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July 29, 2014

Secretary Sally Jewell
 United States Department of the Interior
 1849 C Street, NW
 Washington, DC 20240

Secretary John Laird
 California Natural Resources Agency
 1416 Ninth Street, Suite 1311
 Sacramento, CA 95814

Re: Comments on the Public Draft EIR/EIS for the Bay Delta Conservation Plan

Dear Secretary Jewell and Secretary Laird:

This letter describes the County of Yolo's ("County") principal concerns with the Draft Environmental Impact Report/Environmental Impact Statement ("Draft EIR/EIS") for the Bay Delta Conservation Plan ("BDCP"). Additional comments are also included in a table enclosed with this letter (**Attachment 1**).

The County recognizes the inherent difficulty of preparing a legally adequate EIR/EIS for a complex program like the BDCP, with many elements described only conceptually for implementation throughout a large geographic area. Perhaps as a consequence of these characteristics of the BDCP, the Draft EIR/EIS is both tremendously voluminous—nearly 40,000 pages in length—and very difficult to understand. Beyond the problems presented by its sheer volume and complexity, however, the Draft EIR/EIS is also incomplete and does not properly inform decision-makers and the public about the potentially significant environmental effects of the BDCP—a fundamental requirement of both the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA"). This basic deficiency manifests itself repeatedly throughout the document and has numerous apparent causes, ranging from the misapplication of programmatic environmental review standards to simply using data that is outdated, wrong, or otherwise faulty.

The County's comments focus on these shortcomings and, where possible, offer recommendations for consideration. At least some of the problems identified in the County's comments will require further analysis and—in all likelihood—substantial revisions to the Draft EIR/EIS and recirculation for additional public review. The County reserves the right to provide additional comments on the legal adequacy of the Draft EIR/EIS (as well as the Response to Comments) prior to a final decision on adoption of the BDCP. The County also incorporates

herein by this reference its comment letters dated April 16, 2012 (**Attachment 2**) and July 12, 2013 (**Attachment 3**) on administrative drafts of the EIR/EIS, as well as its April 5, 2010 letter identifying several key issues for consideration with regard to Conservation Measure 2 of the BDCP (**Attachment 4**).

I. GENERAL ISSUES.

A. The Draft EIR/EIS Incorrectly Defers the Analysis of Many Issues By Misapplying Programmatic Environmental Review Standards.

In preparing these comments, the County fully considered the “programmatic” nature of the Draft EIR/EIS with respect to Conservation Measures (“CM”) 2 through 22 of the BDCP. Just like a project-level EIR, however, a programmatic EIR must “give the public and government agencies the information needed to make informed decisions, thus protecting not only the environment but also informed self-government.”¹ In short, the “degree of specificity required in an [EIR] will correspond to the degree of specificity involved in the underlying activity which is described in the [EIR].”² The level of detail in the Draft EIR/EIS must therefore reflect—at a minimum—the level of detail in the BDCP. Similarly, both project-level and programmatic environmental analyses must include “accurate, stable, and finite” project descriptions.³ The Draft EIR/EIS for the BDCP, accordingly, must identify and consider foreseeable significant environmental impacts that will result from the actions authorized by its adoption.

As the County asserted in its July 12, 2013 comment letter addressing a preliminary version of the Draft EIR/EIS, projects necessary to implement the BDCP and related environmental effects should receive full environmental review at the outset, as part of the EIR/EIS on the BDCP, rather than in separate documents that may follow years (and in some cases, decades) later. The County previously explained as follows:

In particular, the County believes the EIR/EIS must specifically analyze the impacts of CM2 given the defined nature of certain biological objectives in the BDCP. . . . CM2 presents a “plan of action” for realizing these objectives within the Yolo Bypass. More than enough information exists for the EIR/EIS to include specific information about potential impacts using the acreage data, modeling, and other presently available information regarding the seasonal floodplain restoration element of CM2. Indeed, the draft EIR/EIS includes some specific information on such impacts based on a UC Davis study . . . commissioned by Yolo County. This approach illustrates that it is presently possible—and thus, required as a matter of law—to include a much more detailed analysis of potential environmental impacts of CM2 in the draft EIR/EIS. (See discussion at p. 3 of Attachment 3 hereto).

¹ In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings, 43 Cal.4th 1143, 1162 (2008).

² In re Bay-Delta, 43 Cal.4th at 1176, citing CEQA Guidelines § 15146.

³ Rio Vista Farm Bureau Center v. County of Solano, 5 Cal. App. 4th 351, 370 (1992).

