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Sent: Friday, July 25, 2014 1:47 PM
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Subject: Comment Letter from Friends of Stone Lakes National Wildlife Refuge re: BDCP & Associated Draft EIR/EIS
Attachments: FSL BDCP Cmnt Ltr 07.25.14.pdf

Mr. Wulff,

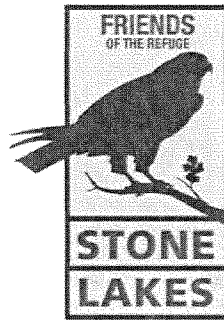
Attached please find the comment letter submitted on behalf of Friends of Stone Lakes National Wildlife Refuge regarding the Draft Bay Delta Conservation Plan and the Associated Draft Environmental Impact Report/ Environmental Impact Statement. Thank you for your time and attention to our comments. Please contact us should you have questions.

Sincerely,

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July 25, 2014

SENT VIA EMAIL (BDCP.comments@noaa.gov)

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

RE: Draft Bay Delta Conservation Plan and Associated Draft Environmental Impact Report/Environmental Impact Statement (BDCP EIR/EIS)

Dear Mr. Wulff:

These comments are submitted in relation to the Bay Delta Conservation Plan ("BDCP" or the "Project") and associated public review draft environmental documents (EIR/EIS) on behalf of the Friends of Stone Lakes National Wildlife Refuge ("FSL," formerly known as the Stone Lakes National Wildlife Refuge Association). FSL is a volunteer, nonprofit organization dedicated to the conservation, protection, enhancement and promotion of the Stone Lakes National Wildlife Refuge ("Stone Lakes NWR" or "Refuge"). The comments are solely those of FSL and are independent of Stone Lakes NWR staff and the U.S. Fish and Wildlife Service ("USFWS").

I. BACKGROUND

In 1994, following six years of study and public meetings, the USFWS established Stone Lakes NWR in southern Sacramento County within the Morrison Creek, Cosumnes River and Mokelumne River watersheds. Located in close proximity to the cities of Sacramento and Elk Grove, Stone Lakes NWR has a significant environmental education

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program serving the 5th largest school district in California (> 60,000 students). The Congressionally authorized project boundary is 17,640 acres. Currently, the USFWS manages 6,550 acres. To date, over eight million dollars of private and public funds have been devoted to protect the ecosystem within the Stone Lakes NWR boundary.

Stone Lakes NWR is one of the largest complexes of wetlands, lakes and riparian areas remaining in the Sacramento-San Joaquin Delta and provides critical habitat for waterfowl and other migratory birds of international concern as well as a number of endangered plant and animal species. Stone Lakes NWR and the surrounding agricultural areas are home to several state and federal special status species, including greater sandhill cranes, Swainson's hawk, Western burrowing owl, long billed curlew, tri colored blackbird, white faced ibis, giant garter snake and valley elderberry longhorn beetle.

The Refuge is a vital part of the Pacific Flyway and an integral player in meeting the goals set forth in the North American Waterfowl Conservation Plan. For example, at Stone Lakes NWR, between 2001 to 2014, the greater sandhill crane population has gone from zero to over 700 birds while the greater white-fronted goose count increased from 30 to over 16,000 birds.

Despite this success, Stone Lakes NWR faces significant habitat challenges. In 2005, the Refuge was designated as one of the six most threatened refuges in the nation. (See "State of the System: An Annual Report on the Threats to the National Wildlife System, National Wildlife Refuge Association," 2005.) This designation was based primarily on impacts from surrounding urbanization. The Refuge is now even at greater risk due to the proposed tunnel conveyance system that is at the heart of the BDCP.

The Stone Lakes NWR and surrounding foraging acreage is "ground zero" for BDCP impacts. The primary proposed conveyance facility components, consisting of three massive pumping stations, the tunnels, new transmission lines and an intermediate forebay are all located either on or very close to the Refuge and have significant potential to degrade or threaten the Refuge's resources and habitat. Wildlife, staff and visitors will all be impacted by construction noise, lighting and extreme levels of truck traffic that will occur during the lengthy construction process.

Since the time FSL learned that the Project was proposed to traverse the Refuge, FSL has been engaged in the BDCP process, first expressing major concerns in Scoping

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comments submitted in May 2008. We advocated for creation of a Stone Lakes working group to address the impacts of the Project specifically on the Refuge. A Stone Lakes Technical Working Group process subsequently began in June 2013, with eight meetings total. At these meetings, FSL has worked diligently with BDCP planning staff, USFWS, California Department of Fish and Wildlife ("DFW"), and Department of Water Resources ("DWR"), among others to reduce impacts on the Refuge. We appreciate the efforts of these agencies and the BDCP consultant staff in attempting to address our concerns with the project, but many concerns remain.

Over the course of these meetings, progress has been made in reducing the project's impacts on the Refuge and surrounding areas. (See Exhibit A, ICF Summary Status Report, April 18, 2014.) For example, the forebay is now smaller with a lower elevation (though it is now located within the Refuge boundary). Also, some inappropriate tunnel muck sites have been relocated out of primary bird habitat areas. The BDCP is also now committing to create a new wetland roosting area and associated uplands to better link the flyway route. As of this writing, however, not all of the issues identified by FSL have been resolved by the Stone Lakes Technical Working Group. (See Exhibit B, FSL Unresolved Issues, May 30, 2014; Exhibit C, Meeting Notes for June 5, 2014 Meeting by ICF.) As can be seen in Exhibit B and C, most of the remaining outstanding issues have now been delegated to the interagency Technical Terrestrial Team; we have been advised there may be no further Stone Lakes Technical Working Group meetings that include FSL. We are concerned that without our participation, these remaining issues may not ever be addressed. Though we have made significant progress with respect to improving treatment of the greater sandhill crane in the BDCP and EIR/EIS (see Exhibit D, Table of Remaining Crane Tasks by ICF, and Exhibit E, Crane Comments for Discussion), we still have outstanding concerns regarding protection of the Western Burrowing Owl and Swainson's Hawk that were not addressed in our Stone Lakes Technical Working Group meetings (see Exhibit F, Stone Lakes NWR Comments on Western Burrowing Owl Conservation Strategy, May 22, 2014).

Even with the progress that has been made on the BDCP and other mitigation efforts, FSL is concerned that impacts to species within and near the Refuge that are proposed for coverage in the plan from CM 1, the tunnel conveyance facility, still have not been adequately addressed. Moreover, we have outstanding concerns about the impacts of the other conservation measures – especially those that convert existing bird habitat to aquatic habitat – on the species the Refuge seeks to conserve. The missions of the Stone Lakes NWR as well as the missions of the BDCP approving agencies promote the protection and improvement of habitat within the Refuge. FSL still questions if the

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BDCP's emphasis on construction of a tunnel conveyance system as a "conservation measure" is consistent with this mission. It is by no means clear that implementation of the BDCP will result in protection of listed species without significantly harming other species. Our specific concerns follow.

Our comments are organized into several major concerns regarding the BDCP and the draft EIR/EIS. We request written responses to each of the comments contained within this letter.¹ We have not included all of the materials from the Stone Lakes Technical Working Group, as those are already in the possession of the BDCP preparers. We have, however, attached several supporting exhibits to assist in describing the comments and concerns.

II. COMMENTS ON BDCP AND BDCP EIR/EIS

A. Overall Concern Regarding Scale of Impact of CM 1 on Refuge

1. Location of Forebay Facilities within Refuge Boundary Necessitates Permanent Protection of Zacharias Island

The forebay and tunnel entrance for the conveyance facility were originally planned to be located just west of South Stone Lake and close to the community of Hood. The location would have eliminated several hundred acres of prime waterfowl foraging area and had visual and other impacts on the Refuge, hunting activities and wildlife. DWR, recognizing our concerns, as well as design/cost issues, significantly reduced the size of the forebay and relocated the forebay and tunnel entrance to a location just north of Twin Cities Road, an area predominantly planted in grapes. The impacts on foraging area and on current Refuge managed lands were thereby reduced.

DWR presented the revised forebay location and design concept at a meeting of the Stone Lakes Technical Working Group on May 15, 2013. The new forebay would be located within the Refuge legislative project boundary just north of Twin Cities Road and east of the Sierra Pacific ("SP") Cut and levee. The forebay now requires 40 acres, with a

¹ To the extent any of the comments herein could be considered comments on the BDCP (the underlying HCP), they should be responded to as if they were comments on the project description under CEQA and NEPA. (See CEQA Guidelines, § 15088 and 40 CFR, § 1503.4.)

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surrounding 200 acres for an overflow retention basin, for a total footprint of about 240 acres. Privately owned Zacharias Island, just to the west of the SP Cut and levee and within the Refuge legislative boundary, is now proposed to be included as part of the Project site, with the southern third of the island identified as a tunnel muck storage site. At the completion of project construction, Zacharias Island habitat would be restored. Zacharias Island, which currently provides waterfowl roosting habitat, is a primary conservation area, which is consistent with the Refuge's mission, and would be a very beneficial addition to the Refuge after successful habitat restoration. FSL believes the area should be incorporated into the Refuge.

DWR subsequently acknowledged the potential conservation opportunities of the new forebay location in an information sheet titled, "BDCP Refinements Respond to Community and Statewide needs," dated August 2013 and posted on the BDCP website:

Relocating the smaller forebay away from the towns of Hood and Courtland and closer to Interstate 5 on the Glanville Tract also lessens the impacts to roads and bridges, creates conservation opportunities with the Stone Lakes National Wildlife Refuge, and makes it possible to utilize more publicly-owned land. (Emphasis added.)

The new location of the forebay within the Refuge project boundary will have a significant visual presence. We have not located any renderings of the forebay facility in the BDCP plan. It has been described to the Stone Lakes Technical Working Group as a steep-sloped earth structure 30 feet above grade. It will be a visually prominent intrusion on the rural landscape and will be adjacent to a potential recreation corridor along the old Southern Pacific railroad grade owned by the Refuge (the "SP right of way"). The EIR/EIS does not adequately evaluate the visual impact of the forebay either from Twin Cities Road or from the SP right of way. The EIR/EIS document must include and evaluate renderings that demonstrate the impact of the structure.

The new forebay location within the Refuge boundary, together with the construction and operation of the intake structures along the Sacramento River just to the north and the power lines supplying them, would significantly impact the Refuge and the wildlife it seeks to conserve, both during construction and after completion. These impacts are identified in the EIR/EIS and are discussed elsewhere in this comment letter. Among the more significant impacts:

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- Tunnel muck material will be stored at several locations within the Refuge boundary, with uncertain long term consequences.
- Truck traffic will significantly increase during the multi-year construction period, increasing safety risks, adversely impacting the visitor experience and increasing wildlife mortality.
- New permanent high voltage power lines will be constructed within the Refuge boundary that will result in take of greater sandhill cranes and other large migratory waterfowl and will visually intrude into the rural landscape and affect the visitor experience.

These impacts result in loss of habitat values within the Refuge both during and after construction. The construction of the forebay and tunnel launch site will also create challenges in completing the Refuge concept of a complex of roosting and foraging areas for migratory waterfowl at an important location on the Pacific flyway while providing appropriate recreational opportunities as one of the few urban national wildlife refuges in the country.

The Project would introduce a land use that is incompatible with the purpose and function of the Refuge. These actions will also impede the ability to carry out the goals of the Final Comprehensive Conservation Plan ("CCP") to continue to better serve wildlife needs and those of the surrounding communities.² (CCP, pp. 71-92.) The Project may also have an upward impact on land prices and may influence willing sellers in ways that would make acquisitions to expand the refuge more difficult.

The USFWS has recently acquired the lineal parcel comprising the SP right of way. The Refuge has yet to incorporate the new acquisition into the Stone Lakes CCP, but the parcel offers potential for controlled recreational access. The security issues associated with the adjacent presence of a significant component of California's water delivery infrastructure could limit or preclude recreational access within the Refuge.

The FSL communicated concerns over the impacts of the forebay and associated facilities in a November 2, 2013 letter to Jerry Meral:

While we do not oppose the new location as it appears at this time to be the 'least worse' site, we must recognize that the new location will

² Available at: <http://www.fws.gov/stonelakes/ccp.htm>.

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potentially complicate completing the refuge in ways that we cannot completely predict. Landowners may be less willing to cooperatively manage lands for wildlife benefit, enter into conservation easements or sell land to the Refuge at affordable prices. In addition, the Association's long term goal for public access along adjoining the old railroad grade may be compromised by forebay security concerns. We believe that the Tunnel Conveyance Facility project should include additional commitments to assisting the goal of completing the Refuge.

(Exhibit G, p. 3.)

As a consequence of these tangible and intangible adverse impacts on the Stone Lakes NWR -- and particularly because the BDCP plan preparers specifically proposed the long term conservation of Zacharias Island when the forebay and tunnel entrance were relocated to within the Refuge boundary -- it is appropriate and necessary that the BDCP commit to the permanent long term conservation of Zacharias Island. The BDCP and/or the EIS/EIR³ should therefore include an enforceable requirement (in the form of an Avoidance and Mitigation Measure ("AMM" or mitigation measures) to commit the Project as follows: (1) BDCP agencies must restore Zacharias Island after project construction; (2) Stone Lakes NWR will receive first right of refusal for fee title or conservation easement of the surface estate of Zacharias Island at nominal cost; and (3) a sufficient endowment to manage the long term conservation of the property is included in any conveyance.⁴ One approach would be for the BDCP implementing agencies to enter into an agreement with the USFWS prior to the initiation of CM 1 construction. These actions would appropriately reduce the cumulative impacts on the Stone Lakes NWR given the scale of the impact proposed by BDCP.

In addition to the ultimate disposition of Zacharias Island, we also remain concerned with management of the forebay to reduce ongoing operational impacts on

³ The requested commitments could alternatively be included in the Implementing Agreement for the BDCP.

⁴ FSL further believes that the Project description in CM 1 in the BDCP must be amended to include the acquisition of Zacharias Island and make the commitment, as part of BDCP plan implementation, to restore Zacharias Island wildlife habitat, make it available to the USFWS for long term management as part of the Stone Lakes NWR and endow the cost of conservation management.

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the Refuge. For example, to address forebay impacts, visual screening with native landscaping to reduce the visual, noise and glare impacts of the facility must also be included as part of the project or as mitigation measures. Also, plans on managing the spillway in a wildlife friendly manner should be included. We are still concerned about rodent control activities and would like to see methods that will not expose hawks, and other predators to poisons. Though these issues have now been deferred to the Terrestrial Technical Team, we request follow up to ensure that they are in fact addressed. (See Exhibit B, item 1.)

B. Concerns with Overall Conservation and Mitigation Approach

1. Placement of Habitat Not Well Planned

Although the Refuge CCP does not include management strategies for enhancing fish species, it is a protected resource included in the conservation goals for existing lakes and sloughs. (CCP, pp. 36-50 (discussing biological resources and species within the Refuge).) However, the BDCP continues to target the southern portion of the Refuge for conversion to tidal habitat. (See Exhibit H, Hypothetical Restoration Areas.)⁵ BDCP should not assume major land use changes within the Refuge that would be inconsistent with the CCP. Moreover, having participated in the BDCP process since 2008, we would expect to be consulted on any major proposals within Refuge boundaries.

2. Timing of Habitat Replacement is Uncertain

We are also concerned that many of the benefits to species negatively impacted by the BDCP may never come to pass. In its present form, the BDCP proposes major disruption of greater sandhill crane and other habitat areas for both CM 1 (the Tunnels) as well as the other conservation measures, particularly those that involve flooding of terrestrial habitat to create aquatic habitat. While the construction of CM 1 appears more certain due to the funding to be provided by the state and federal water contractors, other aspects of the BDCP will only occur if other state and federal funding

⁵ Though the Hypothetical Restoration Areas exhibit states that it is not for distribution, it was later released as a public document under the California Public Records Act, and therefore is no longer a confidential draft. These are the same restoration assumptions made for purposes of the BDCP effects analysis.

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is provided. (BDCP, Table 8-37.) And, since approval of the BDCP by the USFWS is predicated on the BDCP's ability to assure that funding will be available to implement the actions and mitigations we need to know EXACTLY what the funding sources will be in order to evaluate their certainty. If they are not certain, the BDCP should not be approved, nor should take authority be issued.

While the BDCP attempts to claim that greater sandhill crane, for instance, will somehow be better off if the BDCP is implemented, reaching such a conclusion requires a number of assumptions. For instance, one must assume that public funding will be provided for CMs 2-22 in a timely and orderly manner. One must also assume that the "new" habitat and/or resources will be provided in advance or at the same time as impacts to existing habitat occurs. We have discussed this issue in the Stone Lakes Technical Working Group, but it has never been completely resolved.

An ongoing issue in the BDCP is the presentation of thousands of acres of "created habitat" without reference to the number of acres of habitat that is being destroyed. For instance, the BDCP states that it will create 533 acres of greater sandhill crane habitat. (BDCP, p. 5.6-48.) Yet the BDCP also destroys up to 7,250 acres of greater sandhill crane habitat (4% of its habitat in the plan area). (BDCP, Table 5.6-10.) The net habitat creation numbers for each species/habitat type should be presented in the plan to avoid confusion. Moreover, a higher than 1:1 mitigation ratio for destroyed habitat should be applied. Once this is done, it is difficult to see what the benefit of the plan will be with respect to the species.

Timing is especially concerning, given the scale of habitat destruction and no enforceable requirement to replace habitat before or at the time of destruction. BDCP Table 3-4 shows an Implementation Schedule, but it is not clear that there will be coordination between the destruction of wildlife habitat on one hand, and the creation of habitat on the other hand. For instance, CM 1 will destroy over one contiguous mile of area containing channel margin riparian habitat on the Sacramento River where the new intakes will be located. (BDCP, Table 4-2 (listing 6,360 linear feet for intakes and transition walls).) This destruction of riparian habitat is arguably more than has ever occurred under an individual project.

