

From: Murray, Beth <BMurray@sandiego.gov>
Sent: Tuesday, July 29, 2014 4:46 PM
To: BDCP.comments@noaa.gov
Cc: Razak, Halla; Pieroni, Cathleen
Subject: BDCP Comment Letter from the City of San Diego
Attachments: BDCP Comment Letter from the City of San Diego.pdf

Please see attached comment letter from the City of San Diego.

Regards,

Beth Murray, Program Manager
Management Support
Public Utilities Department
MOC II, 9192 Topaz Way | MS 901 | San Diego, CA 92123
Ph. (858) 654-4262 | Email: bmurray@sandiego.gov



"Quality, Value, Reliability - In Every Drop!"



BDCP1724

THE CITY OF SAN DIEGO

July 29, 2014

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

Dear Mr. Wulff:

Subject: BDCP Comments

On behalf of the City of San Diego's Public Utilities Department (San Diego), I wish to submit the following comments related to the joint Draft Environmental Impact Report and Draft Environmental Impact Statement prepared by the U.S. Department of Interior Bureau of Reclamation (Reclamation), U.S. Fish and Wildlife Service, the U.S. Department of Commerce, National Oceanographic and Atmospheric Administration, National Marine Fisheries Service, and the California Department of Water Resources for the proposed Bay Delta Conservation Plan (BDCP). The proposed BDCP is truly monumental in its vision – California and the United States are to be commended for taking this project forward for consideration.

San Diego currently imports approximately 85 percent of its water supplies from the Colorado River and State Water Project (SWP). As the largest member agency of the San Diego County Water Authority (Water Authority), San Diego is paying approximately 40 percent of the cost to bring online 50,000 acre-feet per year of desalinated seawater by 2015. Additionally, San Diego is moving forward with plans to purify its recycled water for potable purposes. By 2035, over a third of San Diego's future drinking water demands are anticipated to be met with locally produced purified water.

The San Diego region is doing everything it can to diversify and fortify our collective water supply portfolio while minimizing imported water deliveries from the SWP. We have recently seen the cost of purchasing imported water double every ten years. Water affordability in the urban area's disadvantaged community (DAC) is an issue with which we struggle. A disadvantaged household in San Diego is already paying approximately \$2,000 an acre-foot for their water. The proposed cost of the BDCP would further increase water rates by 20 percent or more, leading to even greater affordability issues for our ratepayers.

With these general concerns in mind, San Diego supports the co-equal goals of an enhanced Delta ecosystem and enhanced water export reliability. With the resolution of the following general concerns and support for firm commitments by the SWP individual contractors, we are prepared to support the advancement of the Bay Delta Conservation Plan. From our perspective, the greatest risk to cost increases is the potential rolling off of anticipated project partners due to the project's expense, leaving San Diego with a disproportionate share of the cost as compared to that which is envisioned at this time. Project partners need to demonstrate a firm commitment upfront before the project is authorized.



Public Utilities Department

9192 Topaz Way • San Diego, CA 92123-1117

GENERAL CONCERNS

1. **Financial Aspects.** Chapter 8 lacks sufficient detailed information to allow individual agencies to perform their own cost-benefit analysis. With this information, individual SWP contracting agencies should be able to make firm decisions as to whether or not they wish to commit to taking the water made available by the BDCP. With that commitment, the SWP contractors will be better able to move forward with their negotiations related to how to assure continued payment for BDCP conveyance projects. The final BDCP should detail "step-up" provisions if individual water contracts default on their funding obligations. Accompanying those provisions should be a legal analysis of the viability of relying on the State's general fund as security for project debt. San Diego's clear concern is that its ratepayers will be left paying a disproportionate share of the conveyance projects if abandoned by other agencies due to its initial expense.
2. **Draft Implementing Agreement.** The draft Implementing Agreement, dated May 30, 2014, is intended to establish how the various federal, State, and certain SWP contractors (Authorized Entities) will work together cooperatively towards achieving the BDCP's various financial and implementation obligations. Our review of the draft Implementing Agreement finds insufficient clarity with regard to how these legally binding obligations will be made and the timeframe in which they will be made. The final Implementation Agreement should establish the specific commitments of individual SWP or Central Valley Water contractors participating in the BDCP. Also, the draft Implementing Agreement needs to better outline how federal and State funding will be assured over the entire implementation schedule of the BDCP.

The member agencies of the Water Authority, including the City of San Diego, have a very large collective stake in the success of the BDCP. As such, we believe that the Water Authority should be allowed a seat of its own in the various planning and negotiation efforts at which the Metropolitan Water District of Southern California (MWD) is currently representing our interests. We support the work of MWD to advance the BDCP and we also support the work of the Water Authority to thoroughly vet the complex array of engineering and financial decisions presented in the draft BDCP, Implementing Agreement, and all future documents governing the advancement of this project.

Thank you for this opportunity to comment. If you have any questions or concerns, please feel free to contact Cathleen C. Pieroni at 858-292-6424.

Sincerely,



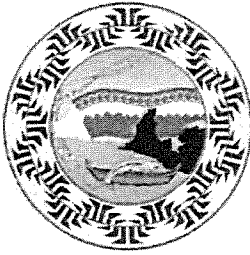
Halla Razak
Director of Public Utilities

From: Dave Hillemeier <Dave@yuroktribe.nsn.us>
Sent: Tuesday, July 29, 2014 4:43 PM
To: BDCP.Comments@noaa.gov
Cc: Dave Hillemeier; Tim Hayden; Nathan Voegeli; John Corbett; Troy Fletcher
Subject: Yurok Tribe comments regarding BDCP EIR/EIS
Attachments: Yurok Comments BDCP Final signed 7 29 2014.pdf

Yurok Tribal comments are attached. Please confirm you have received.

Dave

Dave Hillemeier
Fisheries Program Manager, Yurok Tribe
190 Klamath Blvd.
Klamath, CA 95548
707-482-1350 (ext. 315)
707-482-1377 (fax)
707-954-1524 (cell)



YUROK TRIBE

190 Klamath Boulevard • Post Office Box 1027 • Klamath, CA 95548

Phone: (707) 482-1350 • Fax: (707) 482-1377

July 21, 2014

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

Re: Yurok Tribe Comments on the Draft Bay Delta Conservation Plan (BDCP) and BDCP EIR/EIS

Mr. Wulff:

The Yurok Tribe supports the goal of restoration of the Bay Delta ecosystem and its endangered and threatened species. We recognize the likelihood of increased future water demand and increased uncertainty in water reliability due to impending climate change and population growth in California. We encourage the development of a scientifically based restoration plan that fully recognizes the Yurok Tribe's reserved fishing and water rights on the Klamath and Trinity Rivers, and respects and honors the federal trust relationship between the United States and the Yurok Tribe. We do not support the Draft BDCP as proposed and believe that the Draft EIR/EIS is insufficient, both from a procedural and technical perspective, and fails to fully analyze impacts to the Klamath and Trinity Rivers and their fishery resources that are of utmost importance to the Yurok Tribe and its members.

The Yurok Tribe is located on the lower 44 miles of the Klamath River, and is the largest Tribe in California. Fisheries resources of the Klamath and Trinity Basins are an integral component of the Yurok way of life - for sustenance, ceremonial, religious, and commercial purposes. In light of the importance of the Klamath and Trinity River fishery resource to Yurok People, the Tribe has been a leader in Klamath Basin science and restoration efforts. We must be vigilant stewards of the river and the fishery it supports, to ensure that future generations of Yurok People may continue our way of life.

Despite last minute attempts from the California Department of Water Resources (DWR) to outreach and consult with tribes, we are frustrated that the Yurok Tribe was not consulted and engaged early in the BDCP EIR/EIS development process and that alternatives were evaluated and eliminated prior to adequate tribal consultation efforts by the DWR as lead agency. Furthermore we are concerned that as the BDCP co-lead agency, and federal trustee of the Yurok Tribe, the Bureau of Reclamation (Reclamation) has not initiated formal government-to-government consultation with the Yurok Tribe regarding the development of the Draft BDCP

and supporting Draft EIR/EIS. This failure to consult with the Tribe is a violation of Reclamation's federal trust responsibility to act in our best interests and is contrary to the protection of the Tribe's federally reserved rights and trust resources.

The Yurok Tribe submitted formal comments on the 5th Staff Draft of BDCP in September 2011. We did not receive a written response to our comments, which remain unaddressed in the Draft BDCP and supporting EIR/EIS. In our 2011 comments, in addition to requesting early and ongoing consultation during development of the BDCP, we expressed our concerns regarding the following insufficiencies of the 5th Staff Draft of the BDCP, concerns that remain today:

- Specific language that preserves the fishery restoration flows established in the December 2000 Trinity River Mainstem Fishery Restoration Record of Decision (ROD) and recognizes and authorizes the 50,000 acre-feet of Trinity water identified in the second provision of the 1955 Act.
- Full recognition and compliance with the instream flow requirements and restoration prescriptions of the Trinity River ROD.
- Scientific certainty that the BDCP would not impact annual carry-over storage in Trinity Reservoir and cold-water pool availability and thus jeopardize compliance with Trinity River water temperature objectives contained in the "Water Quality Control Plan for the North Coast Region" by the North Coast Regional Water Quality Control Board (NCRWQCB).
- Water budget analyses and water operating plans for the CVP and State Water Projects that fully account for 50,000 acre-feet of water from the Trinity River Division that is required to be managed for release on a schedule that makes it available to Humboldt County and downstream water uses for beneficial uses in the Trinity/Klamath basin, including non-consumptive instream flows for fishery purposes.
- Segregation and management of the 50,000 acre-feet in a manner that does not interfere with or diminish flow releases identified in the 2000 Trinity River Record of Decision.
- Requirements in the BDCP that, pursuant to section 3404(c)(2) of the CVPIA, every new, interim or renewed CVP water service or repayment contract will include provisions by which CVP water and power contractors expressly agree that the Trinity Division will provide: (a) the separate amounts and independent management and use of the ROD flow releases and the 50,000 acre-feet for the Trinity basin; and (b) pay the cost of Trinity River fishery restoration pursuant to section 3406(b)(23) of the CVPIA.

These insufficiencies remain unaddressed and/or are not incorporated into the Draft BDCP and were not included in the modeling and analysis that was used to evaluate the project alternatives

in the Draft BDCP EIR/EIS. For these reasons, the CEQA/NEPA analysis is insufficient, and does not fully evaluate the impacts related to implementation of Alternative 4 in the Draft BDCP EIR/EIS.

Furthermore, Trinity River in-basin flows for in-basin needs have priority over out-of-basin needs under the 1955 Act. It is clear from the legislative and administrative record that the diversion of Trinity River water is limited to water that is surplus to the needs of the Trinity River basin, which includes the amount of water necessary to meet the federal government's Tribal trust obligations to restore and protect the fishery resources of the Yurok and Hoopa Valley Tribes. Therefore, the BDCP should contain a policy stating that meeting the co-equal goals of water supply reliability and ecosystem restoration shall give priority to in-basin needs over out-of-basin diversions and not adversely impact the downstream federally reserved fishing rights and tribal trust resources of the Yurok and Hoopa Valley Tribes. Klamath and Trinity fishery resource protection includes meeting the flow requirements of the Trinity River ROD,¹ satisfying Trinity River temperature objectives contained in the "Water Quality Control Plan for the North Coast Region"² by the NCRWQCB, and ensuring adequate cold water carry-over storage for downstream fishery needs.

In its current form, the BDCP will fail to achieve its purpose of restoring the Delta ecosystem. The conservation and mitigation measures promoted by the BDCP are unlikely to succeed, and will result in further degradation of Endangered Species Act (ESA) listed Sacramento River Winter-run Chinook salmon, Delta Smelt and other ESA covered fish species. For example the BDCP modeling results reveal substantial decreases in smolt survival rate as a result of Alternative 4 implementation.

The Yurok Tribe is especially concerned about BDCP impacts to Trinity River water quality and temperature compliance targets established by the NCRWQCB for threatened SONCC coho salmon and Spring-run Chinook populations. Water quality impacts of the BDCP and its alternatives on surface water quality in the Trinity River are inadequate, did not consider or evaluate operational/infrastructure changes to Lewiston Reservoir for improved water temperature control measures, and did not contain models or analyses that incorporated the 50,000 acre-feet of Trinity water identified in the second provision of the 1955 Act for Humboldt County and downstream users.

In addition, the Draft BDCP EIR/EIS did not fully evaluate the cumulative impacts of climate change on Trinity Reservoir cold-water pool and end-of-September carry-over storage levels as a result of the BDCP. California is in a third year of drought and forecasted end-of-September (EOS) water volumes for Trinity Reservoir will be insufficient to provide for Trinity ROD flows

¹ See http://www.trrp.net/?page_id=72, accessed 9/14/11.

² See "Water Quality Control Plan for the North Coast Region" Table 3-1, page 3-8.00, footnote 5, located at http://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/083105-bp/04_water_quality_objectives.pdf, accessed 9/14/11.

if a multi-year drought continues such as occurred in 1928-1934. Even without the BDCP and its increased capacity for South of Delta water transfers, the potential to exceed Trinity River temperature standards during critically dry years is high, and may impede recovery of Trinity River ESA-listed coho salmon populations. Current Central Valley Operations forecasts are dire, and predict EOS carry-over storage in Trinity Reservoir to be 654,000 acre-feet under current operations. This is less than the 750,000 acre-feet identified as "problematic" in the Trinity Reservoir Carryover Storage Cold Water Pool Sensitivity Analysis -Technical Service Center Technical Memorandum No. 86-68220-12-06, and close to the reconsultation threshold of 600,000 acre-feet minimum EOS carry-over storage identified in the NMFS 2000 Biological Opinion. The draft BDCP does nothing to reduce the risk; in fact it threatens to increase it, due to increased ability to conduct water transfers from North to South of Delta during drier years. The failure to analyze this risk or consider this variable in the Draft BDCP EIR/EIS demonstrates again the inadequacy of the environmental review under NEPA and CEQA.

The BDCP fails to consider an adequate range of alternatives to new conveyance as required by NEPA and CEQA. The listed alternatives are simply variations on tunnel export capacities, North Delta intake locations, tunnel routes, and operational rules. Alternatives that reduce exports from historical levels have been ignored and eliminated despite support from numerous water organizations throughout California, and despite strong scientific evidence confirming that reduced exports and increased outflows to San Francisco Bay positively benefit Delta ecosystem restoration and fisheries recovery.

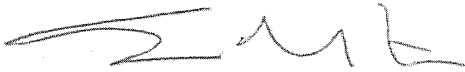
The Yurok Tribe is especially concerned that the implementation of the BDCP will result in an enlarged and inflated market for water transfers, which was not fully evaluated and modeled in the Draft EIR/EIS. The EIR/EIS included selective modeling of only the contractual water volumes and did not include the non-contractual amounts transferred via the water market in drier years. It is clear that south of Delta exports will not only increase in wetter years, but increase in drier years as the water market grows and the capacity to transfer water around the Delta increases.

The Yurok Tribe strongly supports the overall technical analysis regarding the Draft BDCP and BDCP EIR/EIS captured in the formal comment letter submitted by the Environmental Water Caucus and its supporting stakeholder groups and tribes.

