

**From:** Mona Walker <monaw@ccwd.org>  
**Sent:** Tuesday, July 29, 2014 1:49 PM  
**To:** BDCP.Comments@noaa.gov  
**Subject:** Comment Letter to BDCP on DEIR-DEIS  
**Attachments:** BDCP DEIR-DEIS Comments (7.29.14).pdf

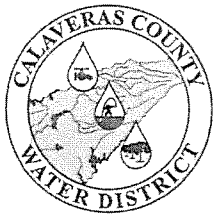
Good Afternoon,

Attached is a letter from the Calaveras County Water District to BDCP with comments to the Bay Delta Habitat Conservation Plan and Environmental Analysis (DEIR/DEIS).

Thank you.

Mona

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## CALAVERAS COUNTY WATER DISTRICT

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July 29, 2014

BDCP Comments

Ryan Wulff, NMFS

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

Thank you for the opportunity to review and comment on the Bay Delta Habitat Conservation Plan and Environmental Analysis (DEIR/DEIS) as released on 12/13/13. The Calaveras County Water District is an interested party to this process. The Calaveras County Water District supplies water to 12,800 customers within the County of Calaveras. We have monitored the BDCP efforts over the years and as time and resources permitted attended BDCP meetings.

The BDCP is a highly ambitious, complex and expensive proposal, that will significantly alter the flows, timing of flows, water quality and ecosystem of the Delta, and potentially the Delta watershed tributaries as well as San Francisco and San Pablo Bay. Additionally, the BDCP proposes to increase the reliability of exporter water deliveries from the State Water Project (SWP) and Central Valley Project (CVP). This will likely, significantly alter agricultural crop selections in export areas as well as hold implications for potential reduced water supply reliability for areas upstream of the Delta, due to uncertainty regarding future Delta water quality. In short, we believe BDCP's effects on California will be widespread in some cases, unanticipated and certainly not confined to the Delta. The sheer volume and complexity of the information in the report necessitated an extended review period (ending 7/29/14) and we appreciate the additional time permitted to our agency. Nonetheless, 34,000 printed pages of information posed a significant challenge to our modestly sized agency with limited resources.

BDCP faces a complex web of regulatory compliance standards, may produce numerous potential environmental consequences, all of which will be projected against the complex tapestry of socio-economic tensions. We have concerns that despite all the work carried out thus far; there may be unintended consequences to upstream agencies such as ours due to the re-ordering and operation of Delta conveyance and upstream reservoirs as well as alterations to Delta water quality. Changes resulting from the BDCP would not be temporary in nature. Indeed, the BDCP would set about a series of actions that would not just change conveyance and the Delta, but also potentially how much of the State Water Project and Central Valley Project facilities (reservoirs,

powerhouses and conveyance facilities) operate. These facilities presently hold exclusive responsibility for the maintenance of the Bay Delta Water Quality standards (State Water Resources Control Board Decision 1641).

The purpose of the Bay Delta Conservation Plan is to provide a comprehensive long-term strategy for the Sacramento - San Joaquin Delta that is consistent with the Sacramento-San Joaquin Delta Reform Act of 2009. Such a conservation plan, coupled with radically different and relocated conveyance facility (capacities of 3,000, 6,000, 9,000 and 15,000 cubic feet per second [cfs]) is capable of inflicting significant upstream impacts through shifts in reservoir operations as well as shifts in Delta water quality maintenance obligations from current parties to upstream water rights holders including but not limited to Pre-1914 and Area of Origin.

As we noted earlier changes from the BDCP would not be temporary in nature. Indeed, the BDCP would set about a series of actions that altered all major elements of the State and Federal Projects operations. The BDCP would also execute significant ecosystem restoration actions with the Delta that may in their own right require different flow regimes and quantities from upstream resources if they are to succeed.

In short, the project is not just an ecosystem restoration program (habitat conservation plan) but is more akin to a project that due to its purposes, requires a secure, reliable water supply to be identified - not just for export purposes - but for all ultimate purposes including environmental purposes. Therefore, it is critical that the EIR/EIS contain a comprehensive assessment of the amounts and sources of the water that will ultimately be required and committed to all primary supply and mitigation requirements of the BDCP. One of CEQA's primary purposes - offering the requisite full disclosure of impacts and actions - to decision makers, affected parties and the general public is confounded absent such information.