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These comments apply equally to the Public Review Draft EIR/EIS for the BDCP with respect to CM2.

Even beyond the context of CM2, the Draft EIR/EIS relies far too heavily on programmatic standards as justification for truncating the scope of environmental review. In a report to the Delta Stewardship Council entitled "How the Bay Delta Conservation Plan Addresses the Delta Reform Act's Goals and Objectives" (May 2014) (the "Arcadis Report"), the consulting firm Arcadis advised the Council that "[t]he programmatic nature of conservation measures inhibits fully understanding and better mitigating impacts to agriculture, recreation, community character, and historical and archaeological resources in the Delta." (Arcadis Report at p. 4.) In its "Key Recommendations for Consideration," the Arcadis Report says "[t]he BDCP should more thoroughly identify impacts to agriculture, recreation, community character, and historical and archaeological resources in the Delta, and offer specific, feasible, and enforceable mitigation measures."

These comments by an impartial, highly experienced consulting firm underscore the validity of the County's concerns with the programmatic approach in the Draft EIR/EIS. Throughout the document, detailed consideration of the potential impacts of CM2-22 on agriculture and other resources is improperly deferred to later documents. Specific instances of this are noted throughout the County's comments in the table accompanying this comment letter (see Attachment 1).

2. The EIR/EIS Baseline is Unclear, Outdated, and Otherwise Flawed.

Similar to the issues raised above, the County has previously objected to the use of an outdated "existing conditions" baseline for the Draft EIR/EIS that is tied to the February 13, 2009 publication of a Notice of Preparation ("NOP") for the EIR/EIS. The County's basic assertion was expressed in its July 2013 comment letter, as follows:

CEQA Guidelines Section 15125(a) provides that the appropriate baseline for environmental review is "normally" the conditions existing at the time the notice of preparation ("NOP") is published. Presumably on this basis, the draft EIR/EIS states that it generally uses a baseline tied to the 2009 date of publication of the NOP. This approach is not reasonable for a project like BDCP given its lengthy and tremendously complex planning and environmental review process, as well as the overall timeframe for implementation. Among other flaws resulting from application of the outdated baseline, the EIR/EIS does not appear to consider the Central Valley Flood Protection Plan (adopted in mid-2012) ("CVFPP"). Coordinating the implementation of BDCP and CVFPP, however, will be a very real issue for many years to come, and it deserves consideration in the EIR/EIS. The County thus urges consideration of an updated baseline as work on the EIR/EIS proceeds. (See discussion at p. 3 of Attachment 3 hereto.)

These comments remain applicable to the Draft EIR/EIS with respect to its analysis of CM2 and more broadly. The very fact that CEQA Guidelines § 15125(a) uses the word "normally" suggests that there are circumstances where a baseline tied to conditions existing as of the NOP

release date is not appropriate. As expressed in Save our Peninsula Committee v. Monterey County Board of Supervisors, 87 Cal. App. 4th 99, 125 (2001), “[i]n some cases, conditions closer to the date the project is approved are more relevant to a determination of whether the project’s impacts are significant.” Other courts have reached similar conclusions:

Administrative agencies not only can, but should, make appropriate adjustments, including to the baseline, as the environmental review process unfolds. No purpose would be served, for example, if an agency was required to remain wedded to an erroneous course and could only make a correction on remand after reversal on appeal. (Citizens for East Shore Parks v. California State Lands Commission, 202 Cal. App. 4th 549, 563 (2011)).

On these grounds, the baseline for the Draft EIR/EIS should have been adjusted (with corresponding changes to the text of its substantive chapters) to include conditions existing close in time to its release. The failure to use accurate and current data, including updated modeling and other information, constitutes a failure to proceed in the manner required by law.⁴ This is particularly true for the Central Valley Flood Protection Plan, as the superficial treatment of that program in the Draft EIR/EIS and its implications for flood protection, aquatic and terrestrial species, agriculture, and public safety presents a key example of the need for an updated baseline rather than one that is nearly five and a half years out of date.

The County thus requests that the Draft EIR/EIS include an updated baseline, consistent with the foregoing authorities, and that Chapter 4 (entitled “Approach to Environmental Analysis”) be substantially revised to fully and clearly explain the baseline used in the chapters that follow.

