

**From:** Gayle Vaughan <vonwind@yahoo.com>  
**Sent:** Saturday, July 26, 2014 7:40 AM  
**To:** BDCP.comments@noaa.gov  
**Subject:** Comment Letter on the BDCP/EIR  
**Attachments:** Letter to BDCP July 24.docx

Attached and printed below is my letter of comment.  
Gayle Vaughan, 707-745-8322

Gayle Vaughan  
123 Banbury Way  
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July 24, 2014

BDCP Comments  
Ryan Wulff, NMES  
650 Capitol Mall, Suite 5-100  
Sacramento, Ca, 95814

Dear Mr. Wulff,

I am a 35 year resident of Benicia, a fourth generation Californian, a former elementary school teacher, an avid Delta sailor, and a current tidal marsh docent for the Solano Land Trust at Rush Ranch on Suisun Slough. I have been reading, attending hearings and community meetings, and studying the Bay Delta Conservation Plan for the last two years. I have numerous and serious concerns about the Plan.

#### **Inequitable economics**

The most prominent of these concerns among my friends and acquaintances involves the issue of water flow from the Northern Sacramento River to the lands south of the Delta. There is great consternation over what appears to be a "water grab" by farmers in the San Joaquin Delta and large water agencies that supply residential water to Los Angeles. Past practices by these agencies have led to the subsidence of soils in the San Joaquin, the draining of Owens Lake, and the reverse flow of the San Joaquin River (Cadillac Desert, Marc Resiner, 1963, DWR, USGS data). It seems that once water resources in the Central Valley became overused, farmers seeking greater profits began to use Sacramento River Watershed water, through the CVP and SWP. Later, the Delta Cross Cut Channel diverted water away from the Sacramento outflow and into the Mendota Cannel. Now, the plan is to take even more water to irrigate marginal soils in a desert region. The fear is that such water takes will cause the Delta to have severely reduced water flows, increased salinity and silt build up, and that the availability of water for current users above and within the Delta will decrease significantly.

While farmers throughout the state from Redding to Bakersfield are seeking a secure source of water to maintain their livelihoods, the BDCP proposes a development which would allow farmers in the San Joaquin and water agencies further south to grow and prosper at the expense of those of us living in the five county Delta region. As stated July 22, 2014, at the Solano County Board of Supervisors' meeting by the Solano County Director of Resource Manager, Bill Emlen, " The plan facilitates a glaring imbalance and inequity whereby economic objectives of other regions are supported at the expense of the Delta region." At a previous Solano Board of Supervisors meeting ( June 2, 2014) other problems for our county were brought to light: uncertainty about which lands will be affected and how management of these lands and habitat will take place, increased salinity of both flowing and ground water, as well as increased salinity of the land itself, loss of taxes from loss of farmland revenues, loss of housing, decrease in local food production, and environmental concerns. Solano County Supervisors have noted in their comment letter that "the plan has significant and far-reaching impacts that will erode the agricultural base that the county has spent decades trying to responsibly preserve."

In addition the Plan has many indirect costs to the county, state, and private industry in order to benefit those in the southland. The "preferred alternative" plan would cause Highway 12, SR 160, and parts of I-5 to be rerouted. With implementation of the habitat plan several county bridges would need to be moved or extended and in one plan for Suisun Marsh, the railroad (Capitol Corridor line, and the one scheduled to bring heavy crude to the Benicia Valero Refinery) would need to be restructured or moved. There is no funding mechanism allowed for any of this in the BDCP.

#### **Project Size and Management**

The Bay Delta Conservation Plan will affect a much larger area than is covered by the the plan itself. While the Plan documents indicate it is "a comprehensive conservation strategy aimed at protecting various species of wildlife while permitting the reliable operation of California's two most important delivery systems", it's purview of study and influence is limited to an area bounded by Goodyear Slough near Benicia in the west to Staten Island in the east and southward to the Tracy pumps. In the plan area alone 3500 to 20,000 acres of useable land will be altered (EIR-31-1), not including the land to be set aside for habitat mitigation. The Plan will in fact affect a much larger area. than that. he way the BDCP and DWR choose to manage the water in the CVP and SWP will have great impact on millions: farmers, towns,cities, and wildlife all the way from Shasta Dam to Los Angeles and out through the Golden Gate.

As noted in the EIR (ES.3) the effects of implementing the BDCP would extend beyond the boundaries of its proposed region, and these effects have not been fully evaluated or mitigated. The Plan needs to examine those effects before proceeding with construction of a water delivery system that will negatively impact millions of people as well as wildlife. At one of the roundtable hearings presented by the BDCP in Sacramento last year, I was very surprised to learn that wildlife presenters, ICF Consultants, and multiple water agencies' personnel had very little understanding of how the BDCP area is geographically and economically connected to the rest of California.

The San Francisco Bay -Delta is the largest estuary on the West Cost of North America. It includes many subregions, each of which have different sensitive ecosystems that will be impacted by the BDCP (Suisun Marsh, Peter Moyle, 2014). The BDCP seeks to recreate historic habitat for about 90,000 acres, while preserving another 116,000 acres in the Suisun Marsh. Some of these acres will be grossly restructured under the Plan, while others will just be more tightly managed. Even though the EIR and BDCP reports are massive in length, the conclusions about how Marsh ecosystems and natural habitats will impacted are vague, and are only in theoretical stages according to the EIR. Proponents and consultants for the habitat restoration project are not yet clear on what the results of their efforts will be. As one ecological consultant at a February hearing in Sacramento announced, "There has never been a habitat restoration project this large in the world, so scientific data about it is limited."

The BDCP lacks a clear statement of oversight and implementation of the project. The Implementation Agreement is nebulous at best. As written there, the BDCP conflicts with six different current water plans for the state of California including the Delta Plan, the California Water Action Plan, and the Suisun Marsh Preservation Plan, numerous county land use plans, and an international treaty for bird migration between multiple countries from Columbia through Canada. The Plan requires reworking of water rights issues that have been in place for decades.

The BDCP is in violation of the Delta Protection Act which "accords first priority to satisfaction of vested rights and public interest needs for water in the Delta and relegates to lesser priority all exports of water from the Delta." The Water Code Section 11461 states that "projects must be operated so as not to cause any material deterioration of water quality which would impair its usefulness for the reasonable beneficial uses which are made by senior right holders." The BDCP is in clear violation of this. (Dante Nomellini, Sr., Central Delta Water Agency, June 3, 2014).

The management of the BDCP is not efficient or transparent. The document itself is so lengthy and user unfriendly that is is difficult for consultants, managers, and the general public to access necessary information for understanding and implementation of the stated goals. The Plan is not inclusive. Those delineated in the IA as primary decision makers do not include stakeholders from the Delta or areas upstream who will be impacted. There is no public vote on any part of the plan. This lack of inclusion increases the political conflict between North and South, farmers, and fisherman, and environmentalists. The hearings that were held, and the comment period allow for some input, but it is limited considering how many will be impacted and how much it will cost us all financially.

The BDCP is expensive and its funding is uncertain. Costs are not set and estimates vary from \$16 to \$35 billion with approximately \$3.2 billion for tunnel construction. These costs are based on an optimism basis according to the Implementation Agreement. The BDCP has offered two cost /benefit evaluations, that don't agree. Economics Professor Dr. Jeffrey Michael ( University of the Pacific) completed an independent cost/benefit comparison which shows a much lower benefit-cost ratio.

According to the BDCP the annual debt service and operating costs of the tunnels will be about \$1.2 billion, while a Westlands Water District Presentation sets it at \$2 billion. Estimations for costs to agriculture in California presented by economist Dr. Michael, and based on the BDCP Economic Impact Report. indicate that the revenue gain based on increased production for south of the Delta would be around \$134 million, the loss to Delta would be around \$91 million. The net gain to California agriculture would be \$41 million before deducting the annual cost of tunnel operation. Financially, for agriculture this plan does not make sense.

The cost of tunnel or conveyance construction and operation is to be split between water supply benefactors, water agencies, and the Federal and State government. Estimates given in February, 2014 by John Laird, Secretary of Natural Resources indicated that about 68% of costs would be paid by urban and agricultural water users. Last week, at a presentation by the Metropolitan Water District, the figure was quoted at 55%. There appears to be some Adaptive Management going on to convince the water contractors to sign onto the agreement. For some water contractors the cost/benefit will not be worth it.

As noted by San Diego County Water Authority in their June 2, 2014, comment letter, "Chapter 8 of the current BDCP does not provide the detailed information necessary for potential participating agencies to evaluate individual agency cost-benefit of the proposed project."

Where will the money come from? Obviously, water rates will rise for all users, including us here in Benicia. Currently, it was reported in the news that larger water agencies may be seeking to raise property taxes to pay for the BDC without a public vote. The State will need to pass a water bond, and the legislature can't seem to agree on one to submit. The Federal government has declined at this point to offer any financial assistance. A recent Army Corp of Engineers Levee Feasibility Study indicated that there is too little benefit for the costs for the Federal Government to get involved at this time. This Study also revealed that the benefit to cost ratio is appropriate for habitat restoration, and that the Federal Government may offer assistance there, but only at 50/50% with private funding.

### Uncertain water availability for the whole state

While the BDCP has co-equal goals of supplying a consistent water source to California users and maintaining a sustainable wildlife habitat in the Delta, it seems unlikely for those goals to be achieved. First let's look at water availability. According to the EIR for the BDCP, (ES.2.2.2.2) water supply reliability cannot be maintained at permitted levels. In 2006, the State Water Board presented information to the Delta Vision Task Force indicating that quantities totaling several times the average annual unimpaired flow in the Delta watershed could be available based on the face value of water permits already issued. What's expected as "consistent water supply" by the farmers in the San Joaquin Valley has never been and probably never will be available.

Presenters at springtime hearings (Santa Clarita Delta Bus Tour, at Rush Ranch, April, 2014) indicated that the tunnels are not going to take more water than is taken now. The BDCP tunnel option would allow 65% of the outflow to be taken for state and federal water projects. The "Preferred Plan" allows an outtake of water at 9,000 cubic feet per second from July to January every year. According to the Delta Water Atlas, the average outflow during the summer varies between 5,000 and 10,000 cfs. This year, the US Geological Service monitoring stations within the Delta show the outflow last month to be closer to 150-300 cfs. Comparisons made by U. C. Davis researchers indicate that the Dayflow calculation system used by the DWR shows almost twice the water outflow as the USGS monitors. There is concern about the difference in monitoring and in the science used by the DWR to determine accurate water flows through the Delta. The science here is questionable and BDCP has not been accessing the Delta Science Project information.

BDCP computer modeling of water flows through the Delta are inaccurate. (Chapter 5) Although the Plan indicates the water not going through the tunnels would flow equally through three channels: Steamboat Slough, the Sacramento River, and Georgianna Slough. The real life lesson of the drought is showing that isn't happening. My own personal observation and those of others living in the Delta (Isleton Newspaper, July, 2014) indicate that Steamboat Slough is "turning into a mud flat" at low tide because of a sandbar that has developed blocking tidal influx, the Sacramento River is 10-15 feet deep between Rio Vista and Walnut Grove, while the Georgianna Slough is 20-40 feet deep.

There are other problems with the computer modeling as well. At a recent presentation by Solano Resource Conservation District, the director presented his own computer modeling about the critical placement of tidal marshes that provided very different information than that found in the BDCP. Placement of such habitat restoration projects is critical for attempting to mitigate the effect of flooding caused by climate change and sea rise (NERR, 2014), one of the secondary goals of the BDCP.

The US Department of Fish and Wildlife noted in the EIR that modeling which had been done was insufficient and/or inaccurate. Limited and inaccurate modeling of water flows and salinity levels in Suisun Marsh were also noted by Peter Moyle, Associate director of the Center for Watershed Sciences at the University of California, Davis, in the book, Suisun Marsh.