Such potential impacts require full disclosure to agencies such as ours so that we may make informed decisions regarding our position on the BDCP and assess potential redirected impacts to our water supplies, communities, economy and environment. Unfortunately in pursuit of such information our review of the subject environmental document exposed what may be fatal inadequacies.

**Project description, a robust comparison of alternative projects and compliance with key statutes -**

We do not believe that there is a clear "fixed" project description sufficient for the reader to determine what will occur if the project is approved either in the Delta, the export areas or upstream.

While the Delta tunnel alternative is presented in great detail, and the other alternatives are also described in some detail, there is no easily understandable side-by-side comparison of alternatives available to the reader. This does not comply with the necessary threshold of a robust examination of alternatives as required by the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA).

The environmental document should provide the reader with a clear understanding of what is proposed and what the direct, indirect and cumulative resulting environmental consequences of the project will be. Those facts should then be able to be compared to the other presented alternatives to further refine the reader's understanding of the choices and outcomes presented. Indeed, this proposal, which may spend billions in State funds, should provide the reader with a much clearer picture of the alternative compared to each other.

However, only the California Department of Water Resources identified a preferred alternative (Alternative 4) for the purposes of a CEQA examination. No alternative was identified by the federal lead agencies as being preferred for the purpose of NEPA analysis. This leaves the reader to speculate when/if the NEPA choice will be made in some fashion. We must assume that a chosen federal alternative would eventually be consistent with the CEQA alternative, as well as federal and state statutes.

Nonetheless, even with this there is uncertainty. The BDCP draft EIS/EIR notes that:

*"Identification of Alternative 4 as the preferred CEQA alternative is tentative only, and is subject to change as DWR and the CEQA responsible agencies, as well as the NEPA Lead Agencies, receive and consider public and agency input on this EIR/EIS. It is therefore possible that the final version of the BDCP may differ from Alternative 4 as described herein, either because Alternative 4 itself was refined, because another alternative was determined to be preferable, or because the Lead Agencies, in response to input, developed a new alternative with some features from some existing alternatives and other features from other existing alternatives."*<sup>1</sup>

Further complicating any reasoned analysis is that while some aspects remain fixed, others vary significantly. For example, the "high outflow" proposal is dependent upon a highly ambitious and as yet non-existing vibrant water transfer scheme involving upstream resources, which are not CVP/SWP water. There is little tangible evidence that the state is doing anything to improve the conditions to facilitate water transfers. Indeed in the opinion of some in the water industry, the DWR has made the possibility of water transfers (except for pre-1914 water rights) more difficult.

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<sup>1</sup> BDCP Draft EIR/EIS Section 3.1

The same proposal makes the presumption that the (Federal) Central Valle Project (CVP) would have imposed some sort of obligations that are not defined or even bracketed as bookends for the reader.<sup>2</sup>

Additionally, the most recent Bay Delta Water Quality Control Plan implementation decision by the State Water Resources Control Board (D-1641) is properly analyzed as expected required flow standards dependent upon water year type. While the SWRCB has released a draft Substitute Environmental Document (SED) in support of Phase I of a Bay Delta Implementation, within the BDCP Alternative 8 jumps ahead to a flow on the San Joaquin River of 55% from the time period of January to June. Such flows are at this time speculative and therefore improper in this analysis, and further confound the reader's ability to understand actual secondary impacts to upstream resources. The question arises as to whether the 55% unimpaired flows are part and parcel of the BDCP. If not, then what would the flows need to be to support BDCP supply, restoration and water quality purposes? How would that water be obtained?

The BDCP lays out 15 so called "Action Alternatives" with varying physical plants and diversion capacity. The preferred alternative (only in CEQA analysis) is #4, which is claimed to have a 9,000 cfs, but the tunnel design could accommodate 15,000 cfs. Despite being described as alternatives the net effect of 14 of the 15 alternatives presented is to create new upstream conveyance facilities that would divert water away from the existing Delta to be exported to the south.