In conclusion, the Yurok Tribe is concerned that as currently scoped and evaluated, the BDCP is seriously flawed, does not fully recognize and account for Trinity River ROD flows, does not recognize and account for the 50,000 acre-feet of water identified in the 1955 Act for Humboldt County and downstream users, threatens recovery of Trinity River ESA-listed coho salmon, fails to adequately address climate change impacts to Trinity Reservoir cold-water pool, and violates the federal trust responsibility of the Bureau of Reclamation to the Yurok Tribe. Given these concerns and the failure of the lead agency DWR and the federal government to adequately consult with the Tribe during the development of the document, the current Draft BDCP and

preferred alternative are inadequate and a new preferred alternative should be developed that addresses these insufficiencies.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. O'Rourke', with a stylized flourish at the end.

Thomas P. O'Rourke
Chairman
Yurok Tribe
P.O. Box 1027
Klamath, CA. 95548

From: Anna Whitfield <awhitfield@minasianlaw.com>
Sent: Tuesday, July 29, 2014 4:38 PM
To: BDCP.Comments@noaa.gov
Cc: vnlgraf@yahoo.com; merue@syix.com; jnorene@succeed.net; garymillerrealty@att.net; sayvirg@aol.com
Subject: Comments on Bay Delta Conservation Plan
Attachments: South Yuba Joinder in North State Water Alliance Comments on BDCP.pdf

The attached correspondence is being sent to you at the direction of Dustin C. Cooper for your information and files.

Anna Whitfield, Secretary to
Dustin C. Cooper
Minasian, Meith, Soares, Sexton & Cooper, LLP
1681 Bird Street
P.O. Box 1679
Oroville, CA 95965-1679
Phone: (530) 533-2885
Fax: (530) 533-0197

SOUTH YUBA WATER DISTRICT
P.O. Box 8
Rio Oso, California 95674
(530) 633-2544

July 29, 2014

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

**Re: The Bay-Delta Conservation Plan (BDCP) and its Impacts on Regional
Sustainability in the North State**

Dear Secretary Laird:

South Yuba Water District supports the comment letter dated 7/28/2014, submitted on behalf of the North State Water Alliance, which contains comments on the Bay Delta Conservation Plan, and its associated Implementation Agreement and draft Environmental Impact Statement and Environmental Impact Report. By and through this letter, South Yuba Water District adopts each comment and objection in the 7/28/2014 letter as its own, along with all exhibits and attachments to that letter, and incorporates herein by this reference all such comments, objections, and documents.

Thank you,

Very truly yours,

SOUTH YUBA WATER DISTRICT

By: 

DUSTIN C. COOPER
Attorney for South Yuba Water District

DCC:aw

cc: Members of the Board, South Yuba Water District

From: Tom Williams <ctwilliams2012@yahoo.com>
Sent: Tuesday, July 29, 2014 4:39 PM
To: BDCP.Comments@noaa.gov
Cc: Charming Evelyn; Jim Stewart; Al Sattler
Subject: BDCP-DEIR/DEIS Comments
Attachments: PrjtEIREIS BDCP 072914Fin.doc

DATE: July 29, 2014
TO: BDCP.Comments@noaa.gov (via email)
CC: **Sierra Club Angeles Chapter, Water Committee**
FROM: **Dr. Tom Williams, Sierra Club, Angeles Chapter, Water Committee**
SUBJECT: **Draft Bay Delta Conservation Plan (BDCP) &
Draft Environmental Impact Report/ Environmental Impact
Statement (EIR/EIS)**
RE: **COMMENT LETTER**

TRANSMITTAL

BDCP1727

DATE: July 29, 2014

TO: BDCP.Comments@noaa.gov (via email)
CC: Sierra Club Angeles Chapter, Water Committee

FROM: Dr. Tom Williams, Sierra Club, Angeles Chapter, Water Committee

SUBJECT: Draft Bay Delta Conservation Plan (BDCP) &
Draft Environmental Impact Report/ Environmental Impact Statement (EIR/EIS)
RE: COMMENT LETTER

Dear Federal and California Agencies, Officers, and Staff Members for the BDCP:

Thank you for the extended period for review of 40,000+ pages of documents for the Draft EIR/EIS of the Bay - Delta Conservation Plan which is a very important project and concept for the State.

DEIR/DEIS Comments -

Project Purposes and Needs/Objectives

As developed, the Project purposes, needs, and objectives show clearly two general projects which have been hammered together for public acceptance: conservation and reliability. Conservation has been addressed by others and generally the levels of conservation projects do not compensate the natural environment for the stresses and impacts endured during the last fifty years with existing facilities nor the future impacts that will arise from the proposed Alternative and associated facilities and growth and their largely unassessed impacts and adverse effects, their very survival.

Reliability is commonly defined as "assurance operations or facilities", in this case, of an annual flow of the State Water Project and continued flow through the Delta to Suisun Bay. The focus has been largely on the reliability of the Delta's operations itself along with Suisun Bay as the potential sources for backflow of estuarine and sea water into the Delta when weak, unstable levees fail in a seismic event, collapse, and draw off all freshwater from the rivers and a lot of salt water from Suisun and San Pablo Bays, >10M acft in one day (>10ft depth x >10,000 sq mi).

However, as other comments will highlight, the proposed Alternative would in fact act as a new source of additional water, primarily to compensate for the evaporative losses

The reasonable assumption for most projects is that they will be operate at or above to their maximum physical/operational capacity as long as the financial and service area benefits compensate for operating costs, as the economies of scale factors would favor 10M acft capacity rather than 6M acft. Also, incremental costs for minor improvements to existing facilities to support the higher flows, especially limited to the San Joaquin Valley may be undertaken without full financial and environmental review required for the proposed Alternative.

The Project Description and its objective, purposes, and needs do not reflect the reality that the proposed Alternative may provide short-term reliability improvements which will be overwhelmed by the growing use of the maximum feasible and induced capacity to induce growth which in turn will degrade the system reliabilities and require additional projects to maintain the initial reliability. If the tunnels were kept ready to divert, but not actually diverting flows, in the event of a significant damaging earthquake then such comments would be moot. The Project Description of the proposed Alternative does not include any meaningful conditions or mitigation to avoid reasonable expectation to operate the tunnels and make them profitable for the operating agencies and service users.

The Project purposes, needs, and objectives and thereby the Project description are inadequate and incomplete and do not fully reflect the proposed Alternative, its operations, and probable future augmentation.

Project Segmentation

The proposed Alternative description (and all the others) does not fully include the various additional projects which would be supported, promoted, and developed to make fuller use of the Alternative's basic capacity

currently set at 9000cfs and prospective enhanced flows, e.g., increasing flow velocities from 3.6ft/sec to 4.0ft/sec for additional flows of 2000 acft/d or 0.7M acft (=total consumption of the City of Los Angeles)

Additional distributed pumping stations and diversion could easily provide greater flow heads, while minor changes to the SWP Delta headworks and canal augmentations could be done with categorical exemptions if done individually.

Eventually once induced and planned growths in the San Joaquin Valley and the absences of sufficient, sustainable Sacramento flows are realized, the users will request the State to implement the earlier 2010 California Drought Contingency Plan (Nov. 2010, http://www.water.ca.gov/waterconditions/docs/Final_CA_Drought_Contingency_Plan-11-18-2010a.pdf). Since the maximum capacity of the proposed Alternative includes, at 6fps, up to 15000cfs/10.9Macft (or 1.5x current SWP). The proposed Alternative depends on maintained and flat or declining agricultural development in the Sacramento Valley and eventually upon the river storage reservoirs to maintain annual tunnel flows of 6-10Macft for the proposed Alternative.

The DEIR/EIS does not explore the maximum velocities and flow capacities of the proposed Alternative and reasonably feasible, expected additions within their headworks, the Delta, and the SWP/CVP facilities in the San Joaquin Valley. Thereby the Project Descriptions and Alternatives in the DEIR/DEIS are inadequate and incomplete for compliance with both CEQA and NEPA. Furthermore, with induced growth dependency upon imported

Growth Inducements in the San Joaquin Valley

Proposed Alternative flow maximization and increased southerly canal flows for the San Joaquin Valley would eventually face financial and technical barriers for transport across the Tehachapi Range as augmentation of the maximum physical lifting capacity is far more complicated and expensive compared to issues from the Delta to Tulare Basin which could not be readily concealed. However, total additional annual flows of the San Joaquin portion of the SWP could readily be diverted and absorbed by the San Joaquin users. Such use would generate huge economic benefits from more intense development of desert and drier lands and annual-to-perennial crop land conversions, as done with the original SWP, and would be sufficient to induce growth in land conversions throughout the San Joaquin Valley. These are not addressed in the relevant sections of the DEIR/DEIS, and thereby the DEIR/DEIS are inadequate and incomplete for the assessment of growth inducement from major increases in total volumes of

Increased Total Diverted Flows from Sacramento Valley

As indicated elsewhere, the current shared Central Valley flows for the State Water Project can be and would be expected to be eliminated, and the SWP's flow requirements could be met by the tunnels from the Sacramento Valley. San Joaquin flows can be directed solely to the current and future irrigators' needs in the San Joaquin Valley. Although this can be recognized in various sections of the DEIR/DEIS, the overall conceptual approach is that the proposed Alternative is only a reliability project and not a flow increase project, and thereby the DEIR/DEIS is inadequate and incomplete in their addressing of the San Joaquin diversions and related leachate issues and of the expanding reliability issues and risks by the San Joaquin farming and economic spheres being tied to the availability of water for the SWP from solely the Sacramento Valley.

Irrigation Leachate/Return Drainage

Although the proposed Alternative is suppose to be a reliability project, the Alternative would provide either directly or indirectly greater water volumes for irrigation which may be further considered as compensation for losses due to Global Warming and extended droughts in the San Joaquin Valley and adjacent Sierran watersheds. Even now San Joaquin flows have been diverted to irrigation and leaching of accumulated salts, etc. from the irrigated soils into the underlying groundwater tables and some aquifers. San Joaquin irrigators have postponed the "West Valley" Return Leachate Drain for years as the costs are large, feasibility questionable, and environmental effects severe. Unfortunately as irrigation volumes as a percentage of native stream flows have rocketed, the rivers dilution capacity has plummeted, while other irrigators have sacrificed their local groundwater and allow leachate to fill up the depress groundwater tables due to over pumping.

The proposed Alternative would further disconnect the San Joaquin irrigators from the consequences of continued and increased leaching of soil salts, pesticides, and fertilizers into the groundwater as long as they can get water to irrigate and leach soil contaminants.

Public Accessibility and Distortion

The whole character of the DEIR/DEIS does not support its use and review by the Public, the monstrous volume, separation of texts/references from illustrations, massive appendices, and widespread use of "techie talk" renders the document as totally inadequate for public review. Inclusions of both conservation and reliability elements in the same document further complicates the public review.

Although a summary document is included, any review comments regarding the summary can be readily dismissed by a response, akin to "This is answer in the main text".

Use of 9000cfs is largely unintelligible for the public who may read and desire to comment on the DEIR/EIS. Few of the public are familiar with cubic feet per sec, cu ft/sec, or cfs, while technical staff may use such numbers or even acre-feet with 43,560 cuft, the public are not and generally uses gallons. Therefore the proposed Alternatives, and others, remain largely unknown to the public. The instantaneous flow has nothing to do with the annual supply delivery (e.g., 9000cfs = 6.6M acft/yr at 3.6fps, or say 100% capacity of the existing SWP or 10xtotal LA DWP supply).

Use of the 9000cfs creates a false public impression of the "not very big" magnitude of the project and does not provide the public means of appreciation that it alone could supply most if not all of the total SWP supply without the San Joaquin Valley.

Faults and Seismicity

Reliability projects for seismicity mitigation require that the proposed Alternative will in fact be largely if not totally immune from the adverse effects affecting the primary facilities. The proposed Alternative lies generally within the same area and would be affected by the same geologic/seismic and hydrologic conditions, unlike the 2010 Water Plan. Close proximity of the tunnels and expected levee ruptures requires greater efforts for isolating the proposed Alternative from similar conditions affecting the levees.

Although smaller underground single tube transit facilities may be ideal survivors of general strong ground movement and can be very elastic in their response, their connects to anchored blocks - stations - are where most stress is focused and damages occur. Similarly the proposed larger diameter tunnels will require greater wall thicknesses and much more steel reinforcements and will create a rigid pole which will be far less flexible than the smaller (20 ft diameter) tunnels. Also like larger road tunnels and the proposed water tunnels, connections to rigid box/caisson structures will form the greatest stress during the same earthquake seismic waves. As the proposed Alternative has access shaft every five miles, every connection (two/shaft) between the shaft and tunnels would be points of stress and weakness during seismic wave passage and with so many such points, considerations must focus on the points of weakness and responses of the rigid tubes in weak soil and alluvium. Such studies and modeling has not been mentioned in the documents available.

Similarly with two sets of tunnels and shafts the probability of damages to both occurring during the same events is multiplied and no cross-connections are provided between the two tunnel systems. However, the presence of cross-connections between shafts other than at the surface would in themselves represent additional points of failure in the proposed Alternative. Furthermore the larger the diameters the greater internal stress are created by seismic compression waves especially when different geologic layers may enclose the same tubular form and because of its larger diameter designs may include greater rigidity and perhaps bracing.

An additional unexplored and unassessed issue is represented in this section is the seismic response of the tunnels and shafts during their construction which represents a significant impact of collapse with construction damages.

All of these seismicity issues clearly show the inadequacy and incompleteness of the DEIR/DEIS.

End of Comments

Again, thanks for the opportunity to comment on this project. Although I consider the efforts as largely not responsive to the requirements of CEQA and NEPA.

Dr. Tom Williams
Sierra Club Angeles Chapter, Water Committee
and Citizens Coalition for a Safe Community
323-528-9682 ctwilliams2012@yahoo.com

From: Anna Whitfield <awhitfield@minasianlaw.com>
Sent: Tuesday, July 29, 2014 4:40 PM
To: BDCP.Comments@noaa.gov
Cc: cmathews@pulsarco.com
Subject: Cordua Irrigation District Comments on Bay Delta Conservation Plan
Attachments: Cordua Joinder in North State Water Alliance Comments on Bay Delta Conservation Plan.pdf

The attached correspondence is being sent to you at the direction of Dustin C. Cooper for your information and files.

Anna Whitfield, Secretary to
Dustin C. Cooper
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Cordua Irrigation District

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Charles J. Mathews, Jr., Chairman
Keith Davis, Director
Kay Siller, Director

July 29, 2014

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

Re: The Bay-Delta Conservation Plan (BDGP) and its Impacts on Regional
Sustainability in the North State

Dear Secretary Laird:

Cordua Irrigation District supports the comment letter dated 7/28/2014, submitted on behalf of the North State Water Alliance, which contains comments on the Bay Delta Conservation Plan, and its associated Implementation Agreement and draft Environmental Impact Statement and Environmental Impact Report. By and through this letter, Cordua Irrigation District adopts each comment and objection in the 7/28/2014 letter as its own, along with all exhibits and attachments to that letter, and incorporates herein by this reference all such comments, objections, and documents.

Thank you,

Very truly yours,

CORDUA IRRIGATION DISTRICT



Dustin C. Cooper, General Counsel

DCC:aw
cc: Charles Mathews

From: be hope <bh.csuchico@gmail.com>
Sent: Tuesday, July 29, 2014 4:40 PM
To: BDCP.Comments@noaa.gov
Subject: BDCP Comments from Barney Hope: see attached PDF file
Attachments: Comments BDCP 29July2014.pdf

TO: BDCP.Comments@noaa.gov

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

FROM: Barney F. Hope, Ph. D., Economics

RE: BDCP Comments

My BDCP Comments are attached as a PDF File

July 29, 2014

TO: BDCP Comments: BDCP.Comments@noaa.gov
Ryan Wulff, NMFS
650 Capitol Mall, Suite 5-100
Sacramento, CA 95814

FROM: Barney F. Hope, Ph. D., Economics
bh.csuchico@gmail.com
1089 E. Lindo Ave
Chico, CA 95926 2426

RE: Comments: BDCP

The following 15 pages constitutes my "Comments" for the BDCP.