Maintenance of a consistent water flow to those in the southland requires both an adequate amount of fresh water and the systems with which to move it. While the BDCP (Chapter 8) offers alternatives for moving water in and around the Delta, and proposes certain modifications to the levee system to accommodate this water movement, it does not address the issue of failing water delivery infrastructures south of the Delta.

According to Michelle Sneed, hydrologist with the USGS who has studied land subsidence along the Delta-Mendota Canal since 2003, the subsidence of soil near the Delta Mendota Canal, the East Side Bypass, and the California Aqueduct is affecting the efficiency of the canals. "You get lost conveyance capacity." Another common impact is a loss of storage capacity within the aquifers there. Perhaps the BDCP or DWR should consider spending funds to improve the current canal system, and regulate ground water pumping to reduce subsidence before heavily investing in a massive Delta conveyance system.

One of the current problems for consistent water delivery is the EPA requirements to stop pumping when Delta smelt and long-fin smelt become trapped in the south Delta pumps. According to the CEQA in the EIR (Table 9-1) these same fish as well as Chinook salmon will be negatively affected and run the same risk of entrapment at the tunnel pumps. Adaptive management techniques suggest that when the fish are more likely to be killed, the water will not flow through the conveyance. At a hearing in Sacramento (February, 2014), The Director of DWR stated that "if (covered) species are jeopardized, permits will be withdrawn" as per the Bay Delta Reform Act of 2009. It would appear that even with the tunnels we will likely have a water delivery problem very similar to the one we have now.

Water users upstream of the tunnel construction will likely suffer reduced water resources, including ground water, during the construction (ten years?) although the EIR only mentions that the BDCP fails to take into account the upstream disruption that can be caused by the construction of the tunnels. Feather River flows will suffer significant reduction during high water demand periods,

negatively impacting the endangered fall Chinook Salmon run. Water use by towns and farmers in the Delta during construction and operation will be negatively impacted as well.

So, there will be less water for those in the Sacramento River watershed, less water for Delta farmers and residents, and an inconsistent source of water for those south of the Delta. Goal number one: not met.

### Decreased Water Quality

Not only will there not be a consistent source of water, the water provided is likely to be of lower quality. The operation of the tunnels will reduce the quality of water available in the Delta. About 20 million people depend on water flowing in the Sacramento-San Joaquin Delta inland from North Bay for their water supply (sfbay.wr.usgs.gov) They and certain aquatic species will be negatively impacted by increase in salinity caused by the reduced outflows of the tunnel project.

As water flows through the Delta are decreased by the tunnel outtake, the EIR explains that increased silting and sedimentation are likely to develop in the channels and sloughs west of the tunnels, further impacting water quality within the Delta. For example, Baker Slough is currently the outtake site for the North Bay Aqueduct, a major source of Benicia's water. According to the BDCP, the tunnel project will cause such a reduction in Delta outflow that the water quality and salinity levels of the water there will not be appropriate for irrigation or drinking. Hence, the North Bay Aqueduct outtake site will need to be moved closer to where the tunnels are to be built.

The water going through the tunnels is likely to degrade in quality as well. Natural filtration of sediment and increased oxygen provided by wetlands and channel habitat will not occur inside the 35 miles of tunnels. (Suisun Marsh, 2014)

According to the EIR and the USGS, the construction of the tunnels and disruptions of underwater soils are likely to increase the amounts of mercury, bromide, chloride, copper, lead, and selenium, and other minerals, negatively impacting water quality downstream. The EIR also notes that agricultural drainage will be negatively affected and may cause a build up of various minerals and pesticides that could seep into the ground or ponding surface water. No mitigation for this is included in the BDCP.

Reconstruction of the wetlands habitat as proposed in the EIR will also cause degradation of water quality within the Delta. Currently, salinity gates at Montezuma Slough help maintain fresh water within Suisun Marsh. The Plan calls for the removal or non-operation of those gates, allowing greater salt water intrusion. Additionally, the habitat reconstruction which suggests removing levees, reducing freshwater flow through channels, and allowing moving water to become more pond-like, and affected primarily by the wind and tides. Not only will this area likely increase in salinity, but it will likely become more polluted with water-borne sediments dropped by slow or non-moving water. USGS and US Department of Fish and Wildlife has expressed concern over fisheries management with this scenario.

### Increased Salinity

Changes in the Delta in flow and out flow affect Delta water quality particularly with regard to salinity. (EIR, ES.2.2.2.3 Hydrology). Freshwater is a major control on estuarine salinity within the North Bay and Delta and is a key state variable for fisheries management in San Francisco Bay according to the USGS (sfbay.wr.usgs.gov). Their surveys show that the salinity within the Delta has been slowly increasing, since the advent of the CVP and SWP. The BDCP calls for a reduction of Delta outflows which will allow salt water to intrude even further. Farmers are concerned (Ag Alert) that this increase in salinity will impact the production of their crops, the irrigation water they use, the ground water they rely on, and even the salt levels in the land itself. The EIR notes all of these problems but fails to offer any mitigation for it.

Much of the water flow in the Delta is affected by tidal action. Brackish water is created when fresh water flows mix with tidal water from the Bay and ocean. The location of this brackish water varies with the tides each day and with the fresh water outflows. During the summer the "tide line" of brackish, salty water known as X2 is usually near Chipps Island. In the winter it is further west near Collinsville. This year because of the drought and reduced water flows the X2 line is further upstream near Brannan Island. This type of encroaching salinity affects where fish like smelt and even herring go, and impacts the water quality of those relying on river water to irrigate or for drinking purposes.

The EIR (ES-7, Biological goals and objectives) indicates that modification to existing flow regimes will result in changes in salinity patterns and water quality. With decreased outflows and increased tidal inflows over the course of several decades it is possible that higher salinity will reach as far as the tunnel outtakes. Currently, consistent brackish water is present at Brannan Island just 17 miles from the proposed outtake site near Hood. (USGS monitoring report, July 2014). The X2 tide line has moved eastward 12 miles just this year alone. This could almost certainly impact the salinity level of the water being moved through the tunnels.

Computer modeling conducted by the BDCP consultants did not reflect this possibility. Once again the modeling is inaccurate and/or incomplete. The data cannot be relied upon as a predictive agent.

Salinity is also a problem in the San Joaquin Valley, partially as a result of the reverse flow of the San Joaquin River due to export pumping. Recent farm news from Bakersfield reported a decline in melon production because of increased salinity in the irrigation water.

Salinity levels influence the movement of fish and birds as well. Last month a local fishing column reported that there was a large school of herring (a pelagic fish) east of Pittsburg. Currently, Delta Smelt are reported to be seen at Brannan Island and Franks Track, in the flow of fresher water being pumped through the south Delta pumps. The BDCP models had predicted that with lower fresh water flows, the smelt would stay in the lower Delta, which has not happened. Both flow levels and water quality have negatively impacted this endangered species. The California Department of Fish and Game indicates that the population of smelt is at its lowest in 37 years, likely because of lack of fresh water flow.

### Unclear Conservation Plan

The Bay Delta Conservation Plan is ill-conceived as a conservation plan. It is incomplete and misleading. The Plan area does not include any of San Francisco Bay, and parts of the Delta are excluded as well. The effects on the Bay and Carquinez Straits from the construction and operation of the tunnels for water export have not been addressed in the Draft Plan or the EIR.

The major focus of the plan is a water conveyance system to shunt water away from the Delta impacting hundreds of species of wildlife that the government is required to protect. The secondary goal of habitat restoration lacks specifics of location, uses of materials, time required, costs, and financing sources. While the tunnel project will be funded in part by water users, the habitat portion has no such provision.

Biological Goals and Objectives stated in the EIR (ES-7) state that there is a significant conflict between conservation goals and the use of natural resources and lands for economic developments.

There are repeated statements within the Draft Plan that are contradictory with the premise of conservation. For example, The Effects Analysis chapter (Chapter 5) of the Draft plan admits that the new upstream diversion would reduce water flows, that in conjunction with climate change, will negatively impact future salmon population, a critically endangered species.

The Implementing Agreement (Chapter 8) requires the U.S. Fish and Wildlife Service and the National Marine Fisheries Service to issue permits to the DWR and the SWP/CVP water contractors to be allowed to "take" wildlife that is fully protected by the EPA or ESA for the next 50 years. Suspending portions of the EPA for 50 years is not a conservation plan!

The EIR recognizes these contradictions in the section on Biological Resources (ES-7): The complexity of the BDCP raises many concerns over environmental consequences for the aquatic and terrestrial ecosystem. These include changes of land uses and habitats, disparity between restored habitat and historical conditions, which could result in adverse effect on sensitive resources, including covered species.

The current proposed location for the tunnel construction is Staten Island, which is a Nature Conservancy Bird Preserve for the breeding and nesting of endangered sandhill cranes. The IA would allow for an unspecified "take", fully jeopardizing the species.

The location of the lands to be mitigated or converted to wildlife habitat are unclear. Some of the agricultural land to be used falls under the Williamson Act of 1965, which is a conservation measure to protect agricultural and related open space lands. Often these lands are used as habitat for various covered wildlife.

The BDCP calls for massive changes in the wildlife habitat of the Delta. The ideas presented for restoration back to pre-1850's condition as a "natural state" are erroneous. Although human intervention did change the Delta in the 1852, previous human effects on Suisun Marsh can be traced back almost 200 years earlier (Historical Ecology, Suisun Marsh, Amber Manfree, 2014).

The result of proposed habitat development plans to break levees and let water overtop 27 islands in the Delta is very unclear. An attempt to create new wetlands and marshlands, in with a changing dynamic of reduced water flows, increased sedimentation, increased salinity, unclear sedimentation rates, climate change, and a myriad of other variables requires significant monitoring and

adaptive management practices. The science needed here is limited and often inaccurate. The amount of land affected and the number of species impacted are huge.

A different kind of habitat development needs to be used. Reconciliation, rather than restoration, will give a better solution to maintaining ecosystems within a growing economy. (Center for Watershed Sciences, U.C. Davis, Bay Conservation and Development Commission). The BDCP needs to rewrite and restructure its habitat conservation plan.

### **Negative Effects on Suisun Marsh**

Suisun Marsh has been described as possibly the largest estuarine marsh in the United States. Some call it the Everglades of the West. It serves as a "refuge for a high diversity of native plants and animals" ( Suisun Marsh, Moyle, et al., 2014). In all there are about 250 species of fish, birds, and animals that depend on the marsh for food, cover, and breeding sites. They include many endangered and "covered" birds and fish that will be negatively impacted by the BDCP plan (EIR table ES-8) and include Delta smelt, long fin smelt, Chinook salmon, California rail, salt marsh mice, Western pond turtles, and the Suisun shrew.

Most of Suisun Marsh is brackish, affected by the daily tides and strong regional winds. The primary plants are tule, cattail, and bulrush which provide food, cover, and nesting sites for all kinds of birds. Many small channels and several larger slough provide moving water and connectivity to the larger Delta for fish.

The BDCP Draft Plan indicates that the habitat portion would involve breaking the levees and allowing the water in the larger sloughs to overtop, creating more open water, inundating the smaller channels. This will negatively impact shallow water plants as well as terrestrials living in the area. The types of grasses that grow would be affected and are not likely to support the feeding habits of animals and birds in the area. The land connectivity needed by the salt marsh mouse and the California Rail would be compromised. ( Suisun Marsh, Peter Moyle, et al, 2014).

Currently Suisun Marsh contains seasonal fresh water ponds that are maintained by various duck clubs in the area for migratory waterfowl. The BDCP plan would eliminate those fresh water ponds, turning them into tidal marsh or wetland, not suitable for ducks, geese, swans, and other migratory birds. On average, 350,000 birds are estimated to winter in the fresh water of Suisun Marsh. Many species of ducks are year round residents and rely on brackish water (not salt water) for cover, food, and nesting.