For the BDCP to be consistent with the DSC's Delta Plan the BDCP must demonstrate that each alternative is consistent with CWC §85021.<sup>3</sup> Therefore, there should be an underlying theme for each alternative that demonstrates a reduced reliance on the Delta through a vigorous investment throughout CVP/SWP Delta service areas in alternate sources of water. Those alternatives are described in the Draft State Water Plan (Update 2013) as Resource Management Strategies<sup>4</sup>. Such strategies include but are not limited to: a) agricultural water use efficiency; b) urban water use efficiency; c) system reoperation; d) water transfers; e) conjunctive management; f) desalination; g) recycled water; h) surface storage; i) groundwater remediation/aquifer remediation; j) urban storm water runoff; k) land use planning and management; l) recharge area protection and; m) watershed and forest management.

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<sup>2</sup> BDCP Draft Plan Section 3.4

<sup>3</sup> "The policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. Each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts."

<sup>4</sup> California Water Plan Update, 2013, Volume 3, Ca. Dept of Water Resources

To achieve the objectives of the DSC's Plan and comply with CWC §85021, any entity receiving water from the proposed BDCP should also have complied with all requirements of Agricultural Water Management Planning (CWC §10608 et seq.) and/or Urban Water Management Planning (CWC §10610 et seq.). Absent evidence of these underlying foundational elements none of the alternatives presented in the BDCP including the no action alternative, would comply with existing statutory requirements.

We note that the EIR/EIS provides an overwhelming level of detail that unfortunately is more voluminous than it is helpful. The reader has a very difficult time in discerning the issues of significance between the various iterations. It would be much more helpful and informative if the "how's" relating to the alternative were made more clear. For example, Alternative 4 (CEQA preferred project) contains a decision tree with for various operational branches. The decisions that make up the decision tree are to be governed through ongoing research. However, there are no plans for research presented in the discussion of alternatives, or that we could determine anywhere in the document. This sort of issue should have been more easily determined with a better prepared and edited document.

The ability sort through the actual implications and impacts of the various alternatives so as to be able to offer helpful suggestions is frustrated by the lack of usable information in an understandable format, for each of the alternatives. We urge that this be corrected in the next iteration of the CEQA/NEPA analysis.

Finally, we suggest that the evidence supporting the preferred project alternative be gathered in a clear and illustrated summary in the revised EIR/EIS. This should be understandable to the lay reader but supportable in citation with compelling evidence that the proposed project alternative is the superior solution. Currently, one has to "dig" through Section 31.3 to find some information relevant to this issue. Please, use readily understandable graphs, charts, maps and other visual aids to summarize the evidence to the reader, and make reference to them by page number.

#### **Adaptive Management & Regulatory Assurances-**

Adaptive Management is a key element for successful management in the 50-year time frame of the BDCP that can adapt management strategies in an informed way, to account for the various outcomes possible in the BDCP. In short, for BDCP to succeed there must be a vibrant adaptive management plan. The BDCP EIR/EIS however, does not provide a level of detail of an adaptive management process. This is not a small matter, as the BDCP must be consistent with the Bay Delta Management Plan as prepared by the Delta Stewardship Council (DSC). The (state) law requires the DSC to use *"...a science-based, transparent, and formal adaptive management strategy for ongoing ecosystem restoration and water management decisions"* CWC §85307(f).

While adaptive management is described in Section 3.6 what is presented is not a plan that actually implements an adaptive management process for BDCP utilization. All of that is to be done sometime in an undefined future, by an unnamed "Adaptive Management Team". Ironically, the "Team" is eventually to be made up not of scientists but managers. The nexus between science and the Team is not indicated in the BDCP. Given the complexity of the Delta ecosystem and the various aspects of operations and conservation measures that could interact with that ecosystem, this omission would appear to be a fatal flaw to a program advertised as adapting to change. The reader is left in doubt as to how, or even if adaptive management will be carried out, who may actually do it, and what their process will be. Our opinion is that this is at least three uncertainties too many.

Adaptive management is a type of assurance, that if circumstances arise or if outcomes are other than anticipated, there will be a competent, scientifically driven management process that will keep the BDCP on a positive trajectory towards success. As an assurance adaptive management must be as much a laboratory (in learning how to improve the BDCP's Conservation Measures [CM's]) as well as an implementation program. To that end, the CM's should more properly presented as a proposed hypothesis, supported by ongoing experiments or tests, which in turn are either modified to meet the objective, become fully implemented as management actions, or abandoned as unworkable.