3. The Draft EIR/EIS Demonstrates that the BDCP Fails to Comply with the Delta Reform Act.

Of relevance to the BDCP, the Delta Reform Act dictates that the “coequal 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.” (Public Resources Code § 29702(a); Water Code § 85054.) This concept is not merely an afterthought. Rather, it appears repeatedly throughout the Delta Reform Act and shapes the basic responsibilities of the Delta Stewardship Council, Delta Conservancy, and the Delta Protection Commission.⁵ As a matter of law, an overarching strategy for achieving the coequal goals--which the BDCP certainly is--must therefore assure the protection and enhancement of these fundamental values and other

⁴ “If an EIR fails to include relevant information and precludes informed decisionmaking and public participation, the goals of CEQA are thwarted and a prejudicial abuse of discretion has occurred.” Save our Peninsula, 87 Cal. App. 4th at 128; see also Sierra Club v. State Board of Forestry, 7 Cal.4th 1215, 1236 (1994); Fall River Wild Trout Foundation v. County of Shasta, 70 Cal. App. 4th 482, 492 (1999); County of Amador v. El Dorado County Water Agency, 76 Cal. App. 4th 931, 954 (1999); Public Resources Code § 21005(a).

⁵ In addition to Public Resources Code § 29702(a) and Water Code § 85054, language reflecting this concept also appears at (among other places) Public Resources Code §§ 32320(i) and 32322(a), as well as Water Code §§ 85020(b) and 85301.

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objectives "inherent in the coequal goals" in the course of its implementation. (Water Code § 85020.)

The Draft EIR/EIS offers no such assurances. Appendix 3.I to the Draft EIR/EIS simply notes the requirements set forth above, asserts that the BDCP will contribute to the coequal goals, and says nothing substantive about how it "protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place." The balance of the Draft EIR/EIS similarly fails to fully analyze related issues of concern, often dismissing the need for meaningful analysis on the basis that the level of review is "programmatic" (for CM2-22) or because mitigation measures (often legally deficient themselves) might purportedly reduce or eliminate certain impacts. The following sections of this letter identify a handful of related issue areas of greatest concern to the County.

II. COMMUNITY IMPACTS.

A. Community and Land Use Impacts Support Elimination of "West Alignment" Alternatives.

Particularly in the Clarksburg area (and for traffic and transportation infrastructure, within West Sacramento), the Draft EIR/EIS provides some analysis of environmental impacts that will affect community character and quality of life. The comment table enclosed with this letter provides detailed comments on many of these topics. Community noise, groundwater, and traffic issues are addressed specifically below, with noise also receiving focused consideration in an independent analysis performed for the County by Ascent Environmental (**Attachment 5**).

As a preliminary matter, however, the County is compelled to address certain land use issues described in Chapter 13 of the Draft EIR/EIS in connection with the west alignment alternatives (Alternatives 1C, 2C, and 6C). As shown in Table 13.4 of the Draft EIR/EIS, the west alignment alternatives conflict with--and will likely require the removal of--far more homes and structures than Alternative 4 or any of the other east alignment alternatives. For instance, each of the west alignment alternatives conflicts with an estimated 194 homes and 726 structures overall. By comparison, the east alignment included in Alternative 4 (the "preferred alternative") will conflict with only 19 homes and 81 structures overall. While even these figures are significant, they make clear that the west alignments will affect nearly 10 times more homes and other structures than Alternative 4. Other east alignments have the potential to affect considerably more homes and structures than Alternative 4, but even the worst of these (Alternatives 1B, 2B, and 6B) impacts only about 50-60 percent of the number of homes and structures that would be affected by the west alignments.

The temporary and permanent conversion of farmland is also considerably greater under the west alignments than under Alternative 4 and some of the other east alignments. For example, under Alternative 1C, an estimated 3,170 acres of farmland in Yolo County will be temporarily converted due to construction impacts and an additional estimated 13,014 acres of farmland will be permanently converted due to conveyance infrastructure and related facilities. Much of this land is prime farmland, and about half of it is currently subject to Williamson Act contracts. As shown in Table 14-8 of the Draft EIR/EIS, however, Alternative 4 will convert only an estimated

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1,315 and 4,975 acres of farmland temporarily and permanently--about 1/3 of the amount that would be affected by any of the west alignments.

On these grounds alone, the west alignments should be dismissed from consideration. That said, even if Alternative 4 or another east alignment is chosen, community impacts within Clarksburg and West Sacramento (traffic/roads) will be significant. Several key community concerns and issues relevant to the Draft EIR/EIS--including but not limited to Alternative 4 and other east alignments--are discussed in subsections B-D, below.