Some plants will be inundated and not recover, like the rare Suisun Thistle which grows primarily in the upland marsh. The amount of zooplankton and protoplankton, food sources for small fish, will be negatively affected by changes in temperature and turbidity created by the BDCP plan.

While the EIR notes that the Plan may have some negative impacts on wildlife in the area, it does not offer any mitigation solutions. Goal number two: not met.

### **Public Health and Safety Issues**

In addition to the negative effects on wildlife, the BDCP is hazardous to humans as well. As noted in the Misc. Section of the EIR, there is likely to be increased chemical pollution of the water, danger from disrupted natural gas wells, disrupted ground water resources and well use, contamination of soil and water due to the storage of tunnel muck with unknown hazardous waste, and air pollution so severe in Byron that large portions of the population of that area may have to be displaced.

With an increase of shallow water caused by reduced fresh water flows, the habitat plan proposal, building of a forebay, and ponding around construction, there is likely to be a large increase in mosquitos according to the EIR. While this may seem like just a minor inconvenience of buzzing insects and bug bites, it is a serious concern. When the last big water project was built (Shasta Dam) in 1938, proper precautions were not taken and a large malaria outbreak occurred. Limited mitigation has been proposed and is not adequate.

### **Summary:**

The Bay Delta Conservation Plan does not meet its co-equal goals of providing a consistent water for the state or maintaining a sustainable wildlife habitat in the Delta. It is a veiled attempt to provide more water for economic growth in areas south of the Delta. It has many negative impacts that affect millions of people and thousands of animals. It does not have enough accurate science for reasonable predictions of effects, it does not have an adequate economic analysis, and it has no secure funding.

The BDCP has been in the planning stages for at least six years with millions spent on research, with no good answers. The project is too big with too many unknowns to succeed in such a diverse state as California. It is a bad idea agriculturally, environmentally, legally, financially, economically, and politically.

I hope you will consider the points I have attempted to make here. I am not a scientist or a lawyer. I have not got a staff of researchers. I am just one concerned citizen.

Sincerely,

Gayle Vaughan, M.Ed



# SAN JOAQUIN FARM BUREAU FEDERATION

MEETING TODAY'S CHALLENGES / PLANNING FOR TOMORROW

July 25, 2014

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

*Sent via email to: [BDCP.comments@noaa.gov](mailto:BDCP.comments@noaa.gov)*

**Re: Draft Bay Delta Conservation Plan and associated Draft Environmental Impact Report/Environmental Impact Statement (BDCP EIR/EIS)**

Dear Mr. Wulff:

The San Joaquin Farm Bureau Federation (SJFB) is a private, not for profit, volunteer based organization that is committed to the growth and development of the agricultural industry in the San Joaquin and Delta region since 1914. We are the largest agricultural organization in the county, currently working on behalf of over 3,800 members to find solutions to the unique issues that local farmers face every day. We appreciate the opportunity to comment on the Draft EIR/EIS for the Bay Delta Conservation Plan (BDCP).

From our review of the environmental documents, we find the following:

**I. The Project Is Inconsistent With The Delta Reform Act**

The Delta Reform Act of 2009 established the co-equal goals of water supply reliability and ecosystem restoration and conditioned their achievement on protection and enhancement of Delta resources to include agriculture. Section 29702 (a) states that "The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resources and agricultural values of the Delta as an evolving place." The Delta Reform act also created the Delta Stewardship Council and directed it to develop the Delta Plan. Chapter 5 of the Delta Plan establishes policies and goals to protect Delta agricultural resources (Delta Plan: Pages 183 and 192-198).

The Delta Reform Act included a mechanism for the BDCP to be included in the Delta Stewardship Council's Delta Plan. Water Code §85320 lists requirements that BDCP must achieve in order to be included in the Delta Plan. The Draft EIR/EIS claims consistency (Appendix 31), but does not achieve the conditions of §Water Code 85320 (b)(2)(A) which requires that a series of studies be completed which "...will identify the remaining water available for export and other beneficial uses." The studies may have been performed, but the amount of water available for export has not been determined and remains subject to adaptive management, which inevitably threatens the quality of water in the Delta.

In addition, the Delta Reform Act of 2009 as explained in Water Code §85021, requires that reliance on the Delta in meeting California's future water needs be reduced. Certainly a 50-year



permit will be operating in the future, and therefore, the BDCP should demonstrate that it reduces reliance on the Delta through strategies such as regional self-reliance, local and regional water supply projects, and other strategies. On the contrary, the BDCP seems to increase rather than reduce dependence on the Delta as a source of future water. The document fails to address the operational concerns of those within the Delta and offers no commitment to operate the BDCP in a manner that is consistent with prevailing California water law and issues of priority. We must see a determination of consistency for every implicated water law and policy consideration.

## **II. Unmitigated Loss Of Agricultural Land**

We find the EIR to be constructed in a roundabout, convoluted manner that leaves us unable to discern the true impact of lands removed from production or the extent to which losses would be mitigated. The construction and operation of the project will remove a cumulative total of over 140,000 acres of prime farmland from production within the statutory Delta. The San Joaquin County General Plan recognizes the importance of both protecting the Delta and the importance of preserving agricultural land and county code strictly enforces 1:1 mitigation for the loss of agricultural land. From what we can discern, the EIR only provides 1:1 mitigation for 5,000 acres.

Another example of inadequate mitigation is the Agricultural Land Stewardship Plan (ALSP) proposed as mitigation for AG 1,2,3,4 and ECON 6,7,12,13, and 18. “Agricultural land stewardship means farm and ranch landowners—the stewards of the state’s agricultural land—producing public environmental benefits in conjunction with the food and fiber they have historically provided while keeping land in private ownership (California Water Plan Update 2005, Agricultural Land RMS).” Continued agricultural production is a key element of the definition of agricultural land stewardship. In the BDCP draft EIR/EIS, BDCP proponents are tasked with developing ALSPs by choosing from a group of strategies to offset impacts. Some of the suggested strategies are:

1. Strategy A: Have farmers manage habitat land (14B-14).
2. Strategy C: Designate habitat production as agricultural production (14B-14).
3. Strategy E: Work with counties to include habitat lands in Williamson Act Preserves (14B-15).
4. Strategy Q: Consider opportunities to develop sustainable agricultural land community in the Delta Region consistent with ecosystem conservation and restoration (14B-17).

None of these strategies is consistent with the definition of agricultural land stewardship because they do not provide for production of food and fiber. The ALSP is inadequate as mitigation because it allows the project proponents to choose from a group of strategies, some of which advance biological goals of the BDCP rather than mitigate for impacts to agricultural resources. In addition, ALSP mitigation is inadequate because it is not defined, and therefore, is not feasible. It is not enforceable nor is it funded. Mitigation as proposed in the BDCP draft EIR/EIS that is discretionary, deferred, unfunded, not enforceable, ungoverned or where feasibility has not been determined, is inadequate.

With the construction and operation of CM-22, there is also the increased potential for more land to be removed from agricultural production because it will result in increasing populations of endangered species and other conditions which will impact neighboring agricultural resources. Farmers must be able to indemnify themselves from liability for the agricultural practices that are necessary to continue farming, such as pumping water they are entitled to.

Finally, we remain adamantly opposed to the state's use of eminent domain to acquire habitat within the Delta. Despite assurances from the Department of Water Resources that the land would only be acquired from willing sellers, there is no such guarantee within the EIR. We would like written, enforceable documentation from DWR to this end.

### **III. The Degradation of Water Quality Will Lead To Agricultural Losses Within The Delta**

The Delta relies on two rivers, the Sacramento River and the San Joaquin River to supply the fresh water necessary to repel salt intrusion into the vast agricultural landscape. The construction of CM-1 will divert a significant and important source of fresh water away from the Delta. The intake on the Sacramento River that diverts the fresh water into an isolated conveyance system will undoubtedly affect the salinity of the Delta downstream water quality impacts WQ7, WQ8 and WQ11 show significantly increased salinity in Delta water downstream from the proposed northern intakes. Furthermore, modeling shows increased salinity will occur in much of the Delta (8-436-438). The result will be regular violations of water quality standards (acknowledged as violation 8H-1 line 17).

This impact is not adequately analyzed with respect to its effect on agricultural resources. The data shows the number of days standards will be violated and the percent of days in violation (Appendix 8H). However, this analysis falls short of having any true meaning to Delta farmers. It is not enough to know that the standard will be violated a certain number of days, but rather it is more important to know how significant the violation will be. The magnitude of the impact to the crop will be determined by the amount of salt, not the amount of days in violation, therefore the water quality impacts as they relate to agricultural production in the Delta are inadequate.

We are also concerned that construction impacts are considered "short term impacts" for which the EIR offers no mitigation. The construction of a project of this size will undoubtedly be a lengthy process and the impacts of the short term construction will lead to long term impacts on Delta agriculture, particularly where water quality is concerned. During construction, in order to de-water construction sites, there will be large amounts of drainage water generated. According to the EIR/EIS, the drainage water will be treated if necessary and discharged into "local drainage channels or rivers" (6-58). This will lead to inevitable impacts on water quality that remain unaddressed in the EIR.

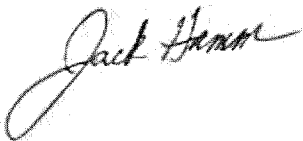
### **IV. Conclusion**

In San Joaquin County, agriculture is a 2.8 billion dollar industry that strengthens our community by providing employment and a reliable tax base. Farms in the Delta are among some of the oldest in the area, with many families that have been on the land for more than five generations.

Over the last two decades, as water exports from the Delta have increased, our farmers have been left with unfulfilled promises of water quality standards that are routinely violated that have led to increased salinity in the water and ever increasing salt buildup in some of the most productive soil in the world. The San Joaquin Farm Bureau sincerely believes that California has a significant water supply deficit, not a conveyance issue. The historical policies that just move water to one area of the state at the expense of another are not sustainable over the long term and do nothing to address the deficiency of overall water supply. There are better, more affordable projects to enhance the available water supply in California such as north of the Delta fresh water storage projects and desalination that enhances regional self reliance. Neither of these key elements is included in the Draft BDCP. The San Joaquin Farm Bureau Federation remains committed to protecting the family farms in the Delta and will continue to advocate that any project in the Delta is in accordance with the Delta Reform Act of 2009.

Again, we wish to express our appreciation for your consideration of our comments and concerns as they relate to the BDCP Draft EIR/EIS.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jack Hannon".

President

---

**From:** Julianne Phillips <jphillips@sjfb.org>  
**Sent:** Friday, July 25, 2014 5:07 PM  
**To:** BDCP.comments@noaa.gov  
**Subject:** BDCP Comments  
**Attachments:** SJFB BDCP Comments.pdf

Dear Mr. Wulff:

Please find attached the comments to the BDCP EIR/EIS on behalf of the San Joaquin Farm Bureau Federation.

Sincerely,

Julianne Phillips

Program Director

San Joaquin Farm Bureau Federation

(209) 931-9311



**From:** Cesar Diaz <cdiaz@sbctc.org>  
**Sent:** Friday, July 25, 2014 3:07 PM  
**To:** BDCP.comments@noaa.gov  
**Subject:** State Building and Construction Trades Council BDCP Comment Letter  
**Attachments:** SBCTC BDCP Letter Support.pdf

Please see the attached letter.

Thank you.