There should also be established "failing" metrics, wherein if a particular CM is not performing at level X (for example) then it would "trigger" an adaptive management program response. Only if such monitoring, analysis and response is occurring on a regular basis as part of the adaptive management program, and reviewed and acted upon by a competent Adaptive Management Team, can it possibly hope to keep the BDCP on track over the anticipated 50-year program time-frame.

We are particularly concerned regarding the unforeseen consequences that may result from implementation of the BDCP. The Delta ecosystem is a complex web of interrelated components that may in turn influence each other as a result of a "trigger" action that is a by-product a project action.

The changing circumstances (Chapter 6.4.2) that are reasonably predictable and that may result in adverse consequences to the land and waterways of the Delta ecosystem may in turn necessitate response either as an emergency response (levee failure, floods, man-made acts of mayhem, wildfires, toxic waste spills, extended serious drought, disease, etc.) or changes in management protocols due to new information (adaptive management). Unfortunately, fish and wildlife agencies are barred from requiring the

commitment of new resources (land, water, funds) outside what is explicitly covered in the BDCP unless the Authorized Entities agree to support such actions (Chapter 6.4.3). We therefore must assume that in the absence of such support the state and federal governments would look to other parties, such as agencies holding upstream water rights, to take corrective actions adequate to resolve the problem. If this is not the case then please provide detailed assurances as to how BDCP assurances regarding State Water Resources Control Board authorities to project applicants are also inclusive and offer protections to other water rights holders in the Delta watershed, lest there be redirected impacts to upstream water resources currently dedicated to beneficial uses.

### **Conflicting Objective/Purpose with Statute and lack of Long Term water supply-**

The policy of the State of California is to reduce dependence upon the Delta (CWC §85021). This clearly worded section of the water code, would lead any reader to assume therefore, that in the future, dependence upon Delta water supplies would be maintained at their present level or reduced, by any project consistent with statute. Ironically, that is not the case with BDCP.

The proposed BDCP objective regarding exports from the Delta watershed is to increase said exports. Specifically, the CVP and SWP combined exports out of the Delta in any one year have never exceeded 6.3 million acre feet (MAF).<sup>5</sup> Therefore, applying CWC §85021, one would assume Delta exports would either remain no higher than 6.3 MAF per year, or be reduced to some lower number. Instead the BDCP aims to achieve "full contract amounts"<sup>6</sup> delivered, which would total 7,432,883 per year, as derived from the U.S. EPA's estimates.

This puts the BDCP purpose and state statute on an apparent collision course. Therefore it would be prudent to address this in some detail in the DEIR, it is required to be addressed in the DEIS<sup>7</sup>. Thus far the proponents (applicants) for the BDCP have not provided evidence in the administrative record that they have as either a collection of contractors (strategically) or at the local and regional level to reduce their reliance upon the Delta. Indeed the justification for the BDCP proposed alternative appears to be to the contrary of this statutory requirement.

Indeed, the "finding" of the extra 1.1 MAF/Year within the sources of water within the Delta, are not identified in the EIR/EIS. There is a presumption that the water will be available for diversion to export, and further that this can be done in compliance with the existing (and therefore only salient) SWRCB Water Quality Control Plan and the

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<sup>5</sup> Letter dated June 2010, from USEPA, Region IX to USBR, NMFS and USFWS

<sup>6</sup> IBID

<sup>7</sup> CEQ regulations, at 40 C.F.R. Section 1506.2(d)



Board's Decision 1641. We find no evidence in the document to support this line of thinking but we do find evidence in the record elsewhere to the contrary.

*"Finally, as a straightforward policy matter, EPA questions the goal of increasing exports out of a severely distressed estuary.*

*The California Supreme Court, when It evaluated appeals of the CALFED Bay Delta Program, noted that the Program was an experiment.*

*"The CALFED Program is premised on the theory, as yet unproven, that it is possible to restore the Bay-Delta's ecological health while maintaining and perhaps increasing Bay Delta water exports through the CVP and SWP. If practical experience demonstrates that the theory is unsound, Bay-Delta water exports may need to be capped or reduced." In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings, 43 Cal. 4th. 1143 (2008) (emphasis added).*