B. Community Noise Impacts are not Properly Characterized.

Under Alternative 4 (the preferred alternative), the Draft EIR/EIS indicates that BDCP intake construction is expected to have significant noise impacts on 110 parcels (including 9 residential parcels) during daytime hours, and 179 parcels (including 70 residential parcels and the Clarksburg Middle School) during nighttime hours. Yet even these figures may underestimate actual noise impacts. As explained in the Ascent Environmental memorandum enclosed herewith, the noise standards employed in the Draft EIR/EIS do not appear to be entirely appropriate for characterizing noise impacts on sensitive receptors such as small rural communities. The accuracy of noise attenuation calculations and assumptions (e.g., the use of "soft ground" in calculating attenuation, rather than attenuation rates based on actual physical conditions) also appears to understate the level of noise impact and the number of residential parcels and other sensitive receptors that may be impacted. Further, the mitigation measures proposed to address traffic-related noise are insufficient and may not lead to any reduction in noise impacts.

The County respectfully requests a response to each comment raised in the Ascent Environmental memorandum, and incorporates that memorandum herein by this reference.

C. Community and Agricultural Groundwater Impacts Require Further Analysis and Enhanced Mitigation.

The Draft EIR/EIS describes groundwater impacts resulting from construction and operation of the new conveyance facilities (i.e., intakes, pipelines/tunnels, forebays), primarily due to dewatering activities that facilitate construction. Groundwater impacts resulting from construction are a potential issue in the Clarksburg area, though to a considerably lesser extent (under Alternative 4 and other eastern alignment alternatives) than in Sacramento County. The Draft EIR/EIS notes that in some instances, well yields may be affected substantially and shallow agricultural or domestic wells "may not be able to support existing land uses" while dewatering is occurring.

As explained in the attached comment table, the Draft EIR/EIS does not appear to fully account for the highly variable nature of groundwater aquifers. It instead assumes effects will be distributed uniformly outward from the dewatering operation. In reality, the effects will likely vary greatly across affected aquifers and potential effects in Clarksburg could be more (or less) significant than described in the Draft EIR/EIS. This factor is an important limitation on the accuracy of the analysis in the Draft EIR/EIS and should be explained clearly and fully. Much

more local involvement in developing and implementing related monitoring and mitigation is also necessary and appropriate.

D. Local Traffic and Road Mitigation Measures are Inadequate.

The Draft EIR/EIS devotes considerable attention to traffic impacts—including increased vehicle trips and reduced pavement integrity—during the construction phase of BDCP. Construction traffic impacts will be significant in West Sacramento and on some roads near the town of Clarksburg. In some instances, road segments will operate at "unacceptable" levels of service for 9-13 hours each day during construction (e.g., Industrial Blvd./Lake Washington Blvd., from Harbor Blvd. to Jefferson Blvd., and Jefferson Blvd. at West Sacramento City Limits to Courtland Road). Several local road segments will also experience significant levels of pavement deterioration due to construction traffic, requiring repairs or reconstruction.

The mitigation measures proposed to offset these impacts are merely run of the mill "fair share" provisions that purport to obligate the BDCP proponents to pay for part of related road improvement, repair, and reconstruction costs, with local governments expected to contribute the remainder. Needless to say, in many instances this will prove infeasible.

III. OTHER SPECIFIC ISSUES.

A. Agriculture and Agricultural Economic Impacts.

The County has previously expressed a wide range of concerns with the agricultural and agricultural economic impacts of BDCP and the treatment of those issues in earlier versions of the Draft EIR/EIS. (See Attachment 2 at p. 3, and Attachment 3 (Attachment 1 thereof).) Similarly, County staff have commented on a draft discussion paper on "BDCP and Delta Farmland." (Attachment 6 hereto). These concerns remain applicable to the current Draft EIR/EIS.

With regard to agricultural impacts, the Draft EIR/EIS continues to sidestep virtually all analysis of CM2-22 by referencing its "programmatic" treatment of those components of the BDCP. The following statement is typical of the analysis in Chapter 14 (Agricultural Resources):

The new inundation schedule [for CM2] could substantially prevent agricultural use of these lands. The amount of agricultural land potentially affected by these and related activities (up to 17,000 acres) suggests the potential for an adverse effect on agricultural resources; however, the extent of these effects is unknown at this point and will be analyzed in forthcoming documents (Draft EIR/EIS, Ch. 14, p. 14-55.)

Certainly, the potential for adverse effects is more than a mere "suggestion" that can properly be deferred for future analysis. As explained in the County's discussion of programmatic environmental review, above, CEQA Guidelines § 15146 states that the "degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity

