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To: bdcpc.comments@noaa.gov
Cc: Emlen, Bill F.; Laughlin, James W.
Subject: Solano County BDCP Comment Letter
Attachments: Solano_County_BDCP_comments_072814.pdf; ATT00001.txt

Hi, attached please find Solano County's comments on the BDCP, Associated EIR/EIS, and Implementing Agreement.

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July 28, 2014

BDCP Comments
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RE: Solano County comments on the Bay Delta Conservation Plan (BDCP),
Associated EIR/EIS, and Implementing Agreement

Dear Mr. Wulff:

Thank you for the opportunity to comment on the Bay Delta Conservation Plan ("BDCP" or "Plan"), including the Implementing Agreement and the associated Draft Environmental Impact Report/Environmental Impact Statement (DEIR/EIS). This "Introduction" provides our overarching comments on the subject, with detailed comments provided in the attachments that follow.

Introduction

Solano County, as one of the five "Delta Counties," has been actively following the evolution of the BDCP since its inception. The County has in good faith commented as requested by BDCP proponents during drafting of administrative drafts, formally became a "cooperating agency" under the National Environmental Policy Act (NEPA) for purposes of participating in the environmental review of the BDCP, and participated in numerous meetings and workshops where BDCP was discussed. Through the process the County focused on providing constructive comments intended for drafters to understand local issues and circumstances relative to the BDCP and Solano County with the hope that the Plan would be modified to (1) reduce impacts to our local area and (2) provide full mitigation for any unavoidable impacts.

Regrettably, in reviewing the formal draft BDCP, DEIR/EIS and Implementing Agreement, the County continues to find 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. Furthermore, we see little evidence of consideration of Plan modifications, or earnest consideration of alternatives or consideration of meaningful mitigation responsive to reducing impacts of the BDCP on Solano County and the Delta region. These are all areas where many comments have been made in prior BDCP public forums from Solano County and many others in the Delta. In light of the current formal draft and the fact that there are few meaningful changes from the earliest drafts, we can only conclude that all of the outreach relative to the BDCP has been nothing more than a “check-off-the-box” exercise with a pre-determined outcome already in place. Hopefully, this comment process will amplify the significance of the local concerns and impacts and result in meaningful changes that respect local concerns.

The following impacts, all of which are described in greater detail in our attached comments, are unique to Solano County and appear to have been largely ignored as the Plan evolved:

- The BDCP will result in the conversion of tens of thousands of the County’s Delta agricultural lands. The resulting economic, environmental and social impact to the County and its agricultural base could be devastating. Yet little effort has been expended to reduce critical impacts of the BDCP on the County and the Delta region and mitigate for impacts that are unavoidable.
- As stewards of some of California’s best agricultural lands, Solano County notes that the BDCP is inconsistent with the County’s General Plan due to the aforementioned conversion of agricultural lands.
- Aside from the significant and deleterious conversion of agricultural land, the BDCP will degrade our water quality, disrupt agricultural infrastructure, and impose new regulatory constraints that will further erode agricultural acreage in Solano County.
- The County has not had an opportunity for any meaningful participation in the Plan’s development or implementation.
- The Plan neglects to address viable alternatives that will greatly reduce impacts to Solano County and our region and still achieve core project objectives.
- The BDCP is not consistent with recent State initiatives in addressing climate change, greenhouse gas emissions and sustainable planning practices – nor does it appear to account for climate change itself by failing to evaluate impacts of the BDCP in all regions that will be affected or benefit by the Plans implementation.

- Despite these profound and significant impacts to Solano County, there is little guarantee the BDCP will even achieve its purpose. And if it does not, reversing the damage will be a near impossibility.
- With less fresh water and new large intakes being located upstream of the County, our agricultural areas and recreational areas will be diminished and could be completely choked off in years of water crisis such as this year.
- The Plan and EIR both underestimate or ignore the full range of impacts that will affect Solano County. The vague commitment to address impacts coupled with weak mitigation measures provides little or no confidence that we will not be significantly negatively impacted if the plan is implemented.
- The DEIR/EIS does not serve its intended purpose as an informational document, because it does not provide sufficient analysis of the project, the project's environmental impacts, appropriate mitigation measures, and a reasonable range of project alternatives

As a consequence, at this critical juncture the Solano County Board of Supervisors and staff are unable to lend support to the BDCP in its current form.

Negative Impact to Agriculture

Solano County has some of California's best agricultural land. As stated in the County's General Plan, "Agriculture has historically been both an important industry in Solano County and a central part of the County's identity." The County's General Plan designates virtually all land for the Delta region as agricultural. Moreover, the voters of the County over the years have voted to preserve agricultural areas outside of incorporated cities to assure orderly growth, including Measure T by an overwhelming 70% majority.