If you would like additional information, please contact me.
Thank you.

Barney F. Hope

Items in quotations marks are referenced from BDCP documents.

Comments by this reviewer are in blue-text type/font.

1. "The Bay Delta Conservation Plan (BDCP or Plan) provides a comprehensive conservation strategy for the Sacramento-San Joaquin Delta (Delta). . . ."
(BDCP, Executive Summary, p. 5)

Comment: part of the BDCP "strategy" is to largely ignore the water, ecological, and economic impacts that this "strategy" will have on "counties of origin" and upstream / downstream watershed and foothill environments.

Comment: With the exception of a few shallow references to "upstream" issues, the northern counties of Shasta, Glen, Butte, Sutter, and Yuba are completely ignored in the BDCP. Therefore the total *direct* costs of the project ignores the costs that will be imposed on "counties of origin".

Comment: The BDCP does not include the external, or *indirect*, costs that may be imposed on counties of origins thru the 50 year operation of the project.

Recommendation: no strategy must be implemented without including the water, ecological, and economic impacts and costs, including indirect costs, in the counties of origin and upstream / downstream watersheds and foothill environments. All costs, including any external costs imposed on counties of origins, upstream / downstream watersheds, and foothill environments, must be internalized and paid for by BDCP water agencies, BDCP water users, and other beneficiaries of the BDCP.

2. "The BDCP is intended to result in a permit decision concerning long-term regulatory authorizations under state and federal endangered species laws for the operations of the State Water Project (SWP) 10 and the Central Valley Project (CVP)."
BDCP, Executive Summary, p. 5

Comment: There is little in the BDCP that will proactively lead to the recovery of threatened and endangered species in the "counties of origin" and/or

counties in the Central Valley that are not in “The Project” area. While there are references to “upstream” dimensions and references to species in those areas, there is no comprehensive and detailed plan that addresses threatened and endangered species outside “The Project” area. The BDCP assumes that water and ecosystems north of the “Project Area” are virtually nonexistent and largely ignore interconnections between the “Project Area” and upstream watersheds.

Comment: Since many counties and citizens of California will not benefit from the BDCP, Water Revenue Bonds must be used as a foundation to finance this project. To use General Obligation Bonds will impose costs on counties and citizens not benefiting from this project.

3. “The Plan will also provide the basis for a biological assessment (BA) that supports new ESA 19 Section 7 consultations between the U.S. Department of the Interior, Bureau of Reclamation 20 (Reclamation), USFWS, and NMFS.” BDCP, Executive Summary, p. 5 p. 5, 6

Comment: “The Plan” includes “biological assessment”, “consultations”, and will monitor effects of the operations of the Central Valley Project and State Water Project, but direct and indirect biological impacts on counties of origin and upstream watersheds are excluded.

Recommendation: “The Plan” must identify and then internalize these external impacts. If mitigation is not possible, then this part of the BDCP must be amended. If mitigation of economic and ecological impacts on county of origin costs are possible, all of these costs must be paid by the beneficiaries and water agencies benefiting from “The Plan.”

4. “The parties seeking take authorizations for actions pursuant to the BDCP and the associated biological assessments are referred to as the *Authorized Entities*. The Authorized Entities include the California Department of Water Resources, Bureau of Reclamation, and certain state and federal water contractors listed below.”

Kern County Water Agency
 Metropolitan Water District of Southern California
 San Luis & Delta-Mendota Water Authority
 Santa Clara Valley Water District
 State and Federal Water Contractors Agency
 Westlands Water District
 Alameda County Flood Control and Water Conservation District (Zone 7 Water

Agency)”

BDCP, Executive Summary, p. 6

Comment: “Take authorizations” exclude counties of origins. The BDCP is not a “comprehensive” plan. To be comprehensive the BDCP must include the entire Central Valley and associated foothill and mountain environments to be “comprehensive”.

Comment: Clearly the BDCP is a plan explicitly designed to exclude the counties of origins. **If this is the intent of the BDCP, then the plan must include the following statements:**

The BDCP is a plan that explicitly excludes the counties of origin plus upstream watersheds, but the BDCP is responsible for any and all ecological damages and economic impacts that the BDCP causes to the counties of origin and upstream watersheds.

The BDCP must be paid by those that benefit from the BDCP -- commercial, agricultural, urban, and all water users . Those BDCP users will also be required to pay all future ecological and economic damages incurred in the counties of origin and upstream watersheds due to the BDCP.

5. From the BDCP: “The conservation strategy is based on the best available science and was built upon the following broad conservation goals”. (BDCP, Executive Summary, p. 6)

Comment: The stakeholders in the counties of origins did not agree on the “broad conservation goals” adopted and agreed to by stakeholders external to the counties of origins.

Comment: The BDCP ignores the “available science” in terms of the ecological and economic impacts by the BDCP in the counties of origins and upstream watersheds.

Comment: The BDCP authors pride themselves on using the best scientific knowledge, but ignoring impacts in the counties of origins and upstream watersheds is not congruent with scientific study.

6. Adaptive Management and Monitoring

Comment: The BDCP plan spans a 50 year period, but does not include

financial resources, plan suspension, legal framework, or plan changes for severe ecological and economic impacts caused by the plan outside of “The Plan” area. While there is adaptive management and monitoring for the “Project Area”, there is no adaptive management and monitoring for impacts in the Central Valley not in the “Project Area.”

Comment: The BDCP MUST include adaptive management and monitoring for impacts outside “The Project” area.

Comment: The BDCP does include action for “Changed circumstances” and “Unforeseen circumstances”. (BDCP, pp 14 ff). *However, these do not apply to the counties of origin and upstream watersheds.*

Recommendation: The BDCP include counties of origins when considering “Changed circumstances” and “Unforeseen circumstances”.

Comment: There is no Adaptive Management and Monitoring Program for counties of origins or upstream watersheds. While one might argue that the science for such a program to identify all economic and ecological consequences of water conveyance did not exist for the Owens and San Joaquin Valleys last century, this is not the case today.

Recommendation: The BDCP incorporate “available science” to “*Analyze, synthesize, and evaluate*” and “*communicate current understanding*” of the impacts of NOT having an “Adaptive Management and Monitoring Program for the counties of origins and present this science to the public. (Note, the words “*Analyze, synthesize, and evaluate*” and “*communicate current understanding*” are words from the BDCP in the Adaptive Management section. (See p. 17, Executive Summary, BDCP)

7. The BDCP will undertake to “Monitoring and research provide the data needed for informed decision-making.” (BDCP, p. 18)

Comment: Since the BDCP will NOT “monitor and research” in the counties of origin, their “informed decision-making” will be unscientific and incomplete.

Recommendation: The BDCP include adaptive management, monitoring, and research in the counties of origin to make “informed decision-making.”

8. Consider the BDCP in terms of “Natural Communities”:

“Consistent 7 with the requirements of the NCCPA, the Plan further provides a multifaceted approach to advance the conservation and management of covered species and their habitats, incorporating a conservation strategy that provides for the protection of habitat, natural communities, and species diversity on an ecosystem level; establishes conservation measures, including measures sufficient to mitigate the effects of covered activities; integrates adaptive management strategies that can be modified based on new information developed through monitoring; and sets out a detailed implementation program, including provisions that ensure adequate funding to carry out the Plan”

Section 1-3-3; pp 1-10 ff

Comment: It is clear that all the provisions in the BDCP in regards to the Federal Endangered Species Act, the Natural Community Conservation Planning Act, the California Endangered Species Act, National Environmental Policy Act, California Environmental Quality Act, and other federal and state laws will NOT be applied to the counties of origins in the same manner they will be applied to the “Plan area”.

“Because the SWP and CVP water infrastructure is operated as an integrated system, the effects of implementing the BDCP may extend to aquatic systems beyond the Delta, both upstream and downstream, and will implicate water operations parameters as well as species and their habitats located in those areas. As such, the BDCP effects analysis (Chapter 5, Effects Analysis) takes into account these upstream and downstream aquatic effects, both positive and negative, and describes, analyzes, and addresses the overall effects of the BDCP. Areas potentially affected by the implementation of the BDCP located outside of the Plan Area, have been included in the analysis of effects to ensure that all of the potential effects within the action area (all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action), as defined by Section 7 of the ESA, have been adequately assessed.”

Section 1-4-1, p 21

Comment: The above statement is not substantiated by the details in the the fine print of the BDCP documents

Comment: The BDCP “may extend to aquatic systems beyond the Delta, both upstream and downstream”, but policy makers are **not required** to undertake those tasks.

Comment: “the BDCP effects analysis (Chapter 5, Effect Analysis)” does not

include safeguards to “. . . take(s) into account these upstream and downstream aquatic effects. . . .”

9. The BDCP notes, very briefly, a relationship between surface water and ground water, but the document does not include any impacts on groundwater resources when surface water is conveyed south and replaced with groundwater..

“Because 17 the Tuscan Formation lies on top of the surface of the lower Sierra Nevada foothills before steeply dipping under the Sacramento Valley, and because it is permeable, it intercepts and stores some surface flow as well as deeply percolating water from local sources. Both the Corcoran Clay and the Tuscan Formation contain or control regional aquifers that are used as alternatives to surface flows..” (BDCP, p. 2-21)

Comment: The BDCP only mentions “The valley/foothill riparian natural community” in the “Plan Area”. (p. 2-56) There is no mention of valley/foothill natural communities -- including their watersheds--that include the Sierra Nevada/Central Valley water nexus or the Coast Range/Central valley water *nexus*.

Comment: Moving water resources from the north to the south will accentuate the movement of ground water from fragile foothill ecological systems. Water markets that allow the selling of surface water from the CVP or SWP to southern corporations and agencies may accentuate the depletion of ground water resources in the Central Valley and threaten fragile foothill/watershed ecological natural communities.

10. The BDCP notes that “. . . the upper watershed of the Sacramento River is composed of permeable volcanic rock. As a result, groundwater discharge from this volcanic system historically maintained a summer base flow at Red Bluff of approximately 4,000 cubic feet per second (cfs) without which the Sacramento River would have nearly dried up each fall (The Bay Institute 1998). (p. 2-4)”

Comment: If surface water is transferred from the northern Sacramento Valley via water markets and agricultural land owners and water districts replace this with groundwater, will the Sacramento River dry up each fall? The BDCP must analyze this possibility; it does not.

11. *The BDCP notes that*

“The BDCP Riparian areas serve as the hydrologic connection between terrestrial uplands and aquatic ecosystems, receiving water from precipitation,

overland runoff, groundwater discharge, and flow from an adjacent water body or alluvial aquifer (Vaghti and Greco 2007). They provide benefits to water quality by processing and filtering runoff, retaining and recycling nutrients, and trapping sediments (National Research Council 2002). Within the Plan Area, these ecosystem functions have been substantially negatively affected due to the destruction and fragmentation of the community.” (p. 2-61)

“ Although the covered fish species do not rely primarily on riparian habitat because they are aquatic species, they are directly and indirectly supported by the habitat services and food sources provided by the highly productive riparian ecosystem, particularly during flood flows when riparian habitats are inundated. Riparian vegetation is a source for organic material (e.g., falling leaves), insect food, and woody debris in waterways and can influence the course of water flows and structure of in- stream habitat. This debris is an important habitat and food source for fish, amphibians, and aquatic insects (Opperman 2005). (p. 2-61)

Comment: Since the BDCP ignores the interconnections between Central Valley / foothill natural communities in the counties of origins and only speciously alludes to “upstream/downstream” areas, it is tantamount to allowing the destruction and fragmentation of those natural communities and those ecosystems in the counties of origins, areas upstream, and/or areas downstream.

12. Costs

The BDCP notes, “Cost uncertainties may result from not fully completed project designs at the time of permitting, unforeseen and unpredictable conditions, or uncertainties within the defined project scope. For planning studies, standard contingencies typically range between 20 and 30%, but may be as high as 50%. . .In those cases where cost contingency has not been explicitly factored into a cost estimate, a 20% contingency is added. ” (BCDP, Ch 8, p. 10)

Comment: External costs for counties of origins have NOT been internalized and therefore the cost estimate in the BCDP may be underestimated. Furthermore, there is nothing in the BCDP documents that allows for contingency funds to be used to address costs imposed on upstream areas and watersheds.

Comment: The distribution of contingency costs is not specified. Who will pay for these unspecified, future costs?

Recommendation: Given the historical record on public project cost overruns, those that directly benefit - water users and water districts - must pay for these costs.

Recommendation: BDCP include on Page 1 of the Executive Summary and press releases to the public that the projected cost overrun in the form of “contingency costs” may be between 20% and 50%. These numbers are currently buried in the BDCP documents. Taxpayers and ratepayers must be clearly warned about the potential “contingency costs” associated with this program. These numbers must be revealed in the BDCP Executive Summary, NOT buried in thousands of pages of documents.

13. BDCP “Conservation Strategy”:

Comment: There is virtually nothing meaningful in Chapter 3, “Conservation Strategy” in terms of conservation initiatives or plans for counties of origin. And when “counties of origin” are alluded to, it represents the most shallow “conservation strategy”. For example, consider the following statement regarding spring-run Chinook salmon.

“The conservation strategy for spring-run Chinook salmon will focus on those life stages occurring in the Plan Area and ensure the timing of actions to benefit those specific life stages coincides with when they would be present in the Plan Area. The conservation strategy also focuses on habitat conditions upstream of the Plan Area, such as water temperature that could be affected by covered activities implemented within the Plan Area.” (Chapter 3-3, p. 148

Comment: If the BDCP was serious about a conservation strategy for salmon in “upstream”, it must be much more comprehensive and detailed instead of a single, vague reference to “water temperature.”

In terms of the goals for salmon recovery, consider the following numbers for BDCP

“Objective SRCS1.1: For spring-run Chinook salmon originating in the Sacramento River and its tributaries, achieve a 5-year geometric mean interim through-Delta survival objective of 49% by year 19 (from an estimated 40%), 52% by year 28, and 54% by year 40, measured between Knights Landing and Chipps Island. The Sacramento River survival metric is an interim value based on limited data from fall-run Chinook salmon in the Sacramento River. This survival metric will be revised to account for new monitoring data and improved modeling expected by year 10.³⁷ For spring-run Chinook salmon

originating in the San Joaquin River and its tributaries, achieve a 5-year geometric mean interim through-Delta survival objective of 33% by year 19, 35% by year 28, and 38% by year 40, measured between Mossdale and Chipps Island. Spring-run Chinook salmon do not currently exist in the San Joaquin subbasin, thus these survival metrics are considered very interim.” (Chapter 3-3, p.150).

Comment: The BDCP fails to specify how this will be done if large agricultural corporation agricultural water districts, and municipalities demand more and more water. The BDCP fails to note the impact on salmon populations if holders to water rights are allowed to sell surface water in water markets.

14. Groundwater and Surface Water Transfers

The BDCP includes minor details on the integration of groundwater into The Plan, but there is no discussion of groundwater impacts in the counties of origin and upstream watersheds linked to the operation of conveying water through Delta tunnels. For example consider this statement regarding Reusable Tunnel Material (RTM):

“To ensure that underlying groundwater is not contaminated, the invert of the RTM ponds will be a 32 minimum of 5 feet above the seasonal high groundwater table, and an impervious liner will be 33 placed on the invert of the RTM ponds and along the interior slopes of the berms to prevent any 34 contact between the RTM and groundwater. Because groundwater tables are high, it is anticipated 35 that there will be minimal excavation for construction of the RTM ponds.” (P.4-13)

Comment: While measures are important to not contaminate groundwater in the Plan Area, a entire set of groundwater management issues are not addressed in the BDCP. For example, the BDCP must include the possibility of groundwater over-drafting in the Tuscan Aquifer. Such an event is not addressed by the BDCP; the BDCP will not prevent this event from becoming a reality.

“Non-project Diversions” and Water Transfers

“For the purpose of the BDCP, nonproject diversions consist of infrastructure used to divert surface waters within the Plan Area and that is not associated with operations of the SWP or the CVP. This conservation measure has the potential to result in the remediation of an average estimated 100 cfs of diversion capacity per year, beginning in year 6 and continuing throughout the

permit term. The level and extent of remediation that occur through this process will depend on the number of participating diverters and the diversion capacity of those participants' diversion facilities." (p. 4-82)

"State and federal laws governing water use in California promote the use of water transfers to manage water resources, particularly during water shortages, provided that certain conditions associated with the transfers are adopted to protect source areas, the environment and other users of the water." (p. 4-90)

Comment: the BDCP must conduct an "Effect Analysis of "nonproject diversions" and "water transfers." This includes northern water right holders selling surface water and then replacing the sold surface water with groundwater. For this event, the BDCP must address the economic and ecological impacts of these water market transfers on the counties of origins and upstream watersheds. The BDCP must comprehensively recognize that the BDCP "Plan Area" is connected to upstream and downstream watersheds.

The BDCP only asserts that "certain conditions associated with the transfers are adopted to protect source areas, the environment and other uses of the water. (p. 4-90) But the BDCP does not discuss adverse economic and ecological effects of groundwater pumping in the counties of origin.

Comment: The BDCP must include specific and detailed plans that will safeguard the sustainability of groundwater resources in the counties of origins. A vague reference of "certain conditions" is unacceptable. The BDCP must review and learn from the costly lessons of groundwater pumping in the Owens and San Joaquin Valley and integrate these lessons into specific and detailed plans involving unsustainable groundwater pumping in the counties of origins.

Comment: Since the BDCP "Plan Area" is hydrologically connected to upstream and downstream watersheds, The BDCP must include these watersheds in the BDCP "Plan Area" in a detailed and comprehensive manner.

"Under the BDCP, there is no quantified maximum amount of water that could be delivered through SWP and CVP facilities in the Delta, including SWP and CVP project water and water from voluntary water market transactions, provided SWP and CVP operations are consistent with the operational criteria described in CM1, and these operations are not limited by other factors including hydrologic, regulatory and contractual conditions. Water transfers, exchanges of SWP or CVP project water among SWP or CVP contractors and other voluntary water market transactions are covered activities if the transactions are consistent with the operational criteria

described in CM1” (p. 4-90)

Comment: There are NO conservation measures in CM1 that will prevent an unlimited amount of “voluntary water” transfers to take place while depleting groundwater resources in upstream and/or downstream aquifers.

Comment: There is NO “effect analysis” in a 745 page chapter (Chapter 5) that analyzes the effect of transferring an unlimited amount of “voluntary water” transfers to take place while depleting groundwater resources in the counties of origin. (See Chapter 5, BDCP)

Comment: The BDCP does not analyze economic and ecological costs of transferring northern California surface water south via water markets for groundwater banking and then pumping groundwater as replacement water.

Comment: There is virtually no adaptive management and monitoring in terms of economic, ecological, and indirect costs in the counties of origins in terms of watershed mismanagement. (See Adaptive Management and Monitoring. (See Chapter 3, BDCP)

Chapter 5 of the BDCP does include the following statement:

“There are 17,644 acres of valley/foothill riparian natural community distributed widely across the Plan Area, in all conservation zones.” (p. 5.4-17)

Comment: The BDCP must not be restricted to 17,644 acres in the Plan Area. The BDCP must include upstream and downstream watersheds and aquifers in terms of “Effect Analysis”.

Comment: While Chapter 5 of the BDCP does include a section on “Upstream Habitat Effects”, for Chinook Salmon in the Sacramento River and Clear Creek, (see pp. 5.5.4-14) there is no discussion of Chinook Salmon habitat in, for example, Butte County. Will selling surface water south and replacing surface with groundwater adversely affect Chinook salmon habitat in Butte Creek, Chico Creek, or Mill Creek? The BDCP must address this possibility somewhere in this 745 page chapter. It does not.

Comment: A search of Ch 5 for “groundwater” turns up zero hits. The entire set of BDCP documents is grossly deficient in including the interconnections between groundwater, surface water, plus foothill and mountain environments.

15: The BDCP and the Sierra-Cascades

Any large water project in California, including the BDCP, must include forested environments surrounding California's Central Valley. This was recently recommended by the Sierra Business Council:

“. . . the Sierra Business Council recommends that any new water bond do the following”:

“Recognize the forested watersheds of the Sierra-Cascade as an area of statewide significance because they provide 65 percent to 75 percent of the state’s developed water supply - including all or part of the drinking water for more than 23 million people and irrigation for one-third of California’s agricultural land - and make up half of the freshwater inflow to the Delta.”

“Investing in California’s primary watershed should be a high priority for the state, regardless of which bill becomes the final vehicle for a 2014 water bond.”

Source:

Viewpoints: Water Bond Must Recognize Sierra’s Importance

By Steven Frisch

Special to The Beel July 28, 2014

<http://www.mercedsunstar.com/2014/07/28/3768777/viewpoints-water-bond-must-recognize.html#storylink=cpy>

16. Costs, Benefits, and Financing Dimensions of the BDCP

Comment: Appendix 9.A Economic Benefits of the BDCP and Take Alternatives contains no analysis or calculations for benefits to water export counties in the northern Sacramento Valley

Comment: Appendix 9.B 1 Take Alternative Cost Estimation contains no analysis or calculations of costs to water export counties in the northern Sacramento Valley

“The Stakeholder Council will be formed to provide opportunities for interested parties to consider, discuss, and provide input on matters related to the implementation of the BDCP.” (p. 7 -19)

Comment: Central Valley counties of origin are excluded from this Council.

Summary of Funding Sources (Chapter 8, section 3.2)

Comment: The BDCP documents fail to include the plan by county and water agency officials to increase property taxes to pay for this project.

Comment: In July 2014, a number of newspaper articles noting that property tax revenues will be used to fund this project. For example:

“In May, the Santa Clara Valley Water District in the San Jose area unanimously approved a resolution supporting an “override tax” that exceeds Proposition 13 limits to help fund its part of the tunnel project. The San Jose Mercury News reports that the district might raise its property tax rate by almost 70 percent in the next decade under this rule.”

Source:

Twin-Tunnel Allies Want An Open Tax Spigot: Water Agencies May Be Able To Raise Property Taxes Without A Vote

U-T San Diego eEdition

By Steven Greenhut, July 28, 2014

<http://www.utsandiego.com/news/2014/Jul/28/delta-tunnel-supporters-opening-tax-spigot/?#article-copy>

See also:

San Jose Mercury,

Property Taxes Could Pay For \$25 Billion Delta Tunnels Without Public Vote, July 22, 2014, By Paul Rogers

http://www.mercurynews.com/science/ci_26198239/property-taxes-could-pay-25-billion-delta-tunnels

Comments: The BDCP must include how property taxes will be used to pay for this project, how much each county receiving the benefits will pay in property taxes, and how much the average property tax bill will increase.

- a. If water revenue bonds for this project cannot be sold at market interest rates (weighted by tax benefits to bond purchasers) to fund this project WITHOUT THE BACKING OF PROPERTY TAXES, then the market is sending a signal that the BDCP is economically unfeasible.

b. To insure that “users pay” for the BDCP, only Water Revenue bonds must be used for this project. General Revenue bonds must NOT be used for this project.

→ The current bond measure for the November 2014 states that up to \$11.1 billion in General Revenue Bonds may be sold by the state under Proposition #43.

• Source: <http://www.lao.ca.gov/ballot/2014/prop-43-110414.aspx>

→ If General Revenue bonds are used as a means to secure initial funding for this project, then the State may require those not benefiting from the “The Plan” repay the bonds of the BDCP.

→ The Department of Water Resources must include the statement in Water Revenue bond perspective that the bonds are only backed by the revenues generated by water users plus revenues pledged by the Federal government, other non State sources, and non property tax sources.

Table 8-40, (p. 8-69) is titled “Potential Funding Source by Conservation Measure—Other Aquatic Stressors” and a footnote includes the following limitation:

“This table notes potential funding sources and does not imply dedicated or guaranteed funding.”

Comment: In Chapter 8, section 4.2 includes a paragraph on “Actions Required in the Event of a Shortfall in State or Federal Funding” (page 8-122) but does not include that rural and urban water agencies officials have already publicly stated that they will increase property taxes to partially pay for this project. Such an “Action” MUST be included in this the BDCP document.

Comment: The BDCP must include a transparent statement and analysis of funding sources. If water users are to pay, the increase rates attributable to those using this water must be prominently publicized in the BDCP Executive Summary

“An economic impact analysis of the BDCP concludes that the Plan would increase California business output by over \$83.5 billion and create or preserve up to 1.1 million jobs (The Brattle Group 2013).” [p. 8 -109]

Comment: There is no analysis of who would benefit from this \$83.5 billion dollar increase. The Brattle Group must ascertain how such benefits would impact those on the lower end of the distribution of income or reduce poverty in California. Furthermore, The Brattle Group must specify how many jobs would be created if public fund dollars were spend on other endeavors. If the BDCP will be a mechanism to shift income and wealth to the top 10% of households, then this project dimension should be included in the Executive Summary.

From: Petrea Marchand <petrea@conserosolutions.com>
Sent: Tuesday, July 29, 2014 4:37 PM
To: bdcg comments - NOAA Service Account
Cc: Don Saylor; Jim Provenza; Chris Ledesma; Shawna Stevens; Heidi Tschudin; Susan Garbini
Subject: Yolo County HCP/NCCP JPA Comments on BDCP and EIR/EIS
Attachments: 2014 0729 Final Yolo County HCP NCCP JPA BDCP and EIR EIS Comment Letter and Attachment.pdf

Mr. Wulff:

Attached please find the Yolo County HCP/NCCP JPA's comments on the Public Draft of the Bay Delta Conservation Plan and associated EIR/EIS.

Thank you!

Petrea Marchand
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Yolo County Habitat/Natural Community Conservation Plan Joint Powers Agency

YOLO NATURAL HERITAGE PROGRAM

~ Partnering for Conservation ~

Member Agencies

*County of Yolo • City of Davis • City of Winters • City of West Sacramento • City of Woodland •
University of California, Davis*

BDCP1730

July 29, 2014

Secretary 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 of the Bay Delta Conservation Plan and the EIR/EIS

Dear Secretary Jewell and Secretary Laird:

This letter communicates comments from the Yolo County HCP/NCCP Joint Powers Agency (JPA) on the public draft of the Bay Delta Conservation Plan (BDCP) and the associated EIR/EIS. The JPA appreciates the support of the state and federal government in development of the Yolo HCP/NCCP over the years and believes there is potential to collaborate with BDCP on terrestrial species habitat conservation efforts in the future. The JPA has significant concerns about integration of the BDCP and the Yolo HCP/NCCP, however, which the JPA first documented in the May 2013 paper entitled, "Interface with the Bay Delta Conservation Plan: Background, Summary, and Remaining Issues" (Exhibit A). California Department of Fish and Wildlife staff involved with the BDCP reviewed and edited this paper. The JPA will need to work with the BDCP to resolve the issues outlined in this letter in the next year to ensure implementation of the Yolo HCP/NCCP is feasible.

The JPA believes there is significant potential for conflict between the BDCP and the Yolo HCP/NCCP for two reasons: 1) there is significant overlap between the BDCP Plan Area and the Yolo HCP/NCCP Plan Area, as well as biological objectives; and 2) the BDCP significantly understates the potential terrestrial species impacts of Conservation Measure 2, the proposal to increase the frequency and duration of inundation in the Yolo Bypass to benefit covered fish species.

The JPA's comments on specific text in the public draft of BDCP should be read to apply to all substantially similar text appearing in the document. The JPA also reserves the right to provide additional comments on BDCP--including detailed legal and technical comments--as work on the BDCP continues. In addition, the JPA understands the BDCP has set aside funding to directly coordinate with local HCP/NCCPs that overlap the BDCP's Plan Area. The JPA has met once

with BDCP consultants to discuss overlap issues and hopes to increase the pace of discussions in the fall of 2014.

Background

The Yolo County HCP/NCCP Joint Powers Agency (JPA) is currently working on the Second Administrative Draft of the Yolo HCP/NCCP, which covers 11 terrestrial species. The JPA is striving for release of the Second Administrative Draft by March 2015 and final permits in March 2017. The JPA is significantly changing the proposed conservation strategy for the Yolo HCP/NCCP relative to the First Administrative Draft released in June 2013.

Conservation related to cultivated lands represents the most significant potential for conflict between the Yolo HCP/NCCP and the BDCP, especially with regard to Swainson's hawk, giant garter snake, burrowing owl, and tri-colored blackbird conservation. Approximately 111,400 acres of the Yolo HCP/NCCP's 653,000-acre Plan Area is within the BDCP Plan Area, or a total of 17% of the Yolo HCP/NCCP's Plan Area. According to personal communication with BDCP consultants, BDCP may propose to conserve as much as 10,000 acres for these species in the Yolo HCP/NCCP Plan Area or approximately 20% of all BDCP cultivated land acquisition. (This estimate is higher than estimates for conservation in the EIR/EIS, as discussed later in this letter.) Given the Yolo HCP/NCCP will likely propose less than 30,000 acres of conservation easement acquisition over a 50-year permit term, the BDCP proposal also represents as much as 1/3 of the acreage needed for the Yolo HCP/NCCP.

BDCP Conservation Zones 1, 2, and 3 are entirely or partially in the Yolo HCP/NCCP Plan Area, including the Yolo Bypass, and comprise the 111,400 acres within the BDCP Plan Area. A number of the BDCP's biological objectives (compliance with which is mandatory to meet the requirements of BDCP's 50-year permit) focus specifically on these Conservation Zones, as follows. (The table does not include a complete list of objectives specific to the Conservation Zones in the Yolo HCP/NCCP Plan Area.)