Cesar

Cesar Diaz  
Legislative and Political Director  
(916) 690-5330 (cell)



State Building & Construction  
Trades Council of California

1231 I Street, Suite 302  
Sacramento, California 95814  
Phone 916.443.3302 Fax 916.443.8204  
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## Member Agencies

CITIES OF  
ESCALON,  
LATHROP,  
LODI,  
MANTECA,  
RIPON,  
STOCKTON,  
TRACY,  
AND  
THE COUNTY OF  
SAN JOAQUIN

July 25, 2014

BDCP Comments  
Ryan Wulff, NMFS  
650 Capitol Mall, Suite 5-100  
Sacramento, CA 95814Re: BDCP Draft Environmental Impact Report/Environmental Impact Study (EIR/EIS)  
Comment Letter Pertaining to SJMSCP

Dear Mr. Wulff:

SJCOG, Inc. is the administrator of the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). Our staff has continuously been involved with the evolution of the Bay Delta Conservation Plan (BDCP) since the inception. In addition to this individual comment letter on the BDCP Draft EIR/EIS, SJCOG, Inc., in conjunction with other Delta Initiative Coalition stakeholders, is submitting a separately transmitted joint comment letters. As reference, our agency also concurs with the issues raised in the 'Friends of the River' letter dated May 15, 2014 regarding the extension the comment period due to the failure to release the draft Implementation Agreement (IA).

We identified issues in the prior releases of the BDCP draft document which were again not fully addressed in those specific BDCP document sections nor in this BDCP Draft EIR/EIS. The continued concerns with the BDCP and this Draft EIR/EIS are very similar to those our agency has voiced previously to BDCP staff regarding overlapping parts of San Joaquin County covered by the SJMSCP. They are:

- The unforeseen impacts to the SJMSCP with regards to the federal and state permits being implemented under the existing SJMSCP to balance development and protection of species within San Joaquin County which the BDCP draft EIR/EIS does not fully addressed.

- Certain proposed activities and oversight of the BDCP, such as the types and extent of restoration in the Delta which may have a negative impact on existing preserves and our ability to acquire future preserves within San Joaquin County.
- The future impacts by the BDCP requiring excessive administrative time and costs to the SJMSCP to provide the vast amount of coordination and information to minimize the potential devastating effects to the existing habitat plan.

A further concern our staff had after review of the Draft EIR/EIS is all the Delta counties which have or are developing HCPs or NCCPs approved or to be approved by federal and state regulatory agencies are not being given a full voice with the overlap of the plans.

Focusing on the SJMSCP, the plan area covers approximately one-third of the Sacramento-San Joaquin Delta in both the Primary and Secondary Zones. The SJMSCP is a permitted habitat conservation plan containing existing agreements with our federal partners United States Fish and Wildlife Service (USFWS) and state partners California Department of Fish and Wildlife (CDFW) agencies including a very complicated Biological Opinion issued with the take permits. These existing agreements are a major difference between SJMSCP and the others under development. Therefore, the SJMSCP (and other implementing plans) should be considered an existing condition and included as such as the baseline.

The SJMSCP has been diligently fulfilling the terms of the Implementation Agreement and issued federal and state take permits by mitigating for development in San Joaquin County through acquisition of conservation easements and establishment of habitat preserves under an existing conservation strategy which include areas considered under the proposed Delta Plan and the incorporated BDCP.

After numerous hours of analysis of the enormous amount of text of the various documents which make up the Draft BDCP and the Draft BDCP EIR/EIS, our staff continues to have the same concerns previously expressed in our communications to BDCP staff and consultants as well as new concerns from the Draft BDCP and Draft EIR/EIS which need to be addressed/examined/explained more completely. All these concerns are matters which can cause great conflict between the already approved implementing SJMSCP under federal and state take permits and the proposed developing BDCP.

Therefore, SJCOG, Inc. strongly recommends the following be addressed by any subsequent drafts or documents of an EIR/EIS:

#### Chapter 4 –

- Section 4.1.2 Project Level and Program Level Analyses

As described as a short-coming of the document in this section, the future planned *‘locations for restoration and preservation actions within the conservation zones have not been specifically identified at this time’* which means the document is guessing about the impacts to other implementing (e.g. SJMSCP and East Contra Costa HCP/NCCP) and developing (Solano, South Sacramento, Yolo) plans surrounding the Delta. The



document states the *'analysis is being done at a programmatic level based on theoretical effects of typical construction, operation and maintenance activities that would be undertaken for implementation of CM2-CM22 at a program-level of analysis, describing what environmental effects MAY occur in future project phase.'* The document pushes future project-level review (as necessary) prior to implementation of specific measures other than CM-1. The reality of approving one of the largest infrastructure projects which can greatly affect existing and planned habitat conservation plans in the Delta without fully vetting the actual impacts seem near sighted.

The Draft EIR/EIS should take a step back to further detail the specific sites, acreages and restoration/preservation concepts to fully evaluate the impacts in consultation with the specific habitat plan administrators before release of the final EIR/EIS document.

- Section 4.2.1.1 CEQA and NEPA Baselines

The 'Existing Conditions' assumed in the baseline employed in this draft EIR/EIS document is supposed to take into account facilities and ongoing programs that existed as of February 13, 2009. The SJMSCP has been in existence since 2001 and implementing in partnership with the USFWS, under a Section 10 take permit, and CDFW, under a Section 2081 take permit successfully within San Joaquin County which covers approximately 33% of the Sacramento San Joaquin Delta area. Over that time, the SJMSCP has employed a Conservation Strategy which is the back bone of the preserve system to off-set the loss of thousands of acres of covered activities within San Joaquin County over the 50-year term of the take permits. The BDCP Draft EIR/EIS has not based the document on the full build out of the SJMSCP for the overlap areas of the two very different plans which can create unrecoverable impacts to an existing habitat plan.

The Draft EIR/EIS should consider the full build out of the SJMSCP (covered activities and preservation) as the baseline. Also, our agency cannot fully comment on the draft EIR/EIS without **adequate time** to review in concert with the important accompanying document of the draft IA.

- Section 4.2.5.2 Cumulative Effects Analysis

The Draft EIR/EIS states the SJMSCP was accounted for as an existing condition under the cumulative effects analysis based on Appendix 3D, *Defining Existing Conditions, the No Action/No Project Alternative, and Cumulative Impact Conditions*, but in the section described it only mentions 'the contribution of the BDCP to other programs, projects and policies' rather than the destructive conflicts which would occur from the BDCP overlapping the already existing SJMSCP which has been implementing since 2001.

The Draft EIR/EIS should note the BDCP does contribute but also has adverse impacts in the cumulative aspect of the existing conditions.

- Section 4.2.5.3 Mitigation Approach

The Draft EIR/EIS states the *'mitigation related to restoration and other activities in CM3-CM22 shall be the responsibility of a larger group of agencies (including DWR and Reclamation) as set forth in relevant portions of the BDCP'* and *'responsibilities for particular measures will be described in the **Mitigation Monitoring and Reporting Program** to be issued in connection with the Final EIR/EIS.'* Unfortunately, our staff was unable to identify the mitigation (who, what, when, why, where) details with relation to impacts to the existing SJMSCP areas which overlap the proposed BDCP conservation zones or locate the **Mitigation Monitoring and Reporting Program** noted.

We respectfully request a copy of the **Mitigation Monitoring and Reporting Program** to be provided and discussed fully with all the surrounding habitat plan administrators and regulatory agencies (e.g. USFWS and CDFW) to review and comment further before the Final EIR/EIS is released.

## Chapter 12 -

- Section 12.0.2.1 Natural Communities

The Draft EIR/EIS touched on a list of 'Natural Communities' with relation to terrestrial species but for simplicity, the cultivated lands were not studied in-depth.

The cultivated lands must be studied in-depth to understand the reality of the environment for terrestrial species between the agricultural land types (e.g. row and field crop habitat, multi-purpose habitat, irrigated pasture habitat, etc.) because each classification has specific impacts to various species (e.g. swainson's hawk, burrowing owls, tricolor black bird, etc.). The breakdown of the type of cultivated lands will greatly affect the surrounding plans which may require conservation of these types of cultivated lands that are in conflict with the proposed BDCP.

- Section 12.0.3 Environmental Consequences

The Draft EIR/EIS calls out the first eleven conservation measures (CM 1 – 11) in this section. The CM 1, which regards construction and operation of water conveyance facilities, and CM 2 - 11 are measures which restore, protect, manage or enhance.

The section does not differentiate that CM1 actually deteriorates the value of the environment while CM 2 – 11 may provide actual benefit to the environment for BDCP. The use of building the facility as a conservation measure would be like considering the building of a large cement gas extraction pad for equipment as a benefit to the agricultural and natural environment it is within. The CM 2 – 11 providing benefit to the SJMSCP is still to be determined.

- Section 12.0.6.2 Comparison of Effects of the Alternatives

The Draft EIR/EIS section goes into numerous scenarios which would cause great losses of natural communities and cultivated lands in the range of 40,000 acres on the lowest end to upward of 100,000 acres on the highest end. The alternatives each have dramatic effects on the Delta (and other programs planned or existing) except for the lone alternative of **No Action Alternative**. The Draft EIR/EIS states *'under the No Action Alternative, there would be no water conveyance facilities construction effects on natural communities. Also, there would be no restoration, protection or enhancement of natural communities resulting from the other BDCP conservation measures. Several programs that are under way or in the planning stages to increase wetlands and riparian natural communities in the absence of the BDCP will benefit natural communities and increase wildlife-friendly agriculture in the study area.'*

The logical response is building the project in any alternative other than the No Action Alternative causes more harm than benefit. Especially, by the Draft EIR/EIS states other existing or planned programs are providing the same or better benefit then the BDCP would. For the natural communities and agricultural mosaic in relation to the species, invest the money in the existing or planned programs within the areas to bolster the success.

- Section 12.1.2.1 Natural Community Mapping Methods

The Draft EIR/EIS defines and categorizes the landscape with data from various sources and dates. The Draft EIR/EIS uses definitions from the CALFED Bay-Delta Program (2000) and CDFW (2005/2006) as well as GIS data using the 2005 USDA Farm Service Agency National Agriculture Imagery Program. Other sources used by BDCP were from the developing HCP/NCCP programs from surrounding counties (e.g. Yolo County Heritage and South Sacramento HCP) with dates of from around 2008. The western area of the Delta (e.g. western Area of Additional Analysis) was truthed in 2012 via Google Earth imagery and ground truthing by consultants.

The natural communities' definitions and mapping data used to analyze the BDCP are stale. Most of the data is between 5-10 years old in an ever changing environment of the Delta. The Draft EIR/EIS should take the steps to use more current data and truthing of the natural communities and landscape to understand the reality of the Delta today.

- Section 12.2.3.1 City and County General Plans

The Draft EIR/EIS mentions the San Joaquin County General Plan 2010 adopted in 1992 and five policies from the Resources Element are considered applicable to the BDCP. Also, the General Plan is under revision currently.

Unfortunately, the Draft EIR/EIS does not fully explain the SJ County and the existing General Plan 2010 are part of the implementing SJMSCP for impacts within SJ County. The current and revision will continue to be part of the SJMSCP for providing conservation and enhancement with SJ County. Furthermore, the Draft EIR/EIS does not provide any discussion of the other jurisdictions with San Joaquin County that are

within the potential plan area of the BDCP (e.g. City of Lathrop, City of Lodi, City of Stockton or City of Tracy) which are also signatories of the SJMSCP. The Draft EIR/EIS should include those jurisdictions' General Plan information in this section.

- Section 12.2.3.2 Habitat Conservation Plans

The Draft EIR/EIS note there is a relationship with other existing or developing habitat conservation plans discussed later in the section (12.3.3.18 Effects on Other Plans).

The SJMSCP comments will be addressed within that section.