The BDCP, by virtue of provisions for large restoration opportunity areas in Cache Slough and the Suisun Marsh, will likely result in the conversion of tens of thousands of acres of the County's Delta agricultural lands. From the County's perspective this will have very real economic, environmental and social impacts, not to mention it being a de-facto penalty for being good stewards of agricultural lands.

Furthermore, beyond ecosystem restoration, there are many other aspects of the BDCP that may have negative consequences on the County's agriculture, including degradation of water quality used for farming operations, disruption of agricultural infrastructure, and new regulatory constraints, among others. These factors, and the associated cumulative impacts, could greatly increase the number of acres of lost productive farmland due to the BDCP well beyond those projected for ecosystem restoration. These are significant issues for the County and one that is basically "papered-over" in the BDCP. This is not acceptable to the County.

Inconsistency with the County's General Plan - and the Co-Equal Goals

Early in development of the BDCP, it would have been appropriate to truly take into account local general plans and policies and local interests in general as BDCP concepts were formulated. If this had occurred, it would have become readily apparent that our County is highly committed to preserving agricultural lands and has been for decades. But that did not occur. And it is important to note that this clear inconsistency with the County's General Plan is not even acknowledged in a serious way in the BDCP documents nor is mitigation for related impacts clearly articulated.

Moreover, the Plan is contradictory to the State Legislature's construct of the "co-equal goals" from the 2009 Delta Legislation. That legislation expressly states that the co-equal goals "shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place." (Water Code § 85054.)

Lack of Meaningful Participation in the Plan's Development or Implementation

Despite the significant impacts to the County, it and the larger Delta community will play a diminished if not nonexistent role in governance of the Plan. The County's role is primarily confined to being one voice among dozens of others – including the state and federal water project contractors – on the "Stakeholder Council," which has no real authority. This is true despite the fact the Delta Counties will bear the brunt of impacts from the BDCP. When no meaningful seat at the table was made available during the BDCP process, any expectation that implementation will be less one sided defies credibility.

The net effect of the Plan is to deal a serious if not fatal blow to agriculture and the economy in the Delta region so that other regions can sustain or build their economies. If the public process had not been controlled by regional interests and BDCP proponents, perhaps a more balanced plan could have evolved. Instead, we are left with a draft plan that is strongly opposed by nearly if not all Delta interests and seriously questioned by many other interests throughout the state. By many measures the public process for the BDCP has failed and further divided already disparate interests. A restart and an honest commitment to an inclusive public process seem essential to achieve progress in meeting the state's current and future water needs.

Lack of Meaningful Exploration of Alternatives

The Plan's imbalance is particularly evident in its choice not to explore alternatives with less impact to the Delta communities. During the course of BDCP development, the County has shown a willingness to work with BDCP proponents in good faith and cooperation, understanding the larger challenges facing our state in the critical area of water. But Plan alternatives that might reduce impacts to Solano County and the Delta region have been summarily dismissed or given only token assessment in the DEIR/EIS.

Solutions like the “Portfolio Alternative” and “Garamendi Plan,” which involve smaller conveyance and less ecosystem restoration, would greatly reduce impacts to our region while still achieving core project objectives. Perhaps even more preferable would be a fresh look at other alternatives that are less dependent on a trans- regional conveyance system that may have reached its maximum limits in the context of climate change and overall available water to be allocated. The current drought crisis highlights the need to invest in new cutting edge ways to meet future water needs. With available dollars precious, it seems prudent to invest in new sources of water that may be derived from new desalination technologies, water recycling infrastructure, groundwater remediation and similar measures where local supply enhancement is emphasized. In this context and with the future in mind, these alternatives seem far more deserving of limited investment dollars than focusing on a project that does not generate more water and is dependent on moving water great distances at great expense.

To elaborate on the investment point, if freshwater flows into and through the Delta continue to diminish on average into the future, it is hard to understand the value of the investment in a BDCP that does not create more water for the system. The BDCP does allow for drawing water at different times than the current south intakes, but the ability to draw water in the new intakes may become constrained anyway due to lower average flows under climate change. Worse yet, the County is concerned that the potential for more frequent drought crisis in the future will force decisions to draw water into the new intakes under emergency declarations despite low flows, which will ultimately make the water in our agricultural channels so saline as to be unusable for agricultural purposes. That would not improve the Delta ecosystem - the key tenant of the BDCP.

Indeed, Solano County recognizes that new statewide solutions to water supply must be developed. Shared sacrifices must clearly be part of the solution. The County is ready to be part of those discussions. What is unacceptable is the current solution which clearly places the burden on the Delta region in an inequitable way. As this process evolves, the County urges further consideration of alternatives that reduce impacts on our region.