Table 1: Biological Objectives Relevant to the Yolo HCP/NCCP Plan Area

BDCP Biological Objective Number	BDCP Biological Objective Text
Objective GNC1.1	Protect 8,000 acres of grassland with at least 2,000 acres in Conservation Zone 1, at least 1,000 acres protected in Conservation Zone 2, at least 2,000 acres protected in Conservation Zone 11, and the remainder distributed among Conservation Zones 1,2,4,5,7,8, and 11.
Objective SH1.2	Within the 48,625 acres of protected cultivated lands, protect at least 43,325 acres of Swainson's hawk foraging habitat with at least 50% in very high-value habitat production in Conservation Zones 1,2,3,4,7,8, and 9.
Objective ASWNC1.2	Restore or create alkali seasonal wetlands in Conservation Zones 1,8, and/or 11 to achieve no net loss of wetted acres (up to 72 acres of alkali seasonal wetland complex restoration, assuming all anticipated impacts occur).
Objective VPNC1.1	Protect 600 acres of existing vernal pool complex

	in Conservation Zones 1,8, and 11, primarily in core vernal pool recovery areas identified in <i>Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon</i> (U.S. Fish and Wildlife Service 2005).
Objective ASWNC1.1	Protect 150 acres of alkali seasonal wetland in Conservation Zones 1,8 and/or 11 among a mosaic of protected grasslands and vernal pool complex.
Objective TRBL1.3	Within the 48,625 acres of protected cultivated lands, protect at least 11,050 acres of high to very high value breeding-foraging habitat within 5 miles of occupied or recently occupied (within the last 15 years) tricolored blackbird nesting habitat in Conservation Zones 1,2,3,4,7,8, or 11.
Objective WCO1.1	Of the 48,625 acres of cultivated land protected under objective CNLC1.1, protect at least 1,000 acres in Conservation Zone 1 and 11 that support high-value burrowing owl habitat and are within .5 mile of high-value grassland habitat or occupied low-value habitat.
Objective GGS2.1	Of the 1,200 acres of nontidal marsh habitat created under Objective NFEW/NPANC1.1, create at least 600 acres of connect aquatic giant garter snake habitat outside the Yolo Bypass in Conservation Zone 2.
Objective GGS2.2	Of the 8,000 acres of grasslands protected under Objective GNC1.1 and the 2,000 acres restored under Objective GNC1.2, create or protect at least 200 acres of high-value upland habitat adjacent to the at least 600 acres of nontidal marsh habitat created in Conservation Zone 2 outside of the Yolo Bypass (Objective GGS2.1)
Objective GGS3.1	Protect, restore, and/or create 2,740 acres of rice land or equivalent value habitat (e.g., perennial wetland) for the giant garter snake in Conservation Zones 1,2,4, or 5...up to 1,700 acres may consist of rice in the Yolo Bypass, if this portion meets the criteria specified in <i>CM3 Natural Communities Projection and Restoration, (Section 3.4.3.3.2, Siting and Reserve Design, Reserve Design Requirements by Species)</i> . Any remaining acreage will consist of rice land or equivalent-value habitat outside the Yolo Bypass.

In addition to the specific mention of the Conservation Zones in the Yolo HCP/NCCP Plan Area, the biological objectives also express a preference for high-elevation lands and lands connected to other conservation lands. Conservation Zones 1,2 and 3 have some of the highest elevation

lands in the BDCP Plan Area, as well as significant acreage of lands that are already protected by conservation easements or owned by the state and federal government for conservation purposes. As a result of the significant emphasis on cultivated lands in the Yolo HCP/NCCP Plan Area, the JPA expects significant conflict with BDCP if steps are not taken to resolve potential issues during the planning process.

General Comments on the Public Draft and EIR/EIS

I. Update references to the Yolo HCP/NCCP

Since the Yolo HCP/NCCP has changed significantly since BDCP released the public draft, the information about the Yolo HCP/NCCP in the BDCP needs to be updated. This includes the following:

- Use "Yolo HCP/NCCP" to refer to the plan. Rather than using the term Yolo Natural Heritage Program, please refer to the plan as the Yolo HCP/NCCP.
- When referring to the agency in charge of developing and implementing the Yolo HCP/NCCP, please use "Yolo County HCP/NCCP Joint Powers Agency." Please change references to "Yolo County HCP/NCCP Joint Powers Authority."
- Change the number of covered species from 32 to 11. The 2nd Administrative Draft of the Yolo HCP/NCCP only covers 11 species.
- Please reference the Yolo Local Conservation Strategy when discussing overlapping planning efforts. The Yolo Local Conservation Strategy is not part of the Yolo HCP/NCCP, but will also further habitat conservation in Yolo County. The JPA will coordinate implementation of the Yolo HCP/NCCP and the Yolo Local Conservation Strategy.
- Change the date the JPA started work on the Yolo HCP/NCCP from March 2007 to November 2004 (date of planning agreement with the California Department of Fish and Wildlife and U.S. Fish and Wildlife Service).

Specific Comments on the Public Draft

II. Need an MOU to guide integration of Yolo HCP/NCCP and BDCP

As discussed in the background section of this letter, there is significant potential for conflict between the Yolo HCP/NCCP and the BDCP. If both the Yolo HCP/NCCP and BDCP are acquiring conservation easements on cultivated and other lands in the overlap area during the 50-year permit term, it is unclear how the two plans will work together and whether easements acquired by willing sellers will count towards the conservation targets of both plans. The JPA is concerned the significant cultivated land acquisition proposed by the BDCP will negatively impact the ability of the JPA to meet the permit requirements of the Yolo HCP/NCCP. It is further unclear whether there are sufficient cultivated lands in the overlap area to support both the conservation targets of the BDCP and the Yolo HCP/NCCP, since acquisition of easements is appropriately based on willing sellers. An MOU is necessary to create a structure to ensure the JPA can successfully implement the Yolo HCP/NCCP.

III. Minimize impacts on terrestrial species from CM2

The JPA encourages close coordination between the Yolo HCP/NCCP and the BDCP in the months ahead to ensure the impacts to terrestrial species of CM2 are minimized for two reasons: 1) Yolo Bypass terrestrial species habitat, including wetlands, is important to implementation of the Yolo HCP/NCCP; and 2) the BDCP significantly underestimates impacts on terrestrial species, such as tri-colored blackbird and giant garter snake, from implementation of CM2.

The EIR/EIS describes the following impacts of CM2 to Yolo HCP/NCCP covered species:

Table 2. Estimated Terrestrial Species Impact from CM2

Number	Species	Estimated Habitat Impact (acres)	Page
Impact BIO-35 (Construction)	Valley Elderberry Longhorn Beetle	295 ^b	12-2088
Impact BIO-37 (Inundation)	Valley Elderberry Longhorn Beetle	161-325 ^c	12-2093
Impact BIO-46 (construction)	California Tiger Salamander	42 ^a	12-2124
Impact BIO-48 (Inundation)	California Tiger Salamander	191-639 ^d	12-2130
Impact BIO-49 (construction)	Giant Garter Snake	541 ^b	12-2134
Impact BIO-51 (Inundation)	Giant Garter Snake	582-1,402 ^d	12-2144
Impact BIO-52 (construction)	Western Pond Turtle	309 ^b	12-2148
Impact BIO-54 (Inundation)	Western Pond Turtle	283-798 ^d	12-2156
Impact BIO-75 (Construction)	Least Bell's Vireo & Yellow Warbler	171 ^b	12-2235
Impact BIO-83 (Construction)	Swainson's Hawk	133 nesting/ 1,500 foraging ^b	12-2258
Impact BIO-86 (Inundation)	Swainson's Hawk	3,066-6,706 ^e	12-2270
Impact BIO-87 (Construction)	Tricolored Blackbird	909 breeding/ 62 nonbreeding ^b	12-2273
Impact BIO-90 (Inundation)	Tricolored Blackbird	2,447-4,312 breeding/ 263-1,252 nonbreeding ^f	12-2287
Impact BIO-91 (Construction)	Western Burrowing Owl	1,127 high value/ 242 low value ^b	12-2290
Impact BIO-94 (Inundation)	Western Burrowing Owl	1390-3,303 high value/ 1,522-2927 low value ^e	12-2300
Impact BIO-95 (Construction)	Western Yellow- Billed Cuckoo	31 breeding/ 140 migratory ^b	12-2302
Impact BIO-99 (Inundation)	Western Yellow- Billed Cuckoo	11-20 breeding/ 37-64 migratory ^e	12-2310
Impact BIO-146 (Construction)	Bank Swallow	-	12-2447
Impact BIO-170 (Construction)	Palmate-bracted Bird's Beak	-	12-2532

The estimated habitat impact descriptions vary by impact number: ^a permanent removal; ^b permanent and temporary removal; ^c periodically affect; ^d could affect; ^e would increase the frequency and duration of inundation on approximately; ^f would inundate.

As the table makes clear, CM2 will have significant potential impacts to species covered by the Yolo HCP/NCCP. While the JPA understands that BDCP will, in many cases, undertake conservation actions to reduce or eliminate these impacts, it is unclear whether the BDCP will implement these conservation actions within Yolo County or elsewhere in the BDCP Plan Area. Any actions taken outside of Yolo County could hinder the ability of the JPA to implement the Yolo HCP/NCCP.

The Yolo Bypass is particularly important to the Yolo HCP/NCCP for giant garter snake and tri-colored blackbird conservation. During development of the Second Administrative Draft of the Yolo HCP/NCCP, the USFWS indicated a desire to preserve habitat for the giant garter snake in the Yolo Bypass. The JPA had previously considered excluding the Yolo Bypass from the Yolo HCP/NCCP conservation strategy, but now expects the Yolo Bypass will be a focus for both giant garter snake and tri-colored blackbird conservation because of the significant presence of both of these species in the Yolo Bypass. The BDCP specifically states giant garter snake conservation is intended as 1:1 mitigation for the impacts of covered activities, including "the loss of rice land in the Yolo Bypass as a result of prolonged flooding from *CM2 Yolo Bypass Fisheries Enhancement*." (p. 3.3-286.) Rice lands and wetlands in the Yolo Bypass (including the Yolo Wildlife Area) provide significant habitat for the giant garter snake (p. 2A.28-5). As other comments in this letter suggest, the presence of such significant habitat supports the need to minimize terrestrial species impacts from CM2.

Furthermore, the JPA believes the BDCP significantly underestimates the terrestrial species impacts of CM2, a point further discussed in the comments provided in this letter on the EIR/EIS. BDCP consultants used the MIKE-21 model to develop the hypothetical footprint for CM2. Yolo County has pointed out in previous comment letters that the MIKE-21 model is no longer the best available model to evaluate Yolo Bypass inundation footprints, as the U.S. Bureau of Reclamation and the California Department of Water Resources have developed a TU-FLOW model that is currently under review by the University of California, Davis. In addition, the impacts analysis relies on an assumption that CM2 flooding will only occur in 30% of years, which is a gross underestimate of potential CM2 inundation.

IV. Reconsider 50% alfalfa requirement for cultivated lands easements

The BDCP currently contains a requirement to conserve "at least 43,325 acres of Swainson's hawk foraging habitat with at least 50% in very high-value habitat production." High-value habitat production is defined as alfalfa in Table 3.4.3-3 (p.3.4-92). No other crop types are allowed to count as "high value habitat production." The JPA is opposed to this requirement in the BDCP and will not adopt this requirement for the developing conservation strategy for the Yolo HCP/NCCP. The JPA has received feedback from many landowners that they are not interested in selling easements that restrict landowners in perpetuity to one crop type, even if the requirement is only 50% of the years. The JPA understands the BDCP's requirement is not specific to individual parcels, but requires maintenance of the 50% alfalfa requirement across the 43,325 acres. The JPA is also aware the BDCP has not yet developed a structure to achieve this objective. Given the JPA is opposed to adopting this requirement for the Yolo HCP/NCCP, the JPA encourages the BDCP to reconsider this requirement. Such a restriction is unenforceable if the market changes (i.e. alfalfa is no longer grown at current levels in Yolo County or in the Delta), similar to the demise of the sugar beet industry in Yolo County.

V. Need to address issues identified in the waterfowl impacts analysis

On page 3.4-239 of the BDCP, the text identifies key uncertainties it will address from the *Effects Analysis of BDCP Covered Activities on Waterfowl and Shorebirds in the Yolo, Delta, and Suisun Basins* (Ducks Unlimited 2012). The BDCP should also address issues raised by the *Waterfowl Impacts of Proposed Conservation Measure 2 for the Yolo Bypass – An Effects Analysis Tool* (Ducks Unlimited 2012). These issues include the decline in potential food production on existing wetlands from increased inundation.

Specific Comments on EIR/EIS

As discussed above, there is significant potential for conflict between the BDCP and the Yolo HCP/NCCP, especially with regard to acquisition of land to meet natural community requirements for cultivated lands, grasslands, riparian, tidal, and wetlands. The JPA is concerned about conflict with all of these natural communities, but addresses specific examples of the conflict for cultivated lands and wetlands.

VI. Avoid conflict with cultivated land natural community

The EIR/EIS states the total acreage lost in the overlap area to BDCP covered activities is 6,158 acres and the estimated BDCP preservation need in the overlap area is between 2,540 and 4,458 acres (Table 12-21, p. 12-3256).¹ The JPA assumes that the majority of this loss is cultivated lands. The EIR/EIS further states that CM2 alone will result in the loss of 629 acres of cultivated lands (p. 12-2075). Since the Yolo HCP/NCCP will rely almost exclusively on acquisition of easements on cultivated lands to fulfill the permit terms, the JPA agrees with the assessment in the EIR/EIS regarding the potential cultivated land conflict between the BDCP and the Yolo HCP/NCCP:

This acquisition and preservation has the greatest potential for conflict with overlapping conservation plans that have substantial needs for acquisition of cultivated lands to satisfy their own conservation requirements. Acquisition by BDCP of cultivated land reduces the amount of such land available for overlapping plans (page 12-3253).

The JPA further believes this conflict is understated in the BDCP for three reasons: 1) the EIS/EIR underestimated the impact of conservation measures on cultivated lands in the overlap area; 2) the Yolo HCP/NCCP's conservation strategy is not yet fully developed, although it will rely primarily on cultivated land acquisition; and 3) the EIR/EIS underestimates the amount of cultivated land preservation in the overlap area. Given the relatively affordable price of cultivated lands in Yolo County, the high elevation of these lands, and the significance of these lands to BDCP covered species, the JPA believes the estimate of BDCP preservation need in the overlap area is low and therefore the potential for conflict is greater than documented in the EIR/EIS. (As discussed previously, personal communication with BDCP consultants put the number of acres needed by BDCP in the overlap area at closer to 10,000 acres.) The MOU mentioned earlier in this letter should create a process for addressing the potential for conflict related to cultivated land easement acquisition.

VII. Avoid conflict with wetlands natural community

¹ Tables 12-18 to 12-21 list specific alternatives in their titles, but none of the tables specifically list preferred

According to the EIR/EIS, there are 11,501 acres of wetlands in the Yolo HCP/NCCP Plan Area, of which 10,932 are in the overlap area. In other words, 95% of the wetlands in the Yolo HCP/NCCP Plan Area are also in the BDCP Plan Area.

The EIR/EIS recognizes the challenge this causes in its analysis of the Yolo HCP/NCCP:

“Based on a simple analysis of the major natural community types for the intersecting area of the two plans (Table 12-17), there is significant overlap between tidal and wetland land cover types. In other words, most conservation targets for these land cover types in the YNHP would need to be addressed within the overlap area. However, the overlap area has more than 10,000 acres of mapped wetland available for acquisition or restoration and almost 5,000 acres of tidal land cover type” (p. 12-3269).