- Section 12.3.3.17 Cumulative Effects on Terrestrial Biological Resources

The Draft EIR/EIS states the Action Alternatives *'would have little or no negative effect or would have long-term beneficial effect on nearly all of the terrestrial biological resources of concern in the study area. This is consistent with the goal of HCP/NCCP programs, which is to improve long-term viability of special status species and their habitats. The positive effects of implementing the BDCP are similar in all of the project alternatives other than the No Action Alternative. There are relatively small variations in the acres affected by construction of the alternative water conveyance facilities (CM1), but the restoration, protection, enhancement and stressor reduction elements of the alternatives are the same for Alternatives 1A, 1B, 1C, 2A, 2B, 2C, 3, 4, 6A, 6B, 8 and 9.'*

Also, this section describes cumulative effects on Giant Garter Snake Movement and Connectivity between Subpopulations. It is stated in Impact BIO-190 under the second bullet point that *'A number of HCP's have been issued by USFWS for projects anticipated to impact the giant garter snake, which include San Joaquin County Multi-Species HCP....'* and other areas within the giant garter snake range being developed.

As stated earlier in the Draft EIR/EIS – Section 12.0.6.2, the various alternative actions will have a wide range of impacts (project construction footprint and CM 2 – 11) on the existing landscape of the entire Delta ranging from 40,000 acres on the lowest end of the spectrum up to 100,000 acres of impact on the highest end. These changes would greatly have effect on the existing habitat landscape, local county governments' bottom tax rolls, productivity of the lands and especially the terrestrial species within each surrounding Delta County with existing or developing HCP/NCCPs. More discussion and explanation is needed with regards to the logic of the contradictory concept:

How do near-term period of alternatives disrupting temporarily or permanently removal of natural communities and modeled habitat for special status plant and wildlife species seem offset with potential undisclosed near-, mid-, and long-term conservation actions? One example is the impacts at Staten Island which is a specie friendly easement created with state public funds within San Joaquin County for the sand-hill cranes. Not to mention the SJMSCP complimentary habitat preserves adjacent to the Staten Island location. The sand-hill crane preserve on Staten Island and the adjacent SJMSCP preserves will have various impacts such as muck piles established large exhaust stacks

created and 5-9 years of construction activity, noises and vibrations occurring where lands have been set aside in protection for the species.

The SJMSCP holds two take authority permits under Section 10 (federal) and 2081 (state) which include potential giant garter snake habitat under incidental take minimization measures prescribed under the plan. The permits do not cover direct take of the giant garter snake or cover activities for giant garter snake impacts in the "Known Occupied Areas" as clearly defined in the SJMSCP (e.g. known occupied habitat for the giant garter snake is the area west of I-5 on Terminous Tract, Shin Kee Tract, White Slough Wildlife Area, and Rio Blanc Tract). These "Known Occupied Areas" are the same tracts of land some of the BDCP alternative actions will be impacting.

- Section 12.3.3.18 Effects on Other Conservation Plans

The Draft EIR/EIS was to analyze the impacts to the surrounding HCP/NCCP of the Delta which call out six (6) that will be impacted due to the overlap of the potential BDCP plan area. While four (4) are still in development (e.g. South Sacramento, Yolo, Solano and Yuba-Sutter), the BDCP will have impacts on the remaining two (2) HCP/NCCP and an adopted Conservation Strategy Plan. The Delta's two implementing HCP/NCCP programs have been in the implementation phase with federal and state regulatory partners since as early as 2001 (e.g. SJMSCP). The *'construction of the water conveyance facilities would reduce the amount of available cultivated land for acquisitions by overlapping conservation plans by ....as much as 14,016 acres in the San Joaquin County HCP (Alternatives 1B, 2B, 6B).'*

The table 12-11 describes the range of impacts to the SJMSCP for the footprint alone to be between 6 acres to 14,050 acres.

The tables 12-14 and 12-18, 12-19, 12-20, 12-21, 12-26 and 12-27 show the estimated acreage in the overlap for the various activities between the existing SJMSCP and the proposed BDCP to be a wide range. The tables states the BDCP would need a minimum of approximately 14,000 acres to 49,000 acres within the overlap area.

The Draft EIR/EIS states *'the cultivated preservation needs of the BDCP and other conservation plan are deemed to be without conflict if the available cultivated land with full build-out is at least double the sum of the needs of the two plans in the overlap area. This assumption is based on the need to have more cultivated land for preservation than required to ensure that enough willing sellers are available for each plan.'* The Draft EIR/EIS refers to the draft BDCP out for public comment *'Chapter 3, Section 3.4.1.3.1 Land Protection having a process for coordination among BDCP, South Sacramento HCP, and San Joaquin Multiple Species Conservation Plan to ensure sufficient lands are available in the overlap area for each plan to meet its conservation obligations.'*

For the SJMSCP as an implementing HCP since 2001, the discussions have been on-going with the BDCP staff and consultant regarding the Draft EIR/EIS calculations and the referenced section of the BDCP Chapter 3, Section 3.4.1.3.1 - Land Protection with regards to the proposed potential process between plans. The SJMSCP 2010 data used

for acreage accounting in the Draft EIR/EIS for potential impacts within the overlap area for the project alternatives and restoration/enhancements coupled with the SJMSCP are not accurate as reported to BDCP staff and consultants or available in the SJMSCP Annual Reports. To further complicate the matter, the assumptions used by the BDCP staff and consultants for the analysis was not accurate to the actual activities/allowances of the SJMSCP's conservation strategies which will decrease the overall acreage allowed to be used by the SJMSCP in the overlap area to meet the obligations of the issued permits. The Draft EIR/EIS shows lower acreage than the reality of lands impacted by the BDCP activities and over reports the available lands for the SJMSCP to acquire within the overlap area. As to the statement of 'deemed to be without conflict', it has been stated to BDCP staff repeatedly and now in writing to the Draft EIR/EIS there will be a major conflict because the 'double the sum of needs' does not exist in the overlap area to 'meet its conservation obligation' for the implementing SJMSCP.

On the matter of the BDCP Chapter 3, Section 3.4.1.3.1 – Land Protection statement in the Draft EIR/EIS, the most accurate description (from the SJMSCP viewpoint) would be described as the Chapter text is in the early infancy stage and needs to be completely vetted with all the surrounding Delta HCP/NCCPs. For the SJMSCP, nothing has been agreed upon with the implementing SJMSCP administrating agency, permittees or regulatory partners in accord with the BDCP as for any potential processes. A more detailed or accurate description of the entire Section of the Draft EIR/EIS is requested.

Our staff looks forward to working with the BDCP staff and consultants on the continued development of the BDCP document and BDCP final EIR/EIS (and draft IA when available) to insure a greater likelihood that the BDCP and SJMSCP will be complimentary to each other rather than conflicting.

Please feel free to contact myself or Steven Mayo, Program Manager, on my staff with any comments, concerns or additional needed information regarding the SJMSCP and the continued work on behalf of the county-wide habitat plan in San Joaquin County.

Sincerely,



STEVE DIAL

Deputy Executive Director / Chief Financial Officer

Cc: SJCOG, Inc. Board  
 Josh Emery, United States Fish and Wildlife Service  
 Todd Gardner, California Department of Fish and Wildlife  
 Habitat Technical Advisory Committee (HTAC) members  
 Kathy Miller, City of Stockton Council Member and Delta Coalition Chair

---

**From:** Steve Mayo <Mayo@sjcog.org>  
**Sent:** Monday, July 28, 2014 10:54 AM  
**To:** BDCP.comments@noaa.gov  
**Cc:** Joshua Emery; Todd Gardner (Todd.Gardner@wildlife.ca.gov); Rosie Vargas  
**Subject:** SJCOG, Inc. - Comment Letters for BDCP materials (Public draft, draft EIR/EIS and draft IA)  
**Attachments:** SJCOG, Inc\_BDCP draft EIR EIS Comments\_July 2014.pdf; SJCOG Inc\_BDCP Draft IA Comments\_July 2014.pdf; SJCOG Inc\_BDCP Pub Draft Comments\_July 2014.pdf

To whom it concerns,

Please find the SJCOG, Inc. comment letters attached for the various BDCP draft materials. Our agency will send a hard-copy of the individual comment letters to Mr. Wulff via US Mail.

Sincerely,

**Steven Mayo**  
**Program Manager**  
*Habitat Conservation Plan*  
*San Joaquin Council of Governments*  
*555 East Weber Avenue*  
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TRACY,  
AND  
THE COUNTY OF  
SAN JOAQUIN

July 25, 2014

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

Re: BDCP Draft Implementation Agreement (IA) Comment Letter Pertaining to  
SJMSCP

Dear Mr. Wulff:

SJCOG, Inc. is the administrator of the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). Our staff has continuously been involved with the evolution of the Bay Delta Conservation Plan (BDCP) since the inception. In addition to this individual comment letter on the BDCP Draft IA, SJCOG, Inc., in conjunction with other Delta Initiative Coalition stakeholders, may be submitting a separately transmitted joint comment letters.

Our agency identified issues in the prior releases of the BDCP draft documents which were again not fully addressed in those specific BDCP documents (e.g. the BDCP Public Draft, the Draft EIR/EIS or this Draft IA) in relation to those issues. The continued concerns with the BDCP and all the subsequent Draft documents are very similar to those our agency has voiced previously to BDCP staff regarding the overlap of vast tracts of land and species in parts of San Joaquin County covered by the existing county-wide habitat conservation plan. Those concerns are but not limited to:

- The unforeseen impacts to the SJMSCP with regards to the federal and state permits being implemented under the existing SJMSCP to balance development and protection of species within San Joaquin County which the BDCP draft EIR/EIS does not fully address.



- Certain proposed activities and oversight of the BDCP, such as the types and extent of restoration in the Delta which may have a negative impact on existing preserves and our ability to acquire future preserves within San Joaquin County.
- The future impacts by the BDCP requiring excessive administrative time and costs to the SJMSCP to provide the vast amount of coordination and information to minimize the potential devastating effects to the existing habitat plan.

A further concern our staff had after review of the Draft IA is all the Delta counties which have permitted HCPs or are developing HCPs or NCCPs be approved by federal and state regulatory agencies are not being given a full voice with the various overlapping areas of the BDCP and existing/potential plans.

Focusing on the SJMSCP, the plan area covers approximately one-third of the Sacramento-San Joaquin Delta in both the Primary and Secondary Zones. The SJMSCP is a permitted habitat conservation plan containing existing agreements with our federal partners United States Fish and Wildlife Service (USFWS) and state partners California Department of Fish and Wildlife (CDFW) agencies including a very complicated Biological Opinion issued with the take permits and the SJMSCP Implementation Agreement. These existing agreements are a major difference between SJMSCP and the others under development. Therefore, the SJMSCP (and other implementing plans) should be considered an existing condition and included as such as the baseline.

The SJMSCP has been diligently fulfilling the terms of the existing SJMSCP Implementation Agreement and issued federal and state take permits by mitigating for development in San Joaquin County through acquisition of conservation easements and establishment of habitat preserves under an existing conservation strategy which include areas considered under the proposed Delta Plan and the incorporated BDCP.

After numerous hours of analysis of the enormous amount of text of the various documents which make up the Draft BDCP, the Draft BDCP EIR/EIS and the Draft IA, our staff continues to have the same concerns previously expressed in our communications to BDCP staff and consultants as well as new concerns from the Draft BDCP, Draft EIR/EIS and Draft IA which need to be addressed/examined/explained more completely. All these concerns are matters which can cause great conflict between the already approved implementing SJMSCP under federal and state take permits and the proposed developing BDCP.

Therefore, SJCOG, Inc. strongly recommends the following be addressed by any subsequent drafts or approved BDCP Implementation Agreement document:

1. The Draft IA in the first paragraph states a 'note to reviewers' regarding the "level of agency signatory" under this agreement remains to be determined. This leaves a large void in the purpose of the draft IA. The draft IA is the tie between the various documents, the project, the proponents of the project and the regulatory agencies which will be giving authority for impacts of said project. How is this possible to not know?

2. The Draft IA should provide details of the project (conditions and funding mechanisms for mitigation) and assignments of responsibilities during the various phases of the project (construction, implementation, mitigation, monitoring). The primary reason for the IA would be a solid contract between the project proponents and regulatory agencies as to the process and means for what will be built, how it will be built, funding to assure it can be mitigated fully and assurances of obligations to meet the various federal, state and local ordinances (e.g. NEPA, CEQA, ESA, CESA, etc.). Those details are lacking in the Draft IA.
3. The Draft IA does not provide the needed assurances, details or support the required information as noted in the draft BDCP public document (see chapters 6, 7 and 8) which was to be provided in the future IA. The prior drafted material 'kicked the can down the road' with details stating the details would be found in the future IA which is not the case.
4. The Draft IA insufficiencies can lead to compliance issues with the state's Natural Community Conservation Planning Act (NCCPA) and federal Endangered Species Act (ESA) section 10 requirements. In addition, the insufficient draft IA can cause concerns with meeting the obligations under CEQA and NEPA for the project.
5. The Draft IA does not provide adequate assurances for the funding of the project (construction, implementation, mitigation, restoration or monitoring) for meeting the goals and obligations under the state and federal permits.
6. The Draft IA does not contain necessary details or language to support the assertions of meeting the NCCPA, CEQA, ESA, NEPA or any other requirement for projects of this magnitude.
7. The Draft IA shows the flaws with the BDCP's implementation structure with the 'Authorized Entity Group'; 'Permit Oversight Group'; 'Adaptive Management Team'; 'Stakeholder Council'; and 'Supporting Entities' by giving the project proponents (DWR, SWP contractors and CVP contractors) equal to that of lead agencies on the state and federal level. There is a lack of any local representation with weight.
8. The Draft IA does not allow for any 'checks/balance' or veto allowance by the regulatory agencies providing the take permits as allowed in other habitat plans.

Our staff looks forward to working with the BDCP staff and consultants on the continued development of the BDCP document and BDCP final EIR/EIS (and draft IA when available) to insure a greater likelihood that the BDCP and SJMSCP will be complimentary to each other rather than conflicting.

Please feel free to contact myself or Steven Mayo, Program Manager, on my staff with any comments, concerns or additional needed information regarding the SJMSCP and the continued work on behalf of the county-wide habitat plan in San Joaquin County.

Sincerely,



STEVE DIAL

Deputy Executive Director / Chief Financial Officer

Cc: SJCOG, Inc. Board  
Josh Emery, United States Fish and Wildlife Service  
Todd Gardner, California Department of Fish and Wildlife  
Habitat Technical Advisory Committee (HTAC) members  
Kathy Miller, City of Stockton Council Member and Delta Coalition Chair

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**From:** Steve Mayo <Mayo@sjcog.org>  
**Sent:** Monday, July 28, 2014 10:54 AM  
**To:** BDCP.comments@noaa.gov  
**Cc:** Joshua Emery; Todd Gardner (Todd.Gardner@wildlife.ca.gov); Rosie Vargas  
**Subject:** SJCOG, Inc. - Comment Letters for BDCP materials (Public draft, draft EIR/EIS and draft IA)  
**Attachments:** SJCOG, Inc\_BDCP draft EIR EIS Comments\_July 2014.pdf; SJCOG Inc\_BDCP Draft IA Comments\_July 2014.pdf; SJCOG Inc\_BDCP Pub Draft Comments\_July 2014.pdf

To whom it concerns,

Please find the SJCOG, Inc. comment letters attached for the various BDCP draft materials. Our agency will send a hard-copy of the individual comment letters to Mr. Wulff via US Mail.

Sincerely,

**Steven Mayo**

**Program Manager**

*Habitat Conservation Plan*

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MANTECA,  
RIPON,  
STOCKTON,  
TRACY,  
AND  
THE COUNTY OF  
SAN JOAQUIN

July 25, 2014

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

Re: Draft BDCP Plan Public Review Comment Letter Pertaining to San Joaquin County  
Multi-Species Habitat Conservation and Open Space Plan (SJMSCP)

Dear Mr. Wulff:

SJCOG, Inc. is the administrator of the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). Our staff has continuously been involved with the evolution of the Bay Delta Conservation Plan (BDCP) since the inception. Our agency is glad to provide individual comments on the Draft BDCP Plan. In addition to this individual comment letter, SJCOG, Inc., in conjunction with other Delta Initiative Coalition stakeholders, is submitting a separately transmitted joint comment letters. As reference, our agency also concurs with the issues raised in the 'Friends of the River' letter dated May 15, 2014 regarding the extension of the comment period due to the failure to release the draft Implementation Agreement (IA).

SJCOG, Inc. has identified issues in the prior releases of the BDCP draft documents (part or whole) which were again not fully addressed in this specific Draft BDCP document sections as requested. The continued concerns with the BDCP (and further displayed in BDCP Draft Environmental Impact Report/Environmental Impact Study) are very similar to those our agency has voiced previously to Resource Agency staff, BDCP leadership through both the Schwarzenegger and Brown administrations, key BDCP staff, and consultant firms throughout the years regarding overlapping parts of San Joaquin County covered by the SJMSCP. They are:

- The unforeseen impacts to the SJMSCP with regards to the federal and state permits being implemented under the existing SJMSCP to balance development and protection of species within San Joaquin County which the Draft BDCP document still does not fully addressed.

- Certain proposed activities and oversight of the BDCP, such as the types and extent of restoration in the Delta which may have a negative impact on existing preserves and our ability to acquire future preserves within San Joaquin County to meet the obligations of the SJMSCP's existing permits in cooperation with our federal and state partners.
- The future impacts by the BDCP requiring excessive administrative time and costs to the SJMSCP to provide the vast amount of coordination and information to minimize the potential devastating effects to the existing habitat plan.

A more global concern our staff continues to have of the Draft BDCP document is all the Delta counties which have or are developing HCPs or NCCPs in partnership with federal and state regulatory agencies are not being given a seat at the table or a full voice with the overlap of the plans.

Focusing on the SJMSCP, the San Joaquin County plan area covers approximately one-third of the Sacramento-San Joaquin Delta in both the Primary and Secondary Zones. The SJMSCP is a permitted habitat conservation plan containing existing agreements with our federal partner, United States Fish and Wildlife Service (USFWS) and state partner, California Department of Fish and Wildlife (CDFW) including but not limited to a very complicated Biological Opinion issued with the take permits. These existing agreements are a major difference between SJMSCP and the other HCPs/NCCPs under development. Therefore, the SJMSCP (and other implementing plans) should be considered an existing condition and fully included as such as the baseline.

The SJMSCP has been diligently fulfilling the terms of the Implementation Agreement, Biological Opinion and issued federal and state take permits by mitigating for development impacts in San Joaquin County through minimizing incidental take of species and acquisition of conservation easements as habitat preserves under an existing conservation strategy which include vast areas considered under the proposed BDCP.

After numerous hours of analysis of the enormous amount of text of the various documents which make up the Draft BDCP and the Draft BDCP EIR/EIS, our staff continues to have the same concerns previously expressed in our communications to BDCP staff and consultants as well as new concerns from the Draft BDCP and Draft EIR/EIS which need to be addressed/examined/explained more completely. All these concerns are matters which can cause great conflict between the already approved implementing SJMSCP under federal and state take permits and the proposed developing BDCP.

Therefore, SJCOG, Inc. strongly recommends the following be addressed by any subsequent drafts or documents for the BDCP:

- Chapter 2 Section 2.3 Existing Ecological Conditions

The Draft BDCP defines and categorizes the ecological landscape with data from various sources and dates. The Draft BDCP uses definitions from the CALFED Bay-Delta Program (2000), California Department of Fish and Wildlife (CDFW - 2005/2006) and Department of Water Resources (DWR), to name a few, as well as GIS data using the 2007 Vegetation and Land Use Classification Map of the Sacramento-San Joaquin River Delta from 2007. Other sources used by BDCP were from the developing HCP/NCCP programs from surrounding counties (e.g. Yolo County Heritage and South Sacramento HCP) with dates from around 2008. The western area of the Delta (e.g. western Area of Additional Analysis) was truthed in 2011 via Google Earth imagery and ground truthing by consultants.

The existing ecological condition definitions and mapping data used to analyze the BDCP are stale. Most of the data is between 5-10 years old in an ever-changing environment of the Delta. The Draft BDCP document states that the every changing cultivated land in the Delta are based on the ‘crop-rotation patterns’ and ‘market forces’ of the industry. Those factors lead to show dramatic trends in the last 30-40 years in the Delta (e.g. an 18-fold increase in vineyards – 2007 DWR). The Draft BDCP should take the steps to use more current data and truthing of the ‘existing ecological condition’ and natural communities’ landscape to understand the reality of the Delta today.

- Chapter 3 Section 3.2.3.2 Physical Habitat Restoration

The proposed conservation measure of 84,000 acres of natural communities contains 65,000 acres of tidal natural communities and associated transitional uplands distributed across the Plan Area, but primarily within Suisun Marsh, South Delta and Cache Slough ROAs. In addition, the proposed plan calls for another 5,000 acres of riparian restoration to occur within future floodplains and tidal restoration areas.

The South Delta is primarily an agricultural landscape of row and field crops which support a robust agricultural economy and various suites of species covered under the existing SJMSCP. The South Delta lands are a focal point to the existing conservation strategy employed by the SJMSCP over the first 14-years of implementation of the county-wide habitat plan covering San Joaquin County. The SJMSCP has encumbered over 1,600 acres of agricultural lands in the South Delta and Conservation Zone 7 area for protection of row and field crop habitat for proliferation of the multitude of species under the SJMSCP (Figure 3.2-12 and 15 BDCP). In the near future, the SJMSCP has more lands negotiated for protection within the area to continue the important strategies of the SJMSCP. The proposed BDCP conversion of some of the best agricultural lands within San Joaquin County to tidal communities will cause great harm to the local economy, generations of farming families and the SJMSCP’s commitment to fulfilling the obligations of the existing permits.

- Chapter 3 Section 3.2.4 Developing the Terrestrial Resources Component of the Conservation Strategy

The proposed BDCP's terrestrial strategies are stated as *'actions to provide connectivity between areas that are important for sustaining and improving ecosystem functions and for the conservation of covered species.'* It continues to discuss species along the periphery of the Plan Area as *'opportunities for increased habitat connectivity will be mostly between existing and newly protected terrestrial species' habitat in the Plan Area and protected terrestrial species' habitat adjacent to the Plan Area (mostly associated with adjacent or surrounding HCPs and NCCPs).'*

This section of the proposed Plan Area for the BDCP puts a higher value and need of the proposed BDCP's conservation strategy than that of any of the surrounding plans which are developing or already in existence. Since 2001, the SJMSCP has been providing the protection, improvement and connectivity for the protected species within the SJMSCP (Figure 3.2-12 and 15 BDCP). The tone of the section assumes the adjacent lands and/or surrounding HCPs/NCCPs should be subordinate to the developing BDCP strategies and proposed restoration plans there in. This is illogical because the SJMSCP is to be considered baseline existing condition by the BDCP. The assumption of the proposed BDCP is in direct conflict to the SJMSCP.