Under CM 6, 20 miles of channel margin habitat will be created within the first 30 years under the Plan. (BDCP, Tables 3-4, 6-2.) We understand from our Stone Lakes Technical Working Group meetings, however, that the focus of CM 6 will be on the west

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side of the river, away from the area of impact. We would like to see replacement riparian habitat also occur on the east side of the river.

Similarly, hundreds of acres of riparian habitat will be directly destroyed by CM 1 construction (BDCP, Appendix 5J, Table 5.J-6.) Yet the 5,000 acres of "Riparian Natural Community Restoration" promised to be restored under CM 7 is provided over the course of 50 years. (BDCP, Tables 3-4, 6-2.) It does not appear that there is any connection between the areas of impact and where the restoration will occur. From what we have heard, we are concerned that much of this restoration will occur in areas far from the initial impact.

Incredibly, the BDCP and the EIR/EIS does not provide a detailed accounting of habitat loss by type (species), by year or an accounting of the type and quantity by year of fully functioning habitat restoration or mitigation, so a detailed analysis to quantify this shortfall is not possible. Though BDCP Table 6-2 suggests an implementation schedule, there does not appear to be any enforceable means to ensure this schedule is followed. Moreover, there is no indication that the pace of habitat loss will be matched by habitat creation. It appears that the pace of the amount of habitat lost to conveyance construction and aquatic habitat creation could occur at a much faster pace than the restoration and functional development of habitat restoration CMs. Since the purpose of the HCP/NCCP is to conserve and protect the covered species, the project should not be allowed to result in a net negative quantity and quality of habitat for the listed/covered species at any point in time during the BDCP project.

This problem applies to specific covered species, such as the greater sandhill crane. Here, the BDCP plans to "take" greater sandhill cranes each year (among other birds), for instance, with the new power transmission lines due to bird strikes. (BDCP, Appendix 5.J.D, Table 2 (estimating 138 deaths per year, which is estimated to be reduced to 48 deaths per year if the powerlines are marked according to a Colorado study indicating that a 66% reduction in bird strikes could be attained through marking).) A great deal of existing greater sandhill crane habitat is also proposed to be converted to other uses or otherwise affected by the BDCP actions. (BDCP, Table 5.6-10.) Yet, that take is not adequately minimized and mitigated, and is instead barely replaced. (16 U.S.C, § 1539, subd. (a)(2)(B); Fish & G. Code, § 2052.1.) For the impact of the taking to be minimized and mitigated (16 U.S.C, § 1539, subd. (a)(2)(B)(ii)), new habitat must be provided to replace the lost habitat in a timely manner. BDCP Chapter 6 does not explain when and how these measures will be carried out.

3. The Level of Detail of the HCP is Inadequate for Issuance of Take Authority

The level of measurable commitment to recovery of the covered species provided in the BDCP is inadequate for issuance of 50-year take authority. While it may be appropriate to conduct “programmatic” CEQA and NEPA review, the BDCP itself must contain sufficient detail in order to justify issuance of take authority for the covered activities. Yet, the discussion of the other CMs is very sketchy; the functionality and location of new habitat and other critical details of the Other Stressor CMs has not yet been defined. Moreover, the BDCP’s own analysis indicates that acquisition of adequate lands to carry out the CMs may be difficult, and that many of the lands needed for tidal habitat are currently being used for terrestrial species conservation measures.⁶ Even CM 1, as described below, is proposed to be served by a power transmission line whose design and location has not yet been determined. This level of detail is inadequate for issuance of take coverage. (See 50 CFR 17.22(b)(1), 17.32(b)(1), or 222.22; see also Habitat Conservation Planning and Incidental Take Permit Processing Handbook (1996) (“HCP Handbook”), p. 3-10.)

4. The Plan Area is Not Appropriate Given the Location and Impacts of the Project

FSL is not satisfied with progress made on adjustments to the plan area to ensure that impacts on the Refuge are avoided or mitigated as required by law. For instance, we have repeatedly requested that mitigation lands for impacts on the Refuge be available for placement to the east of the Refuge, toward Elk Grove. Such an expansion would be consistent with federal agency guidance on the appropriate plan area. “The HCP plan area might also include areas necessary for the mitigation. The exception to this general rule may be where the mitigation consists of reserves apart from the area in which incidental take is authorized.” (HCP Handbook, p. 3-12.)

⁶ See Black & Veatch Corporation, Delta Habitat Conservation & Conveyance Program Creation of Up to 100,000 Acres of Intertidal and Associated Subtidal Habitat: Feasibility Level Assessment Based on Elevation & Land Acquisition Considerations Technical Memorandum. Prepared for California Department of Water Resources, DHCCP-Environmental. July 2012. (See p. 16 and Table E-5 and E-6.)