Furthermore, the EIR/EIS identifies the following impacts on wetlands from CM2:

Table 3. Impacts of CM2 on Wetlands

Number	Type of Wetland	Permanent Removal (acres)	Page
Impact BIO-7 (Inundation)	Tidal Freshwater Emergent Wetland	24-58	12-2008
Impact BIO-15 (Construction)	Nontidal Freshwater Perennial Emergent Wetland	25	12-2031
Impact BIO-16 (Inundation)	Nontidal Freshwater Perennial Emergent Wetland	6-8	12-2034
Impact BIO-18 (Construction)	Alkali Seasonal Wetland Complex	45	12-2039
Impact BIO-19 (Inundation)	Alkali Seasonal Wetland Complex	264-744	12-2042
Impact BIO-24 (Construction)	Managed Wetland	24	12-2054
Impact BIO-25 (Inundation)	Managed Wetland	931-2,612	12-2057

There are two problems with the EIR/EIS analysis of wetlands impacts: 1) some of the estimates rely on the assumption of CM2 flows of 1,000 cfs to 4,000 cfs (p. 12-2008) and others rely on an 8,000 cfs assumption, when CM2 assumes flows will reach a maximum of 6,000 cfs; and 2) it relies on the flawed assumption that plan-related increases in flow through the Fremont Weir would be expected in only 30% of years.

The EIR/EIS further draws erroneous conclusions from this flawed analysis, such as “the modification of periodic inundation events would not adversely affect the ecological function of tidal freshwater emergent wetlands habitats and would not substantially modify its value for special-status or common terrestrial species” (p. 12-2008) and findings of less-than-significant impact or no impact on these communities in the BDCP Plan Area. The finding for managed wetland is especially egregious, as it states, “the managed wetland community would not be significantly impacted because periodic inundation is already experienced by most of the land that would be affected” (p. 12-2058). For CM2, this is countered by the study *Waterfowl Impacts of Proposed Conservation Measure 2 for the Yolo Bypass – An Effects Analysis Tool* (Ducks Unlimited 2012). Furthermore, it is impossible to draw these conclusions from the existing information available for CM2.

While there may not be significant impacts to wetlands in the BDCP Plan Area, there could be significant impacts in the Yolo HCP/NCCP Plan Area -- especially if wetland restoration and protection activities take place elsewhere in the BDCP Plan Area or efforts to mitigate these

impacts in the Yolo HCP/NCCP Plan Area result in other terrestrial species habitat impacts. As a result of both the flawed analysis of CM2 and the competition for wetlands acres in the overlap area, BDCP could potentially significantly hinder the ability of the Yolo HCP/NCCP to protect wetlands in the Plan Area important to terrestrial species. The Yolo HCP/NCCP would therefore potentially be unable to meet permit requirements related to wetlands impacts. This issue should also be a focus of the MOU.

VIII. Define cultivated lands as a natural community and analyze impacts

The EIR/EIS and the BDCP are inconsistent in their treatment of cultivated lands as a natural community. On page 12-2075, the EIR/EIS states "because cultivated lands is not a natural community and because effects of its loss are captured in the individual species analyses, there is no separate analysis of this land cover type presented here." On p. 12-3253, however, agriculture is listed on a table entitled "Overlap by Major Natural Community Type for Yolo Natural Heritage Program." On page 3.4-83 of the BDCP, cultivated lands is listed in as one of the natural communities in Table 3.4.3-1, "Natural Community Siting and Reserve Design Requirements." The BDCP and the EIR/EIS should consistently label cultivated lands as a natural community and the EIR/EIS should provide the same analysis of cultivated lands as it does for other natural communities.

IX. Clarify statement re Yolo HCP/NCCP giant garter snake strategy

The following is a confusing statement related to the Yolo HCP/NCCP giant garter snake conservation strategy and needs to be clarified:

"The BDCP targets 600 acres nontidal marsh restoration (crosswalked to "wetlands" in this analysis), 200 acres of grassland protection or restoration, and 700 acres of cultivated lands protection within or adjacent to habitat occupied by the giant garter snake Yolo/Willow Slough subpopulation in CZ 2, entirely within Yolo County. The YNHP also has conservation targets for giant garter snakes in this subpopulation, but it is focused in the YNHP Willow Slough Basin Planning Unit, only a small portion of which overlaps with the BDCP Plan Area. The two plans could work together to jointly achieve conservation for giant garter snake in the Yolo/Willow Slough subpopulation." (page 12-3269).

The Yolo HCP/NCCP will focus on the Yolo Bypass for giant garter snake conservation, which is entirely within the BDCP Plan Area. There is therefore potential for significant conflict between the BDCP and the Yolo HCP/NCCP with regard to giant garter snake conservation. It is unclear how the two plans could work together to achieve giant garter snake conservation unless there are sufficient willing landowners interested in selling giant garter snake easements in the overlap area. This issue should also be further discussed through the MOU process.

X. Source of 1,000 acres of cultivated land acquisition for Swainson's hawk foraging habitat unclear

On page 12-3270, the EIR/EIS states a target of only 1,000 acres of cultivated land easement acquisition for Swainson's hawk foraging habitat in the overlap area. This is inconsistent with other estimates provided by BDCP consultants and in other tables. The other numbers in this same paragraph need to be double-checked as well, as they do not appear accurate.

The JPA looks forward to working with the U.S. Department of the Interior and the California Natural Resources Agency to address the issues outlined in this letter. Please contact the JPA's Executive Director, Petrea Marchand, if you have any questions about these comments.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to be 'Chris Ledesma', with a long horizontal stroke extending to the right.

Chris Ledesma
Chair, Yolo County HCP/NCCP Joint Powers Agency

cc: Yolo County Board of Supervisors
Rep. Doris Matsui
Rep. John Garamendi
Senator Dianne Feinstein
Senator Barbara Boxer
Senator Lois Wolk
Assemblymember Mariko Yamada
Assemblymember Roger Dickinson

The Yolo Natural Heritage Program
Interface with the Bay Delta Conservation Plan
Background, Summary, and Remaining Issues
May 23, 2013

Background

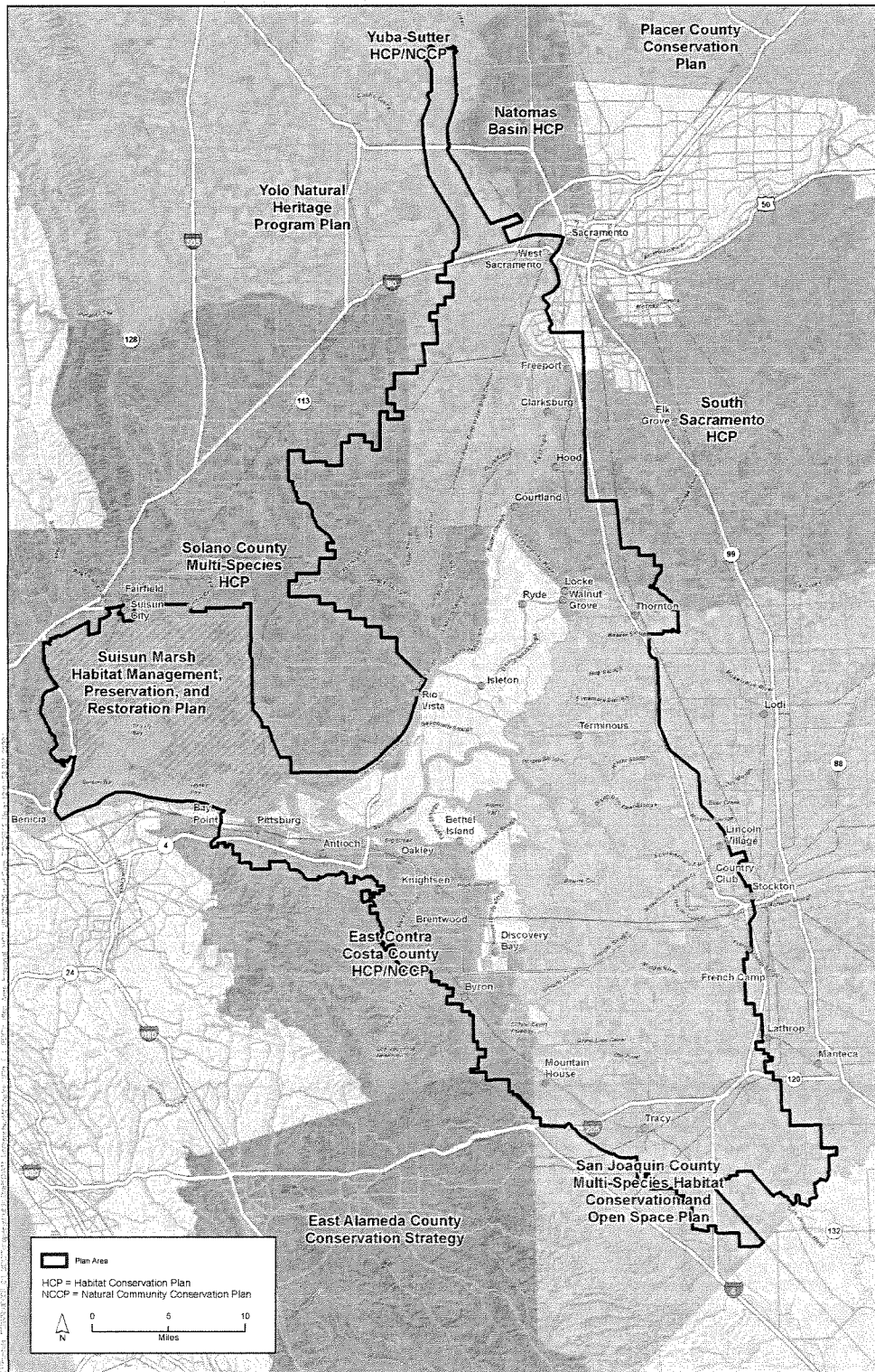
The Yolo Natural Heritage Program (Yolo HCP/NCCP) and Bay Delta Conservation Plan (BDCP) Plan Areas overlap (Figure 1-2 from 2013 BDCP draft). The Yolo HCP/NCCP encompasses the entirety of Yolo County, covering an area of 653,820 acres of which approximately 108,000 acres in Yolo HCP/NCCP Planning Units 15-18 and 21 overlap with the BDCP Plan Area (Figure 1). The BDCP encompasses the statutory Sacramento-San Joaquin Delta as defined in the California Water Code, Section 12220 and additional lands in the upper Yolo Bypass and Suisun Marsh necessary to implement the proposed BDCP conservation actions. In addition, the BDCP has adjusted its planning area to allow the BDCP to undertake conservation actions in Yolo County that could lead to additional overlap with the Yolo HCP/NCCP. The BDCP has expanded the BDCP Plan Area to allow for protection of approximately 1,400 acres of giant garter snake habitat in Planning Unit 11 adjacent to and west of the Yolo Bypass.

The Yolo HCP/NCCP and BDCP both cover the following 18 species. Each plan also covers other species as well (e.g. BDCP covers fish species).

- Alkali-milkvetch
- Brittscale
- San Joaquin spearscale
- California linderiella
- Conservancy fairy shrimp
- Midvalley fairy shrimp
- Vernal pool fairy shrimp
- Valley elderberry longhorn beetle
- California tiger salamander
- Western pond turtle
- Giant garter snake
- Swainson's hawk
- White-tailed kite
- Western burrowing owl
- Western yellow-billed cuckoo
- Least Bell's vireo
- Yellow-breasted chat
- Tricolored blackbird

Summary of BDCP Actions

The BDCP is proposing to implement several conservation measures within the shared portions of the Yolo HCP/NCCP and BDCP plan areas. The proposed BDCP conservation measures include: (1) physical modifications to the Fremont Weir and Yolo Bypass to provide habitat for juvenile salmon and splittail, as well as upstream passage for salmon other fish species (the Yolo HCP/NCCP does not cover fish species); (2) potential channel margin restoration along Sutter and Steamboat Sloughs and the Sacramento River; (3) tidal habitat restoration within the southern portion of the Yolo Bypass for the Delta smelt (an endangered fish); and (4) habitat protection. These conservation measures would be implemented in BDCP Conservation Zones 2 and 3, which include portions or all of Yolo HCP/NCCP Planning Units 15-18, and 2.1



GIS Data Sources: HRA, HCP, 2012; Conservation Plan Boundaries, HCP, 2013.

Figure 1-2
BDCP Plan Area in Relation to Neighboring Conservation Plan Boundaries

BDCP Fremont Weir and Yolo Bypass Modifications and Operations. The BDCP includes a conservation measure to modify the Fremont Weir and Yolo Bypass and to operate the Fremont Weir to increase the availability of floodplain habitat for spawning and rearing for juvenile salmon and splittail, increase food production on and downstream of the Yolo Bypass, and improve fish passage in and near the Yolo Bypass for adult salmon, sturgeon, and other fish species. The Fremont Weir and Yolo Bypass will be modified with an operable gate and operated to improve rearing and spawning habitat for covered fish species, provide for a higher frequency and duration of inundation of the Yolo Bypass, and improve fish passage in the Yolo Bypass, Putah Creek, and past the Fremont and Sacramento weirs. These actions are expected to result in some removal of riparian, grassland, wetland, and agricultural habitats within the footprint of new structures and could alter the farming practices if necessitated by BDCP Fremont Weir operations. (The BDCP has not yet fully developed the Yolo Bypass project and Yolo County is working with BDCP to identify and minimize potential impacts of the proposal.) Implementation of this BDCP conservation measure affects Yolo HCP/NCCP natural communities and covered species in Yolo HCP/NCCP Planning Units 17 and 18, including giant garter snake habitat if farmers can no longer produce rice in the Yolo Bypass as a result of increased flooding.

Habitat Protection and Restoration. The BDCP includes the following actions to protect and restore habitat, a portion of which could be implemented in the Yolo HCP/NCCP Plan Area. Maps from the draft plan showing giant garter snake and Swainson's hawk habitat in Yolo County are included at the back of this paper for comparison, since these are the two species for which there may be the most significant overlap with BDCP conservation efforts.

- Restoration of over 5,000 acres of tidal habitat in the Cache Slough/lower Yolo Bypass area, some of which could be implemented in Planning Unit 18. This habitat is primarily focused on restoring habitat for covered fish species, but will also provide benefits for many terrestrial covered species. (Based on conversations with BDCP staff, it is expected that approximately 1,400 acres of this tidal marsh restoration will occur in Yolo County on the Yolo Ranch. The rest is expected to occur in Solano County.)
- Restoration of at least 5,000 acres of riparian habitat, some of which could be implemented in the Planning Units 15, 17, 18, and 21. At least 3,000 acres of the restored riparian habitat will occur on restored floodplains in the south or east Delta. The remaining acreage can be distributed throughout the BDCP plan area, a portion of which is likely to occur as a component of the tidal habitat restoration in the Cache Slough/lower Yolo Bypass area.
- Restoration of at least 600 acres of nontidal wetland in Planning Units 17, 18, or 11.¹
- Protection and enhancement of 5,000 acres of managed wetland, some of which could be implemented in Planning Units 17 and 18. It is likely that protection and enhancement of managed wetland will be focused in Solano County to meet the needs of species that occur in Suisun Marsh.

¹ BDCP has expanded its Plan Area to include a portion of Planning Unit 11 to accommodate protection and restoration of giant garter snake habitat, of which nontidal wetland is a component.

- Protection of grassland, some of which could be implemented in Planning Unit 18. The majority of the conservation would occur in BDCP conservation zones outside Yolo County.
- Restoration of 2,000 acres of grassland, some of which could be implemented in Planning Units 11, 16, and 18 to provide upland habitat adjacent to tidal and nontidal wetlands.
- Protection of at least 45,405 acres of cultivated lands throughout the BDCP plan area, much of which will be required to be in alfalfa rotation, and plant trees and establish hedgerows on protected lands, some of which could be located in Planning Units 15-18. This protection of cultivated lands is primarily driven by the needs of the Swainson's hawk, sandhill crane, and giant garter snake, but several other covered species will also benefit.
- Protection of at least 50 acres of occupied/recently occupied tricolored blackbird nest sites, some of which could be implemented in Planning Units 15-18 if unprotected tricolored blackbird nest sites are present.

These habitat restoration and protection objectives will be implemented such that at least 800 acres of giant garter snake habitat is restored and at least 700 acres, comprised of cultivated lands, is protected (at least 500 acres of rice) adjacent to the Yolo Bypass (Planning Units 17 and 18).

Coordination with local HCP/NCCPs. The BDCP overlaps several HCP and NCCP plan areas, in addition to the Yolo HCP/NCCP. To coordinate BDCP implementation in overlapping plan areas, the BDCP proposes to enter into partnerships with the HCP/NCCP Implementing Entities. The 2013 draft of the BDCP identifies the following criteria for establishing these partnerships (Section 3.2.4.2.3 on page 3.2-26 and 3.2-27).

- 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 obligations of other plans (i.e., BDCP mitigation cannot supplant the mitigation obligations of other plans and vice-versa).
- In cases where the BDCP shares the goal of providing for the conservation of covered species with another conservation program, where actions contributing to species or natural community conservation are not related to either program's mitigation requirements and limited opportunities exist for either plan to achieve its goal separately, the BDCP and the other conservation program may share conservation credit for the same action with fish and wildlife agency approval. (This situation is most likely to arise for requirements to protect rare and fragmented natural communities.)
- Actions contributing to species or natural community conservation, when implemented by another conservation program in the Plan Area on behalf of the BDCP, could be funded by the BDCP to cover the costs of initial implementation, long-term management, long-term monitoring, and remedial actions.

The Yolo HCP/NCCP will comment on the 2013 draft of the BDCP, including the above coordination criteria. It is important to keep in mind, however, that the BDCP (as an HCP/NCCP) must be granted a permit by the state Department of Fish and Wildlife and U.S. Fish and Wildlife Service, similar to the Yolo HCP/NCCP. As a result, the wildlife agencies

view of acceptable means to coordinate overlapping plan areas is more important than language in the draft BDCP document. DFW staff have expressed that the above language in the BDCP draft is not permit-worthy. In addition, DFW staff have consistently indicated over time that it is unlikely the BDCP and other conservation programs may share conservation credit for the same action with fish and wildlife agency approval. DFW staff have further indicated that additional discussion is needed to determine whether actions implemented by another conservation program in the Plan Area on behalf of BDCP to achieve species or natural community conservation goals could receive funding from BCP to cover the costs of initial implementation, long-term management, long-term monitoring, and remedial actions.

Issues

The JPA has identified the following related to implementation of BDCP actions in the Yolo HCP/NCCP Plan Area that the JPA, wildlife agencies, and BDCP will need to be resolved.

1. Mechanism for achieving conservation objectives in BDCP overlap areas. The JPA, BDCP, and the wildlife agencies, must establish a mechanism must to provide assurances to all parties that the conservation objective for covered species can be met in the area of overlap between the Yolo HCP/NCCP and BDCP by either or both plans. The California Department of Fish and Wildlife (CDFW) and United States Fish and Wildlife Service (USFWS) have indicated they will work with the Yolo HCP/NCCP to establish the conservation objective for species covered by both plans in the area of plan overlap, independent of the mitigation requirements of either plan, and based upon the guidance of published recovery plans and the best available science. Where actions contributing to species or natural community conservation are not related to either program's mitigation requirements, the wildlife agencies have indicated that either plan or both plans may contribute to meet the conservation objective, with agreements and assurances made through an implementing instrument such as a Memorandum of Understanding (MOU). Given limited availability of local sources of funding to meet Yolo HCP/NCCP habitat restoration and protection objectives, coordination with BDCP may be a critical component of the success of the Yolo HCP/NCCP. Further discussion about potential increases in funding to the Yolo HCP/NCCP in return for coordination with BDCP and/or means to reduce Yolo HCP/NCCP costs will be a critical component of future discussions with both BDCP and the wildlife agencies.

2. Mitigation for BDCP impacts outside of Yolo County within Yolo County (and vice versa). The JPA, wildlife agencies, and BDCP need to develop policies related to BDCP mitigation efforts implemented in the Yolo HCP/NCCP Plan Area for impacts of BDCP actions outside of the Yolo HCP/NCCP Plan Area and vice versa – the potential for BDCP to mitigate outside of the Yolo HCP/NCCP Plan Area for BDCP impacts in the Yolo HCP/NCCP Plan Area. Both situations could negatively affect the ability of the JPA to achieve Yolo HCP/NCCP biological objectives.

3. Assurances re Yolo HCP/NCCP permit commitments. The JPA, wildlife agencies, and BDCP need to discuss the possibility of USFWS and DFW assurances in the Yolo HCP/NCCP regarding any failure of Yolo HCP/NCCP to achieve Yolo HCP/NCCP permit commitments resulting from implementation of permitted BDCP actions. Such assurances would include mechanisms for ensuring Yolo HCP/NCCP commitments can be achieved into the future regardless of BDCP conservation actions in Yolo County. The wildlife agencies have indicated

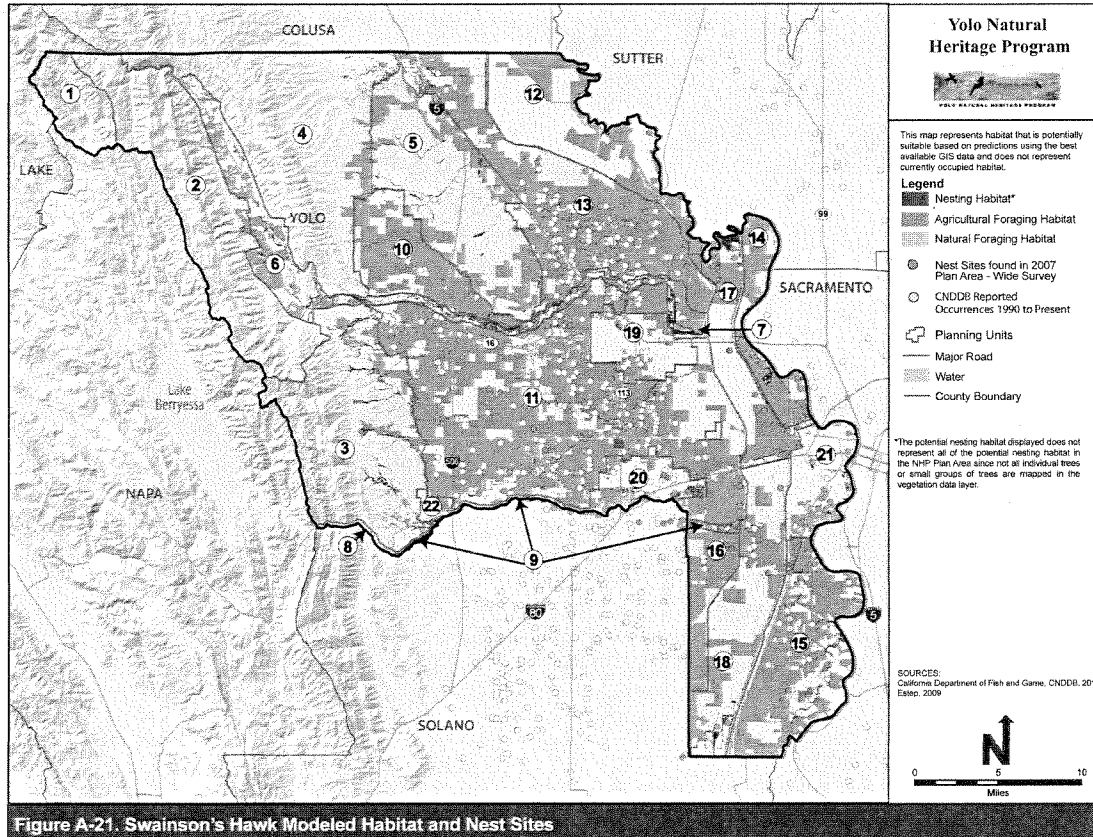
that if BDCP is permitted first, the JPA and the wildlife agencies should be able to anticipate some of BDCP's implementation actions, so the Yolo HCP/NCCP could be developed in coordination with BDCP implementation actions.

4. Consistency of BDCP and Yolo HCP/NCCP implementation actions. The JPA, wildlife agencies, and the BDCP need to ensure consistency of BDCP habitat restoration, protection, and management actions in the Yolo HCP/NCCP Plan Area with Yolo HCP/NCCP implementation requirements (e.g., mitigation requirements, application of conservation land assembly principles). The wildlife agencies have indicated there is a mechanism for addressing the consistency issue through a process that is part of the Natural Community Conservation Planning Act related to interim projects, which needs to be further explored as part of this discussion. BDCP proposed actions currently include, for example, the easement requirement for Swainson's hawk of maintaining 50% of land under Swainson's hawk easements in alfalfa in perpetuity. Some farmers have expressed concern about such requirements and therefore more discussions with landowners and farmers are needed before the JPA can agree to base the Yolo HCP/NCCP conservation strategy on such requirements. (See Swainson's hawk issue paper developed by the JPA.) Another example includes mitigation for loss of giant garter snake habitat in the Yolo Bypass (e.g. rice and wetlands). The USFWS is currently considering permitting a giant garter snake mitigation bank in the Bypass, but the USFWS recovery strategy for giant garter snake discourages preservation of giant garter snake habitat in the Bypass. Such issues need to be resolved as both BDCP and the Yolo HCP/NCCP move forward.²

5. Land cost increases or other impacts resulting from competition. The wildlife agencies, BDCP and the JPA need to identify mechanisms for avoiding/minimizing competition between Yolo HCP/NCCP and BDCP for acquisition of lands necessary for Yolo HCP/NCCP and BDCP to achieve their biological goals and objectives and permit commitments. Such mechanisms could include coordination prior to making offers to purchase available land from willing sellers. Without such coordination, land and easement costs could increase as a result of competition between BDCP and the Yolo HCP/NCCP for conservation lands for covered species in Yolo County. (In Merced County, the University of California at Merced paid a large sum for land to mitigate for vernal pool impacts. This purchase impacted the price of land for vernal pool mitigation within the County.) Such mechanisms should include policies for ensuring effective coordination between the Plans during implementation to avoid conflicts and to increase implementation cost effectiveness (e.g., consolidated monitoring of biological resources, management of contiguous YOLO HCP/NCCP and BDCP conservation lands) and mechanisms for addressing any impacts of BDCP actions on Yolo HCP/NCCP protected lands.

² The Bay Delta Field Office of the USFWS will likely be providing some language to help clarify any issues regarding mitigation banks.

DRAFT



02/15/13 S:\GRAPHICS-WORKING FILES\YOLC - Figures\Appendix

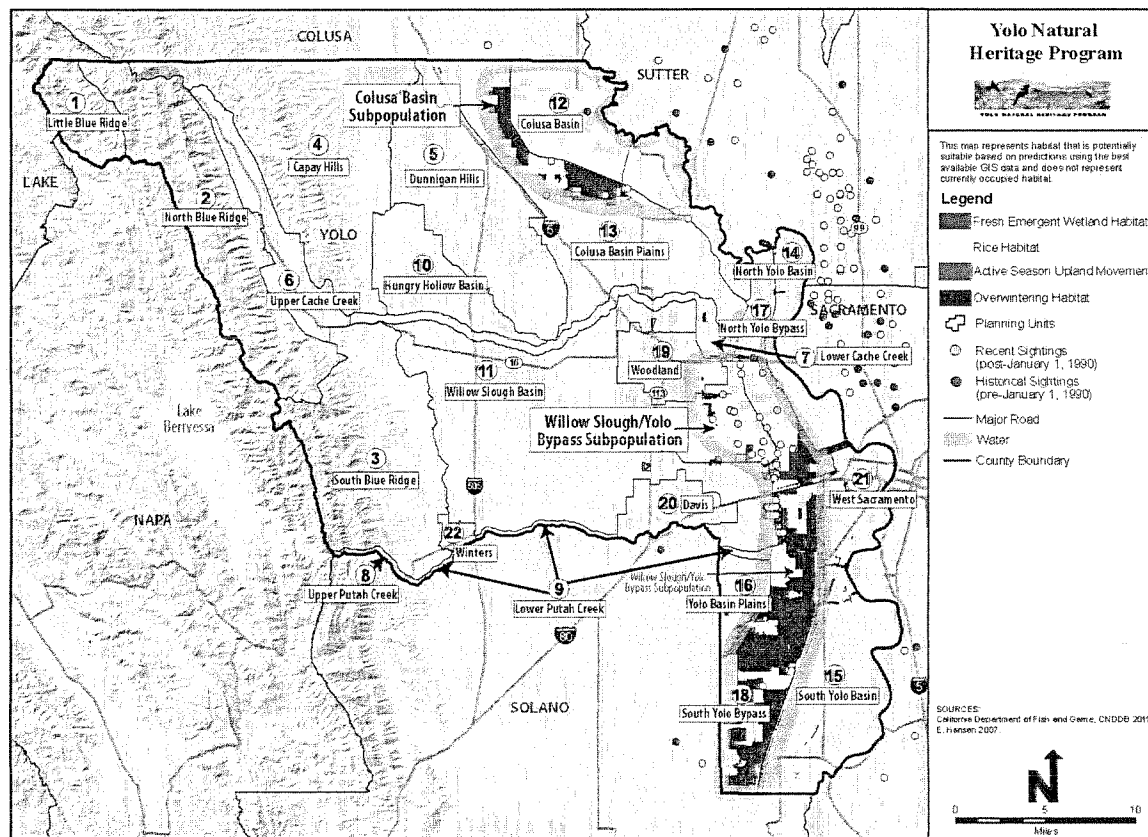


Figure A-19. Giant Garter Snake Modeled Habitat and Occurrences

From: Jeanne Beers <jbeers@minasianlaw.com>
Sent: Tuesday, July 29, 2014 4:53 PM
To: BDCP.Comments@noaa.gov
Cc: Paul Minasian; Denise Dehart
Subject: Comments on Bay Delta Conservation Plan Implementing Agreement and Draft EIR/EIS
Attachments: SJREC Comment Letter re DEIR-EIS.pdf

Ladies and Gentlemen: Pursuant to Paul Minasian's instructions attached is the above-referenced letter submitted on behalf of the San Joaquin River Exchange Contractors.

Jeanne Fielder, Secretary to
Paul R. Minasian, Esq.
Minasian, Meith, Soares, Sexton & Cooper, LLP
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**MINASIAN, MEITH,
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Retired

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July 29, 2014

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National Marine Fisheries Service
650 Capitol Mall, Suite 5-100
Sacramento, CA 95814

The Honorable Sally Jewell
Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

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

Re: Comments on Bay Delta Conservation Plan
Implementing Agreement and Draft EIR/EIS

Ladies and Gentlemen:

I. Introduction:

By this letter, the San Joaquin River Exchange Contractors comment upon and object to the Draft Environmental Impact Report / Environmental Impact Statement (DEIR/EIS) and the draft Bay Delta Conservation Plan (BDCP). While the flaws in the BDCP and DEIR/EIS are numerous, this comment letter focuses on the most glaring: (1) the lack of assured funding for the BDCP and specifically for its Habitat Conservation Plan (HCP) and (2) the plan's failure to consider levee maintenance integral to the project. The San Joaquin River Exchange Contractors believe that compliance with NEPA, CEQA and the requirements of Federal Endangered Species Act (16 USC 1530 et seq) including the requirements of a valid HCP plan can only be accomplished if the proponents of this

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project prior to attempting to circulate and receive final comments upon the environmental examination implement and demonstrate their funding plan is feasible. Such a plan would assure that either the bond funds specified to be used for environmental mitigation have been placed upon statewide or local ballots for voter approval and approved in advance of the certification of the project so that the project and alternatives are accurately described or if the environmental mitigation and levee repair obligations are not to be funded by state voter approved bonds and repaid from state general funds, an alternative funding plan is shown to be feasible. Recirculation when the Project is accurately described and funding is approved by the voters will remedy these fundamental flaws.