- Chapter 3 Section 3.2.4.1 Conservation Targets

The lead paragraph of the section states *'The conservation targets are intended to satisfy mitigation requirements associated with the effects of covered activities on natural communities and covered species and provide the conservation of those species and their habitats.'*

The proposed project footprint impacts and operations associated with the exporting of waters from the northern state rivers to deliver to export pumps must impact a large amount of natural tidal communities to dictate the described mitigation/restoration. Even under standard mitigation requirements ratios of 3:1 for natural community mitigation, the proposed creation/restoration requirement of 85,000 acres of natural tidal communities from the existing prime agricultural lands which serve as an economic driver to families and counties as well as habitat to protected species would be exorbitant to mitigate the proposed project. Please identify the natural tidal communities impacted by the footprint and operation of the project which requires the mitigation.

- Chapter 3 Section 3.2.4.2.1 Reserve System Assembly Principles

The section lists bulleted principles which assist in the Reserve System Assembly to guide and support decisions of the proposed BDCP Implementation Office regarding the acquisition of reserve lands (not all included):

- Protect, enhance, and restore the ecological diversity of natural communities and covered species habitats at the periphery of the Plan Area on lands



mostly likely to accommodate future sea level rise and less likely to be flooded as a result of levee failures.

- Design reserves to appropriately scale the ecological gradient and emphasize compatibility between restored natural communities and working landscapes (e.g. cultivated lands).
- Maximize connections between reserves and with existing conservation lands in and adjacent to the Plan Area.
- Where feasible, build off of existing conservation lands and management systems to increase management efficiency, connectivity, and patch size.
- Protect the highest value natural communities and covered species habitats available consistent with the BDCP implantation schedule.
- Implement conservation measures for terrestrial and nontidal wetland communities and covered wildlife and plants in a manner that complements or supports the conservation strategies of approved and developing conservation plans for areas adjacent to and overlapping the Plan Area.

Based on the principles stated in this section of the proposed BDCP as guiding and supporting of the BDCP Implementation Office's decisions, the repetitious concept through the principles are protection of lands with focus on working landscapes (cultivated lands) and existing HCP/NCCP conservation strategies. The concern is the potential plan to remove highly productive active agricultural lands in the South Delta. Based on the guiding and supporting principles, the land in the South Delta and Conservation Zone 7 provide benefit to the entire San Joaquin County (land owners, agricultural economy, County tax rolls and SJMSCP conservation strategy/preserve system). The concept of removing large patches of lands above mean sea level to convert to non-agricultural uses (e.g. tidal communities) seems counterintuitive to the guiding and supporting principles listed because of the detriment to those in San Joaquin County.

- Chapter 3 Section 3.2.4.2.3 Relationship of the Conservation Strategy with other Regional Conservation Planning Programs

As noted in this section, the SJMSCP has the largest amount of overlap area (more than 300,000 acres) with the proposed BDCP. Further the section states the proposed BDCP Implementation Office may partner with willing regional conservation planning sponsors to jointly implement such actions which complement each plan and provide economies of scale/efficiencies listing specific criteria (not all listed):

- The BDCP is responsible for the mitigation of its effects.
- The mitigation actions and the mitigation requirements of the BDCP must be additive to the mitigation obligation of other plans (e.g. BDCP mitigation cannot supplant the mitigation obligations of other plans and vice-versa).

The SJMSCP has been an active participant with discussions since the inception of the proposed BDCP to grasp the entirety of the potential conflicts created between the existing habitat plan and the proposed BDCP. To date, the discussions have not

yielded much headway for common ground (e.g. governance, guarantees, etc.). The concerns are the proposed BDCP project and required mitigation of the effects will cause great harm to the permitted SJMSCP in fulfillment of the obligations (e.g. conservation goals and strategies). The existing SJMSCP has been implementing efficiently since 2001 for protecting various habitat community types in San Joaquin County but now may be supplanted by the potential BDCP conservation strategy, goals, restoration and/or governance. The SJMSCP overlaps multiple proposed BDCP conservation zones (CZ 4, 5, 6, 7, 8) in whole or part where existing preserves and strategies have been employed (Figure 3.2-12 and 15 BDCP). The potential of increased costs, administration, competition or loss of mitigation inventory are unclear in the proposed BDCP document.

1. What is the meaning of the statement 'the BDCP actions and mitigation requirements of the BDCP being additive'?
2. What would be the result if there is conflicting actions or needs between the existing SJMSCP and proposed BDCP (e.g. permits needs, land acquisitions, etc.)?

- Chapter 3 Section 3.3.5.1 Reserve System

The section identifies in the table for Goal L1 and subsequent 'Objectives' the minimum number of target acres per Restoration Opportunity Area (ROA). The Objective L1.3 addresses tidal natural communities and transitional uplands restoration in the amount of 65,000 acres is planned. The 'Objective' further identifies target minimums of 1,500 acres for the Cosumnes/Mokelumne ROA and 5,000 acres for the South Delta ROA.

In order to attain the minimum target numbers within the overlap ROAs of the Cosumnes/Mokelumne (minimum – 1,500 acres) and the South Delta (minimum – 5,000 acres) means the removal of highly productive agricultural lands. These areas are partially or completely within the SJMSCP plan area which are part of the agricultural habitat conservation strategy employed under the implementing habitat plan for San Joaquin County. The reduction of available agricultural lands will dramatically impact the ability of the SJMSCP to fulfill the obligations of the SJMSCP permits over the life of the plan (2001-2051). Further, the SJMSCP has existing easements (e.g. Ishizuka in the Cosumnes/Mokelumne ROA and Wing Levee Preserve in the South Delta ROA) which could be greatly affected by the conversion of such large magnitude to something other than agriculture. The change of highly productive agriculture lands can cause other concerns to the generations of farming families losing land by eminent domain to achieve the goal, a loss of productive agriculture in a flourishing agricultural economy, a decrease in San Joaquin County tax rolls and create an unknown concern for Mosquito/Vector Control in San Joaquin County in the potential tidal natural community.

- Chapter 3 Section 3.3.6.4.2 Natural Community Goals and Objectives

The section identifies in Goal TFEWNC1: Large, interconnected patches of tidal freshwater emergent wetland natural community within the 'Reserve System' of the proposed BDCP. The Objective TFEWNC1.1 addresses of the 65,000 acres of tidal natural communities and transitional uplands (Objective L1.3 above) will restore or create at least 24,000 acres of tidal freshwater emergent wetland in Conservation Zones 1, 2, 4, 5, 6, and/or 7. The section goes on to provide the rationale (TFEWNC1.2) would be expectations of the restoration/creation to potentially occur *'along the mainstem and several channels of the San Joaquin, Old and Middle Rivers...and near the confluence of the Cosumnes and Mokelumne Rivers.'*

In order to attain the target numbers within the overlap Conservation Zones means the removal of highly productive agricultural lands. These areas are partially or completely within the SJMSCP plan area which are part of the agricultural habitat conservation strategy employed under the implementing habitat plan for San Joaquin County. The reduction of available agricultural lands will dramatically impact the ability of the SJMSCP to fulfill the obligations of the SJMSCP permits over the life of the plan (2001-2051). Further, the SJMSCP has existing easements (e.g. Ishizuka, Burchell, Nuss, White Slough, Hilder, Beck, Wing Levee, Jaques, Pombo, Pelegri, Alegre, Mizuno, Cabral) all within the Conservation Zones which could be greatly affected by the conversion of such large magnitude to something other than agriculture. The change of highly productive agriculture lands can cause other concerns to the generations of farming families losing land by eminent domain to achieve the goal, a loss of productive agriculture in a flourishing agricultural economy, a decrease in San Joaquin County tax rolls and create an unknown concern for Mosquito/Vector Control in San Joaquin County in the potential tidal natural community.

- Chapter 3 Section 3.3.6.5.2 Natural Community Goals and Objectives

This section identifies Goal VFRNC1: Extensive wide bands or large patches of interconnected valley/foothill riparian natural community. Further, the section explains the Objective VFRNC1.1 to restore or create 5,000 acres of valley/foothill riparian natural community, with at least 3,000 acres occurring on restored seasonally inundated floodplain. Identified in Objective VFRNC1.2 is protection of 750 acres of existing valley/foothill riparian natural community in Conservation Zone 7 to occur by year 10 of the proposed BDCP. Also, the section identifies at least 3,000 acre will occur in the south Delta seasonal floodplain restoration site in Conservation Zone 7.

In order to attain the target numbers within the overlap Conservation Zones means the removal of highly productive agricultural lands. These areas are partially or completely within the SJMSCP plan area which are part of the agricultural habitat conservation strategy employed under the implementing habitat plan for San Joaquin County. The reduction of available agricultural lands will dramatically impact the ability of the SJMSCP to fulfill the obligations of the SJMSCP permits over the life of the plan (2001-2051). Further, the SJMSCP has existing easements (e.g. Ishizuka,

Burchell, Nuss, White Slough, Hilder, Beck, Wing Levee, Jaques, Pombo, Pelegri, Alegre, Mizuno, Cabral) all within the Conservation Zones which could be greatly affected by the conversion of such large magnitude to something other than agriculture. The change of highly productive agriculture lands can cause other concerns to the generations of farming families losing land by eminent domain to achieve the goal, a loss of productive agriculture in a flourishing agricultural economy, a decrease in San Joaquin County tax rolls and create an unknown concern for Mosquito/Vector Control in San Joaquin County in the potential tidal natural community.

- Chapter 5 Section 5.4 Effects on Natural Communities

This section addresses the proposed changes for the BDCP in terms of aquatic and terrestrial restoration and enhancements for all of the following:

- Tidal Perennial
- Tidal Mudflat
- Tidal Brackish Emergent Wetland
- Valley/Foothill Riparian
- Nontidal Perennial Aquatic and Nontidal Freshwater
- Alkali Seasonal Wetland
- Vernal Pool Complex
- Managed Wetland
- Other Natural Seasonal Wetland
- Grassland
- Cultivated Lands

The section describes the expected net effect of the actions taken by the proposed BDCP in a very one-sided light but does not delve into the real effects of the proposed removal of the fertile ground to the surrounding communities (e.g. farmers, local jurisdictions and HCPs/NCCPs) with the vast amount of land conversion being proposed. To focus on just one portion of the overall section of cultivated lands due to the covered activity, the proposed actions will PERMANENTLY REMOVE an approximate total of 55,372 acres of high quality producing agricultural land in the Delta. As stated in the section, the amount of acres is 11% of the entire cultivated lands within the proposed Plan Area of the BDCP. The breakdown of the loss is as follows converting highly productive agricultural lands to non-agricultural uses:

- 629 acres (1%) Fremont Weir/Yolo Bypass inundation
- 960 acres (2%) from tidal natural communities restoration
- 1,950 acres (4%) nontidal marsh restoration
- 2,000 acres (4%) grassland restoration
- 2,087 acres (4%) levee construction for floodplain expansion
- 3,593 acres (6%) seasonal floodplain restoration
- 4,588 acres (8%) from conveyance facility construction
- 39,565 acres (71%) from tidal natural communities restoration

San Joaquin County overlaps a great portion (approximately 40%) of the lands in the Plan Area which would equate to over 22,000 acres of loss if distributed proportionally. San Joaquin County and local jurisdictions, as land-use authority, will have little or no say over the potential removal of those productive lands by the proposed BDCP activities which will have great harm to the County (e.g. agricultural production, economic factors, taxes, loss of generations of family farms, etc.). Further, the SJMSCP which covers the same lands will be greatly affected by the PERMANENT REMOVAL of the highly productive agricultural lands which are potential habitat for the 97 covered species in the county-wide habitat conservation plan (which agricultural habitat types are a primary focus). The PERMANENT REMOVAL of the agricultural lands can greatly cause harm to the ability of the SJMSCP because of unforeseen cumulative impacts not taken into account within the SJMSCP's Biological Opinion was issued and/or to meet the obligations under the implementing federal and state take permits for mitigation requirements.

- Chapter 6 Section 6.1 Performing Implementation Actions

This section describes the proposed actions of performing the Implementation Actions, property acquisitions, planning/design, regulatory compliance, restoration schedule and post-permit term implementation. The Table 6-2 *'Implementation Schedule for Natural Community Protection and Restoration Conservation Measures'* details the type, acreage and term (near-term – 1 to 10 year; early long-term – 11 to 15 years; late long-term – 16 to 50 years) for each conservation measure under the proposed BDCP. The planned acquisition method is likely to occur on public lands but may require the acquisition of private lands by way of fee title or conservation easement. The actual implementation of each conservation measure may require more planning/design as these come to fruition with appropriate regulatory and jurisdictional entities.

The section on Implementation Actions is very general and does not have enough details to fully comment on the actions, timing and impacts each conservation measure. The 'kicking the can down the road' approach for the project level design costs/funding assurances and schedule of work makes commenting on this section rather difficult. With most public sector projects and especially under the many HCPs/NCCPs, the beginning of any construction activities (e.g. permit issuance and/or the ground breaking of the facilities) that create 'take' for loss of habitat for species should require the mitigation (fees, land dedication, etc.) of said project be provided. The proposed BDCP pushes the mitigation required because of the project impacts to be provided years after the project begun constructing and most during the later operations. As stated in Table 6-2, the mitigation requirements seem to be delegated to the future (near-term – 1 to 10 year; early long-term – 11 to 15 years; late long-term – 16 to 50 years) term of the permits which means impacts have occurred without actual mitigation being provided.

- Chapter 6 Section 6.2 Interim Implementation Actions

This section addresses various projects that are to be counted toward meeting the proposed BDCP's requirements but do not provide mitigation for an interim project. The section describes *'actions that have been completed, are in the process, or are planned to be initiated prior to the permit issuance'* for the proposed BDCP.

The section lists various projects which the proposed BDCP will be allowed credit toward the requirements under the permits. The lands are either public held lands or private land associated with another project is some capacity. The listed projects in the section create questions such as public lands owned by the state and the taxpayers of the state being used for Water Contractor's gains and mitigation from prior project that have been on-going being used for BDCP purposes under the permits. Some listed Interim Implementation Actions projects which need more details are:

- Calhoun Cut and Lindsey Slough Restoration
  - 927 acres property owned by CDFW – how was it acquired and what funds were used?
- Lower Yolo Restoration Project
  - Restoration project intended to help fulfill the tidal wetland mitigation requirement for the 2008 BiOp on Long-term Operation of the CVP and SWP – how is this not double dipping?
- Dutch Slough Tidal Restoration Project
  - 1,178 acre property owned by DWR – how was it acquired and what funds were used?
- McCormack-Williamson Tract Restoration
  - 1,660 acre property owned by The Nature Conservancy under a CALFED grant (USFWS funds) – do the USFWS funds used allow it to be used toward mitigation required by the proposed BDCP?
- Grizzly Slough
  - 489 acre property that was purchased in 1992 as mitigation for the SWP and owned by DWR. Nearly 70 acres has been utilized to mitigate for the Delta Levee Program while the remaining 450 acres (please check on math as remainder should be 419 acres) is planned for riparian and floodplain restoration – how is this not double dipping?
- Meins Landing Restoration Project
  - 666 acre waterfowl hunting club purchased in December 2005 by DWR in partnership with Suisun Marsh Preservation Agreement Agencies (DWR, CDFW, Reclamation, Suisun Resource Conservation District) and the California Coastal Conservancy – how was it acquired and what funds were used?
  - Part of the Van Sickle Island Levee Improvement Program and portions of the land not counted as mitigation for other DWR programs – what part is counted and not counted of the 666 acres or other land not identified?
- Hill Slough Tidal Restoration Project

- 1,723 acre property owned by CDFW of which 640 acres and 200 acres will be considered – how was it acquired and what funds were used? Can BDCP count any toward obligations?
- Tule Red Restoration Project
  - 350 acre tidal marsh with another 1,300 acre potential owned by Westervelt Ecological Services purchased to help fulfill the tidal wetland mitigation requirement of the 2008 USFWS BiOp for Coordinated Long-Term Operations of the CVP and SWP (USFWS 2008). Based on the MOA between Reclamation, USFWS, DWR, NMFS, CDFW and SFWC, this restoration project may also count toward BDCP tidal wetland restoration – how is this not double dipping?
  - Restoration may be expanded into an adjacent land owned by CDFW – how was it acquired and what funds were used?
- Rush Ranch Restoration Project
  - 2,070 acres acquired by the Solano Land Trust in 1988 intended to help fulfill the tidal wetland requirement for the 2008 USFWS BiOp for the Coordinated Long-Term Operation of the CVP and SWP (USFWS 2008). Based on the MOA between Reclamation, USFWS, DWR, NMFS, CDFW and SFWC, this restoration project may also count toward BDCP tidal wetland restoration – how is this not double dipping?
  - Project was initiated through agreement with DWR, Reclamation and the Suisun Marsh Plan with partial funding through the CALFED ERP. Some restoration could count toward BDCP obligations – how was it acquired and what funds were used?
- Prospect Island Restoration Project
  - 1,306 acre property acquired by DWR from General Services Administration in January 2010. The restoration project is intended to help fulfill the tidal wetland requirement for the 2008 USFWS BiOp for the Coordinated Long-Term Operation of the CVP and SWP (USFWS 2008). Per the Fish Restoration Program Agreement (2010) between CDFW, DWR and MOA with Reclamation, USFWS, DWR, NMFS, CDFW and SFWCA it may count toward BDCP obligations - how was it acquired and what funds were used? – how is this not double dipping?
  - The project is fully funded by SWP through the Fish Restoration Program Assistance – how do those funds associated with the State Water Project allowed to use toward the BDCP?
- Chippis Island Restoration
  - 1,000 acre property which has only 750 acres available for potential mitigation land since 250 acres has been set aside for a previous mitigation project – is that the case or all 1,000 would be used toward the BDCP obligations?
- Decker Island Restoration

- 658 acre property created in the early 1900 through deposits from Montezuma Hills. 473 acres is privately owned, CDFW owns 34 acres and Port of Sacramento owns 140 acres. Approximately 110 acres of restoration will provide habitat to migrating salmon and steelhead by the Port of Sacramento as a restoration project – what part of the land is mitigation obligation already (e.g. Port of Sacramento or CDFW Levee Program)? – how was the it acquired by CDFW and what funds were used? – is any of this going to be considered double dipping?

There are many questions, concerns and potential issues of the mingling of prior project obligations and counting toward the proposed BDCP obligations under a HCP/NCCP permit. More clarification on how prior BiOp or projects are related to the BDCP would be helpful as well as any information on the funding mechanisms used to secure the properties.

- Chapter 6 Section 6.3 Planning, Compliance and Progress Reporting, 6.4 Regulatory Assurances, Changed Circumstances and Unforeseen Circumstances, and 6.5 Changes to the Plan or Permits

These sections addresses how the Implementation Office will prepare planning documents, implementation reports and demonstrate compliance with the BDCP document (e.g. Annual Work Plan and Budget, Delta Water Operations, Progress Report, Five-Year Review and Implementation Plan, Regulatory Assurances, Obligations of the Parties, etc.) that references a draft IA as a part of the whole project and those associated authorities under ESA, NCCPA and all other regulatory requirements.

The section is difficult to comment on without **adequate time** provided in concert with the recently released draft IA. The ‘whole project’ should be viewed as one entire documented project (e.g. BDCP document, EIR/EIS, and IA) rather than the piece meal approach for best results in relation to CEQA, NEPA, ESA, NCCPA. The draft BDCP document nor the draft IA document provide any assurance details of how the project, permits, oversight and funding will be established ahead of the impacts.

- Chapter 7 Implementation Structure

The chapter and subsequent sections describes a very overarching institutional structure and organizational arrangements for the proposed BDCP with the assignment of the duties/responsibilities to be figured out over the near term of plan implementation.

The section does not provide adequate representation of the Delta (e.g. environmental, general public, governments or HCPs/NCCPs) which makes up the impact area. The governance structure limits the regulatory agencies and is



essentially allowing the 'fox to watch the hen house' with very limited ability of the local communities to enact change when needed. The whole governance structure needs to be reconsidered and redesigned to include more local representation of the Delta communities at the table and involvement. It should include more than inclusion on the 'Stakeholder Council'. Also, the regulatory authorities (e.g. USFWS, CDFW, NMFS, ACOE, etc.) should be provided 'Veto' authority within the proposed BDCP governance structure or following Implementation Agreements.

Also, our agency cannot fully comment on the draft BDCP because the important accompanying document of the draft IA to be reviewed in conjunction is lacking supporting details or requirements which cause concerns. The appointments are at the discretion of the Natural Resource Agency or the Authorized Entity Group rather than appointment and inclusion of local community stakeholders and other habitat conservation plan groups at large.

- Chapter 8 Implementation Costs and Funding Sources

This chapter and subsequent sections outlines the costs associated with implementation of the proposed BDCP and some components of the plan. The chapter notes the requirements of the proposed BDCP for permits with relation to the ESA and NCCPA to ensure adequate funding to carry out obligations. The proposed BDCP breaks down with the best assumptions possible the related costs and potential funding.

The section cannot be commented on without the funding (construction, implementation, mitigation, restoration, monitoring, etc.) details being provided by the draft BDCP sections or draft IA. Neither of the documents have sufficient information on assured funding for any part of the project. The project proponents have been admitting the repeatedly 'the costs of the BDCP is high and there is concern it will increase' which is not a surprise given the nature of public works projects over time during construction. A lacking and important piece which must accompany any review of the BDCP Implementation and Funding Sources chapter is the draft IA that establishes each proponent's contribution to the project as a whole. The 'whole project' and especially the costs/funding should be viewed as one entire documented project (e.g. BDCP document, EIR/EIS, and IA) with **sufficient time provided** under CEQA, NEPA, ESA, NCCPA.

Our staff looks forward to working with the BDCP staff and consultants on the continued development of the BDCP document, the BDCP final EIR/EIS and the draft IA to insure a greater likelihood that the BDCP and SJMSCP will be complimentary to each other rather than conflicting.

Please feel free to contact myself or Steven Mayo, Program Manager, on my staff with any comments, concerns or additional needed information regarding the SJMSCP and the

continued work on behalf of the county-wide habitat conservation plan of San Joaquin County.

Sincerely,



STEVE DIAL

Deputy Executive Director / Chief Financial Officer

Cc: SJCOG, Inc. Board  
Josh Emery, United States Fish and Wildlife Service  
Todd Gardner, California Department of Fish and Wildlife  
Habitat Technical Advisory Committee (HTAC) members  
Kathy Miller, City of Stockton Council Member and Delta Coalition Chair

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**From:** Steve Mayo <Mayo@sjcog.org>  
**Sent:** Monday, July 28, 2014 10:54 AM  
**To:** BDCP.comments@noaa.gov  
**Cc:** Joshua Emery; Todd Gardner (Todd.Gardner@wildlife.ca.gov); Rosie Vargas  
**Subject:** SJCOG, Inc. - Comment Letters for BDCP materials (Public draft, draft EIR/EIS and draft IA)  
**Attachments:** SJCOG, Inc\_BDCP draft EIR EIS Comments\_July 2014.pdf; SJCOG Inc\_BDCP Draft IA Comments\_July 2014.pdf; SJCOG Inc\_BDCP Pub Draft Comments\_July 2014.pdf

To whom it concerns,

Please find the SJCOG, Inc. comment letters attached for the various BDCP draft materials. Our agency will send a hard-copy of the individual comment letters to Mr. Wulff via US Mail.

Sincerely,

**Steven Mayo**  
**Program Manager**  
*Habitat Conservation Plan*  
*San Joaquin Council of Governments*  
*555 East Weber Avenue*  
*Stockton, CA 95202*  
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