement should provide that as long as the Permittees are fully meeting their obligations, the permits may not be revoked or suspended due to a lack of federal or state funding. At a minimum, the term “minimal effect” needs to be defined in order to protect the Permittees from backstopping the obligations of the state and federal government.

Also the funding obligations of State of California and the United States are lumped together. The funding split between the State of California and the United States needs to be identified and included in the final Implementing Agreement.

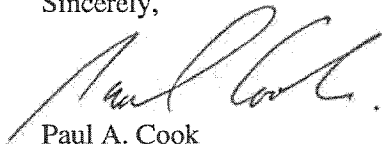
Section 13.2 also references the requirement for rough proportionality in funding to ensure there will be no mitigation debt in the event of inadequate funding. While the Draft IA contains a definition of rough proportionality, it includes no standard for when a failure of rough proportionality would trigger a partial suspension or revocation of the Permits. This should be addressed. Consistent with the comments above, a failure to maintain rough proportionality due to a shortfall in state or federal funding should not be a basis for partial suspension or revocation of the permits provided the Permittees are fully meeting their obligations.

Conclusion

The Implementing Agreement should fairly and clearly detail the roles and responsibilities of each party to the BDCP and establish the steps taken if a party fails to meet its obligations under the plan. The assurances contained in the Implementing Agreement are important to the BDCP’s success and the balancing of the coequal goals. The final Implementing Agreement should include the necessary regulatory assurances to sufficiently protect the significant investment being made to improve habitat and water supply reliability.

IRWD encourages the state and federal agencies to quickly finalize the BDCP and Implementing Agreement with the additions discussed above. Once the Implementing Agreement is finalized, the BDCP and Preferred Alternative (Alt. No. 4) should be expeditiously implemented to limit further uncertainty in the Delta’s ecosystem and water supply reliability. California can no longer afford to delay its investment in the Delta.

Sincerely,



Paul A. Cook
General Manager

From: Christine Compton <Compton@irwd.com>
Sent: Friday, July 25, 2014 11:37 AM
To: BDCP.comments@noaa.gov
Subject: BDCP Draft Implementing Agreement Comment Letter
Attachments: BDCP- IRWD Comments of Draft IA- 7-25-2014.pdf

Attached please find a comment letter on the Draft Implementing Agreement for the BDCP from the Irvine Ranch Water District.

Sincerely,

Christine Compton

Government Relations Manager

Irvine Ranch Water District

15600 Sand Canyon Avenue

Irvine, CA 92618

949-453-5338 Office

949-453-0228 Fax

compton@irwd.com