Inconsistency with Other State Initiatives

Looking at the bigger picture, it is difficult to understand how the BDCP can be found consistent with recent State initiatives in addressing climate change and sustainable planning practices. As noted above, the BDCP will result both directly and indirectly in the loss of many thousands if not hundreds of thousands of acres of high-quality, sustainably farmed lands in the Delta with a favorable growing climate, good soils, and naturally available water. Producers in the Delta region are able to efficiently move product to nearby urban centers and grow a wide variety of agricultural product, thus minimizing greenhouse gas emissions.

In contrast, the BDCP will essentially take quality farming areas away in the Delta while empowering continuation and expansion of farming in areas with poorer soils, harsher

climates, higher evapotranspiration rates, and higher greenhouse gas emissions both from powering a series of pumps to move water to distant farming areas and from shipping products to distant markets. It is curious the State is advocating for a project with such a glaring contrast from the greenhouse gas policies that have been embraced legislatively.

And there are other looming questions of the BDCP relative to climate change. Impacts from climate change and impacts from drought do not appear to be well thought out. Is the BDCP preferred project concept the best solution going forward in the face of climate change? It seems entirely possible that a climate change scenario evolves whereby Northern California's climate becomes similar to what has been experienced in Southern California over the past few centuries. This means longer and more severe drought periods and fewer higher than normal rainfall years. In essence, the State and Federal water projects were designed under the premise of California climate paradigms that may change dramatically and seem to be changing already. In fact, the past few decades have already shown a pattern of fewer "above the mean" rainfall years in many parts of Northern California and that may be a trend under climate change. Reduced snowpack and earlier snowpack melt-offs are already occurring. Why is this important to the County? With less freshwater coming through the system and new large intakes to be located upstream of the County under the BDCP, freshwater coming into our agricultural areas would be diminished and could be completely choked off in years of water crisis, such as this year. Assuming this occurs more frequently, it is inevitable that large agricultural areas in the Delta would be negatively affected, which represents a loss that is not proposed to be mitigated. Agricultural lands that would be lost as a result of the BDCP project should instead be preserved, because those lands cannot be recreated. Very little of the information in the BDCP document or DEIR/EIS gives the County any assurance that such a scenario can be avoided.

No Guarantee the Plan will even Achieve its Purpose

As noted above, the effects of the BDCP are far reaching and damaging to the County and the Delta region. The offered basis for these changes is a theory that somehow many acres of ecosystem restoration can compensate for significantly modified natural system and reduced freshwater flows where many species are in peril. The reality is the BDCP documents themselves are hardly reassuring that targeted species will be restored. The concept of "Adaptive Management" still seems largely speculative and may not reveal failure to achieve objectives until long after too much has been invested to turn back the clock. In the process the County and other Delta areas will have to deal with the effects of BDCP infrastructure and habitat areas along with an extremely damaged agricultural economy. Furthermore counties like Solano will likely have to respond to the unintended consequences of ecosystem restoration such as service and maintenance costs of such areas. This concern is exacerbated by the fact that mitigation to the County for such impacts is weak and unspecific in current BDCP documents.

Summary

For the reasons that are set forth in this letter, Solano County is unable to support the BDCP as proposed. We had hoped the formal draft would be more reflective and responsive to comments from Solano County during administrative draft phases but, if anything, our concerns have grown as more information has become available. We recognize that statewide solutions to water supply are essential and continue to offer our willingness to share in solutions that address the problem. We are unwilling, however, to support an effort that could devastate our agricultural industry and negatively alter the ecosystem in the Delta. As proposed the Plan appears to ignore the mandated "co-equal goals" as outlined by the 2009 Legislature amplifying the impacts from the BDCP impacts to our County—one that is central to this Plan—in a way that are so significant and so devastating that it leaves Solano County with no alternative at this time but to raise serious objections and call for significant changes responsive to the County's comments and comments from other Counties in the Delta region.

The following attachments contain detailed comments regarding the BDCP, including the Implementing Agreement and the associated DEIR/EIS.