*The Court was looking at a program that was developed during the 1990's and adopted in 2000. The intervening ten years have not proved the theory accurate, and, in fact, seem to point the other way. EPA does not believe that we can attain the goal of a sustainable estuary if we are simultaneously trying to export an additional 1 million acre-feet from that estuary.*

*We emphasize that we are not raising this issue of an oversubscribed Delta as an indirect attack on potential changes in Delta conveyance. The real lesson of the past ten years of science is that the current conveyance for Delta exports is neither reliable nor sustainable, for either environmental or water supply purposes. We believe that piggybacking on the conveyance problem to demand significantly increased exports out of the Delta risks delaying an expeditious response to this immediate and difficult conveyance problem."*<sup>8</sup>

The fundamental question of consistency with state and federal statute, and treating the proposal in the same fashion as any other project requiring a water supply sustainable for at least 20 years, is needed. The short question, hanging unanswered in the DEIR/DEIS is where is the water coming from to increase exports by up to 1.1 MAF/Year and simultaneously maintain water quality objectives within the Delta Water Quality Control Plan? This must be answered in the revision to the DEIS/DEIR.

### **Moving Baseline & Varying levels of Analysis-**

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<sup>8</sup> Letter dated June 2010, from USEPA, Region IX to USBR, NMFS and USFWS

The California Environmental Quality Act and the National Environmental Policy Act each have different requirements particularly insofar as “baseline”.<sup>9</sup> That is, comparing what is proposed to what existing conditions are. Furthermore, CEQA and NEPA differ on what is considered the subject matter warranted for analysis. This is important as one of the outcomes of the BDCP is both a change in the timing and amount of water taken out of the Delta (bypassed) as well as the resulting shifts in salinity within the Delta and attendant obligations to meet SWRCB imposed salinity standards.

Furthermore, some portions of the proposal are carried out at a project level analysis level (construction of infrastructure such as conveyance facilities and operations thereof) while the long-term and potentially “long reaching” environmental outcomes resulting from the BDCP conservation strategy are only carried out at a programmatic level with much less detail. Despite the likely changes to upstream SWP, CVP and other reservoir operations to meet changes in Bay Delta Water Quality objectives and “fill” the ambitious water transfer scheme, no analysis is provided of changes to upstream reservoirs with non-CVP/SWP water rights holders.

This becomes increasingly hard to follow when the proposed project assumes certain things about baseline. The June 2009 Biological Opinion (BiOp) for salmonid species from National Marine Fisheries Service (NMFS) and the December 2008 BiOp for the delta smelt from the United States Fish and Wildlife Service (USFWS) are both included within baseline conditions. While that is understandable the “moving” baseline does not include implementation of certain BiOp requirements. In particular, the DEIR/DEIS does not assume full implementation of the “Fall X2” salinity standard.

As it turns out, the Fall X2 standard was not included in the baseline because of ongoing legal challenges and other factors. The DWR apparently unilaterally determined implementation of Fall X2 was not certain. This “uncertainty finding”, together with CEQA’s focus on existing conditions (baseline), led DWR to exclude Fall X2 from the analysis baseline conditions. However, for NEPA purposes, and absent a DWR imposed determination, Fall X2 was included in the Baseline for assessing environmental effects of the action alternatives. This is to say the least confusing to the reader. One finds it hard to draw conclusions regarding differences. Instead of comparing apples-to-apples, it is more akin to comparing apples to fog. It is permissible to utilize a so-called “projected baseline” under CEQA, but specific justification evidence must be provided by the Lead Agency within the administrative record.<sup>10</sup>

We urge the state and federal governments to jointly revise and reissue the DEIR/DEIS so as to adequately provide the decision makers, the directly and potentially affected parties, and the general public with the information necessary to understand the costs,

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<sup>9</sup> BDCO Draft Plan Section 5-56


<sup>10</sup> *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439

tradeoffs, the severity of the redirected impacts as well as the assurances in governance and adaptive management that are needed for the program to be a success. Further, we urge that the revised documents be more easily read, through a thorough editing process, and summary sections to assist the reader.

We look forward to reviewing the revised documents and providing comments in the future.

Sincerely,

CALAVERAS COUNTY WATER DISTRICT

A handwritten signature in black ink, appearing to read "Larry Diamond", is written over a horizontal line.

Larry Diamond  
Interim General Manager

cc: CCWD Board of Directors