Sincerely,



Bill Emlen
Director, Solano County Department of
Resource Management

Enclosure

CC: Solano County Board of Supervisors
Rep. Mike Thompson
Rep. John Garamendi
Senator Dianne Feinstein
Senator Barbara Boxer
Senator Lois Wolk
Assemblymember Susan Bonilla
Assemblymember Jim Frazier
Assemblymember Mariko Yamada

**Comments of the County of Solano on
The Draft Bay Delta Conservation Plan (BDCP),
The Draft EIR/EIS for the BDCP Project (DEIR/EIS), and
The Draft Implementing Agreement
July 28, 2014**

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Both the DEIR/EIS and BDCP Documents Fail to Properly Distinguish Between Project, Impacts, and Mitigations

The format and content of the Bay Delta Conservation Plan (“BDCP”) and the Draft Environmental Impact Report/Environmental Impact Statement (“DEIR/EIS”) are governed by multiple statutes and their implementing regulations. As an environmental impact assessment document, the DEIR/EIS must comply with CEQA for use by California state agencies and must also comply with NEPA for use by federal agencies. The BDCP, as a habitat conservation planning document, must comply with the NCCPA and, to the extent it is intended to be approved as a HCP, the federal ESA. In addition, as to any component of the BDCP project that provides public benefits, the BDCP must comply with requirements established in the DRA in order for that component to be eligible for state funding. (Water Code, § 85320, subd. (b).) As to any component of the BDCP project that does not provide public benefits, that component would be ineligible for state funding due to the constitutional prohibition against gifts of public funds. The CEQA, NEPA, and federal ESA HCP processes are structured so that the various steps required by those processes occur sequentially; if the specified sequence is not followed, the process does not work as intended. Because the entire BDCP document is included as part of the DEIR/EIS, the various sequential processes established in each of these statutes must all be synchronized so that one process does not begin or end its course out of sync with the others.

DWR, a state agency, will be the first agency to take a project approval action on the BDCP project. As a state agency, DWR’s primary responsibility when conducting environmental review is to comply with CEQA. Under CEQA, state agencies are instructed to cooperate with federal agencies “to the fullest extent possible to reduce duplication” in the environmental review process, including preparing joint documents when possible. (CEQA Guidelines, § 15226.) The phrase “to the fullest extent possible” means that CEQA does not cede document preparation standards to NEPA. Therefore, to the extent the document formatting standards under CEQA differ from those established by NEPA, DWR is required to prepare an EIR that describes and evaluates its proposed project in the manner required by CEQA.

The CEQA Guidelines allow flexibility in document formatting, but recommend that each required element be covered in distinct sections of the EIR. (CEQA Guidelines, § 15120, subd. (a).) The Guidelines identify “Project Description” and “Alternatives to the Proposed Project” as separate elements of an EIR. (CEQA Guidelines, §§ 15123 & 15126.6.) Although the CEQ’s NEPA regulations suggest that a proposed action should be described in the same portion of an EIS as the project alternatives, those regulations allow for the proposed action to be described separately from the alternative when the federal agency preparing the EIS determines that there is a compelling reason to do so.

(40 CFR § 1502.10.) In this case, the formatting standards established in the CEQA Guidelines and to which DWR is subject provide a sufficiently compelling reason.

More generally, an EIR must cover each of the topics or elements specified in Article 9 of the CEQA Guidelines, either separated into distinct sections of the EIR or else clearly identified regarding where in the EIR each required element is discussed. (CEQA Guidelines, §§ 15120, subd. (a), & 15160; see *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (7/7/2014) xxx Cal.App.4th xxx.) These required elements of any EIR include a summary of the project and its consequences, a project description, a description of the project's environmental setting, consideration and discussion of the project's significant environmental impacts, discussion of the project's significant effects which cannot be avoided, consideration and discussion of proposed mitigation measures, consideration and discussion of project alternatives including the No Project Alternative, and a discussion of cumulative impacts. Each of these required elements has unique meaning and significance for the CEQA processes, and the critical distinctions between the various elements cannot be ignored. For example, if a portion of the project description is identified and presented in the EIR as a mitigation measure, then the EIR has likely failed to evaluate the full environmental impacts of the project as proposed. NEPA establishes similar requirements.

The HCP process draws a sharp and clear distinction between the underlying or "otherwise lawful" activity that will be the cause of incidental take, on the one hand, and the measures proposed by the incidental take permit applicant to minimize or mitigate the impacts of that incidental take, on the other. (16 USC § 1539, subd. (a)(1)(B) & (a)(2)(A)(ii).) For example, the opening paragraph of the Department of Interior's Habitat Conservation Planning Handbook ("HCP Handbook") states as follows:

The purpose of the habitat conservation planning process and subsequent issuance of incidental take permits is to authorize the incidental take of threatened or endangered species, not to authorize the underlying activities that result in take. This process ensures that the effects of the authorized incidental take will be adequately minimized and mitigated to the maximum extent practicable. (HCP Handbook, p. 1-1.)

The HCP Handbook describes the required process for preparing an HCP and identifies the following specific steps, as well as others, that should be performed in sequence in order to be performed correctly:

- The first step is identifying the impacts likely to result from the proposed incidental take. This first step includes multiple subtasks, including (a) delineating the plan area, (b) collecting biological data, (c) identifying the underlying "otherwise lawful" activities that are likely to result in incidental