The comments to this document will no doubt demonstrate by citation to judicial precedent, that there are many ways to say the obvious: CEQA, NEPA and the principles of Habitat Conservation Plans do not permit a project to be put forward which is not financially feasible, and depends on measures and mitigation devices which are not actually available. The NEPA, CEQA and HCP require facts, available and feasible mitigation and other measures and without those "facts" the project description is so uncertain as to not allow analysis of the impacts and alternatives. If the voters of the State do not authorize the funding of the environmental mitigation and use of existing authorized public debt, the repayment obligations can be assigned to specific parties benefitting from the project if it is feasible for them to bear those costs or the project must not be certified as correctly and accurately described. The idea of putting an approved environmental project on the shelf and awaiting a physical catastrophe in the Delta to fund the environmental mitigation contemplated is simply not in accordance with law.

II. The HCP May Not Rely on Speculative and Uncertain Funding Sources

The BDCP and its Habitat Conservation Plan (HCP) rely on many speculative and uncertain funding sources. The Federal Endangered Species Act only allows an incidental take permit to be issued if "the applicant will ensure that adequate funding for the [habitat conservation] plan will be provided." 16 U.S.C. § 1539(a)(2)(b)(iii) (emphasis added). This requires that the funding source not be speculative or uncertain. See e.g., *Sierra Club v. Babbitt*, 15 F. Supp. 2d 1274, 1282 (reliance on speculation as to funding from third parties is arbitrary and capricious); *Sierra Club v. Marsh*, 816 F.2d 1376 (9th Cir. 1987) (action agency cannot "insure" project will not jeopardize species based on promise of future mitigation measures). To approve an HCP whose funding is not ensured because it

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is speculative or uncertain is arbitrary and capricious. See *Southwest Ctr. for Biological Diversity v. Barbel*, 470 F. Supp. 2d 1118, 1156-57; *Sierra Club v. Babbitt*, 15 F. Supp. 2d 1274, 1282 (reliance on speculation as to funding from third parties is arbitrary and capricious). The California ESA similarly requires that funding for mitigation measures be "ensured." Cal. Fish & Game Code § 2081(b)(2), (4). The California Environmental Quality Act also requires that mitigation measures be feasible and "actually be implemented as a condition of development." 83 Cal. App. 4th 1252, 1260-61 (citing CEQA §§ 21002.1, 21081(b); CEQA Guidelines, § 15091(b)). The BDCP relies upon speculative and uncertain funding sources for implementing the required mitigation measures, including bonds that have yet to be proposed, let alone approved by voters; grant money that has not been rewarded or earmarked, from programs that aren't guaranteed to last the life of the BDCP; and speculative contributions from project contractors who have not made funding commitments.

State-issued general obligation bonds are heavily relied upon for BDCP funding. See BDCP at 8-67 to 8-69. The plan assumes that it will receive \$1.514 billion from what has turned out to be a highly contentious and uncertain water bond that will be included on the 2014 ballot, followed by an even larger amount (\$2.25 billion) in a yet to be proposed (let alone approved) water bond at some point in the future. See BDCP at 8-84 to 8-85. There is absolutely no certainty that this \$3.8 billion will ever be approved by voters. Indeed, the value of the 2014 water bond, its contents, and its chances for approval are currently a subject of great debate: Legislators have been proposing all manner of modifications to the 2014 water bond and many stakeholders have been demanding that the bond be "tunnel neutral" – that is, that the water bond not directly provide any funds for EIR/EIS twin tunnel planing, design or environment mitigation related to the BDCP. And, even if a bond is approved by voters, it would still be subject to bond validation challenges. Reliance on the approval of a contentious proposal by the voting public is far from the assurance of funding required by statute. The plan also makes many unrealistic assumptions about the availability of various grant funds, and the likelihood that they will be awarded to support the BDCP. See BDCP at 8-86 to 8-118. The document indicates that the plan or certain components "may be eligible" for certain grant monies. See, e.g., BDCP at 8-87, 8-89. In some cases, the plan acknowledges that the grant funds are already exhausted, but still assumes that they will be (or have been) directed toward components of the BDCP. See, e.g., 8-87. In other cases, the plan assumes that grant programs will continue for the entire duration of the 50-year project implementation period, and that the BDCP will receive significant grants each year, even though there is no guarantee that the grant programs will continue for the life of the project, let alone

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make consist awards to the project. See, e.g., BDCP at 8-92 (\$90 million over 50 years, based on seven years of past grants); 8-93 to 8-94 (\$100 million over 50 years, from a program that must be reauthorized every three years); 8-94 to 8-96 (\$100 million over 50 years from a program "likely to have some funding available," relying on part on "new sources"). And in other cases, the projected proportion of grant monies directed to the BDCP appears unrealistic compared to past practice. See, e.g., BDCP at 8-101 (in 2012, a program made IS grants totaling \$3 million; the BDCP assumes it will receive \$2 million per year from this program for the entire 50-year permit term. These optimistic assumptions only mask the reality: The funding sources for the BDCP are speculative and uncertain, and adequate funding is not "ensured."

Finally, the plan assumes that contractors of the State Water Project (SWP) and the Central Valley Project (CVP) will fund huge portions of the HCP, but there is scant assurance that they will actually do so. The BDCP indicates that SWP and CVP contractors will fund 100% of Conservation Measure 1. BDCP at 8-77, 9-74. However, the proportions that SWP Contractors and CVP Contractors will contribute has not been determined. BDCP at 8-70. The CVP contractors' participation is not assured at all-the plan only "anticipate[s]" participation from CVP contractors. BDCP at 8-73. The plan presumes that all of the SWP and CVP project water purchasing Contractors will agree to fund Conservation Measure 1 because that measure, standing apart from the other BDCP costs, "may" create economic benefits greater than the initial investment. BDCP at 8-80 to 8-82. The document asserts that the plan is "affordable" because the plan's annual costs are "small in relation to" the gross annual income of individuals living in counties that would benefit from the plan. BDCP at 8-81. It is far from assured that the Contractors' contributions, which are "essential" to the plan, will materialize as suggested in the planning document. BDCP at 8-82.

III. The Environmental Documents Ignore Maintenance Costs for a Major Project Component: Delta Levees

According to the planning documents, approximately half of all water exported to the south of the Delta would continue to flow through the Delta, and only half would flow through the new tunnels. Because half of the project water will flow through the Delta, Delta levees must be kept maintained and repaired in order to meet salinity requirements and maintain water quality at the south of Delta pumps. Levee failure in the Delta is a looming concern, and is one of the main justifications for the BDCP. Project proponents argue that if the levees failed in an earthquake, the north of Delta tunnel intakes are necessary to maintain a supply of fresh water to the south. e.g., BDCP at 6-34. However, the plan only provides maintenance funding for about 10% of Delta levees-those related

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to the HCP. BDCP at 4-27 to 4-28. Even though the other levees are necessary for the conveyance of about half the project water to the south Delta, their upkeep is not accounted for. The plan would leave maintenance and repair of this integral project component to local agencies and landowners. BDCP p. 6-35, theorizes that in the case of levee failures appropriate local agencies(i.e. reclamation districts) will provide for reclamation, repair of the islands and removal of flooding conditions. However, a large part of the land protected by these levees will have become owned by DWR the project proponent and how DWR would pay its share of rebuilding levees is not specified. The plan pays so little attention to the hundreds of miles of levees necessary for the operation of the BDCP that they were omitted from the DEIR/EIS project description. DEIR/EIS 3-64 to 3-69. The project description is, therefore, flawed because it fails to include this major component of the project. BDCP proponents cannot avoid responsibility for integral levee maintenance and repair by simply limiting the project description. *Rural Land Owners Association v. Lodi City Council*, 143 Cal. App. 3d 1013, 1025 (1983) or speculating that there will be sufficient funding for DWR to pay its share of the levee repair and rebuilding costs. A plan that proposes one half of the water exported pass through tunnels and one half be reliant upon levees has to candidly describe how the whole project is feasible, will work and if it does not have economic feasibility simply conclude by accurately describing the alternatives and their impacts. Here, the project description in removing the financial support for levee maintenance through public ownership of presently productive Delta lands and removing the economic support represented by the twin tunnel alternative conveyance must to accurately describe the project explain the likelihood of which levees will not be repaired and reclaimed and the effect upon the environment from the absence of those resources to locally support a functioning levee system.

IV. NMFS and USFWS cannot make the determinations to support an HCP which provides sufficient relief from the Federal Endangered Species Act. The Federal Government role and the financing uncertainty are fatal flaws.

In addition to the requirement that financing must be assured in order for mitigation and protection measures to be considered (*National Wildlife Federation v National Marine Fisheries Service*) D.Or 2003254 F.Supp. 2d 1196,1205, funding cannot be adequate if it simply speculates that actions of others will provide the funding or mitigation measures in the future. *Southwest Center for Biological Diversity v Bartel*, 470 F. Supp 2d (SD. Cal 2006) at 1118). San Diego HCP plan rejected because no reliable funding to acquire land for a preserve. Promises to cause bond funding in future inadequate) the Endangered Species Act itself requires that incidental take permits not be

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granted unless the financially feasible mitigation measures are assured. 16 USC Section 1539(a)(2)(B)iv requires that funding of those mitigation or environmental protection measures be assured as a condition of incidental take authority. Here, the CVP and Federal Government are not committed to a particular percentage of the project or environmental mitigation cost and no mechanism for funding that contribution is provided in the document. If the federal government is to appropriate funds and pay toward the costs of the project, the specific percentage and mechanism for payment must be described. Otherwise, the project takes on the image of a shell game in which the project plan is kept alive so that when and if an emergency condition arises, it can be pulled from the shelf and cited as finished even if the conditions described are never really assured to exist.

IV. Modeling of water operations must be accurate. It need not be perfect but errors which result in an improper project description must be corrected and the impacts of those changes quantified.

As the MBK Report describes, the modeling utilized understates the export of water by the CVP and SWP by approximately 210,000 acre feet per year and incorrectly models the allocation between the pumping at the head of the twin tunnels and the pumping amounts at the South Delta pumps dependent on levee integrity. MBK Report p. 6 and 7. This error potentially understates the effect on delta salinity and flows near the South pumping diversions. the Modeling failure to set forth exactly what alternatives and changes in the Coordinated Operating Agreement between the CVP and SWP project operations would accompany the BDCP also leaves the Project improperly described in terms of its potential environmental impacts.

V. Adaptive Management, Deferred Implementation, Decision Trees are not a substitute for or satisfaction of NEPA, CEQA and HCP requirements.

A project description must be "accurate, stable and finite" (Concerned Citizens of Costa Mesa 42 Cal 3d at p. 938) However, here the BDCP pp 3.6-22 and 25 makes clear that the Adaptive Management Team will change conservation measures or objectives as tools and resources are available. The Decision Tree is to determine delta outflow in the fall and spring yet, there is no decision or standards set forth as alternatives to judge whether SWP and CVP operations will be feasible. The decisions will be made apparently

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only after the construction and operation of the tunnels begins BDCP p 3.4-25 and EIS p 3-207 and 30-208. The operations of Shasta Dam, Folsom and Oroville as a result of the Project alternatives are not examined or their effects quantified because the project description simply assumes it is sufficient under the law to not ask for and obtain those requirements before drafting the EIR/EIS. Like funding, if there is a defined project, whether that plan's financial underpinnings are feasible and its water outflow underpinnings are feasible must be included in the EIR/EIS and HCP. The financing by current CVP and SWP purchased water contractors may have little water to purchase and thus be unable to support this project. A proper project description requires specific operational criteria to confirm financial feasibility before the payment of environmental mitigation in excess of conservation measures is assumable. The water operations anticipated must be first presented to the voters and the SWRCB to have a defined and specific project and to understand its environmental impacts and alternatives.

VI. Conclusion.

Many major funding sources that the project proponents rely upon are speculative, uncertain, or illusory. The project failed to identify funding for maintenance and repair of a necessary project component-the Delta levees-because it failed to even acknowledge that they are an integral piece of the plan. The mitigation and underlying flow and modeling of flows are so uncertain as to prevent a meaningful project description and consideration of impacts. This EIR/EIS is improper and inadequate and the HCP and the BDCP and its supporting documents must be disapproved due to these egregious errors. Recirculation is required when the voters have approved funding for the environmental improvements planned and the water operations are approved by the SWRCB as feasible.

Trying to put a project on the shelf on the basis of these documents as completing the EIR/EIS and HCP process so that it can be ignited and everyone will know what to do or forget to do as money gets short when there is a physical failure in the Delta is worse than a lack of preparation because it will give the impression of consideration of alternatives and impacts and cut off real examination of alternatives. If logic does not call for rejection of such a device, the law will.

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Very truly yours,

MINASIAN, MEITH, SOARES,
SEXTON & COOPER, LLP

By: 

PAUL R. MINASIAN

PRM:jb

From: Michael J. Van Zandt <MVanZandt@hansonbridgett.com>
Sent: Tuesday, July 29, 2014 5:11 PM
To: 'BDCP.comments@noaa.gov'
Cc: Theodore A. Kolb; J. Dennis McQuaid; 'Tom Hester'
Subject: BDCP Comments
Attachments: LTO Ryan Wulff re Island Inc .pdf; LTO Ryan Wulff re RD 501.pdf

Mr. Wulff:

Attached please find comment letters from Reclamation District 501 and Islands, Inc.

Sincerely,
Michael Van Zandt

Michael J. Van Zandt
Partner
Hanson Bridgett LLP
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July 29, 2014

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

Mr. Ryan Wulff
National Marine Fisheries Service
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Re: Comments on Draft Bay Delta Conservation Plan and Associated Draft Environmental Impact Report/Environmental Impact Statement

Dear Mr. Wulff:

The law firm of Hanson Bridgett LLP represents Reclamation District 501 ("RD 501"), the reclamation district responsible for Ryer Island in Solano County, near Rio Vista. We provide these comments for consideration of the decision makers on the Bay Delta Conservation Plan ("BDCP") and the associated environmental impact report ("EIR") and environmental impact statement ("EIS"). RD 501 joins in the comments filed by the North Delta Water Agency. We also support the proposal and comments by SolAgra Corporation on the BDCP and the EIS/EIR..

Ryer Island is named for Dr. Washington Ryer, a prominent physician who was General Winfield Scott's Assistant Surgeon during the Mexican-American War. Dr. Ryer was so enamored with California, he established a medical practice in Stockton. Dr. Ryer's family owned the entire island for many years and it is named in his honor. The Ryers married into the Nixon Family and part of the island is still owned by the Nixon Family. Lewis Nixon III was one of the former owners of the island and he is famous for being one of the "Band of Brothers" from Easy Company in World War II.

Farmers on Ryer own riparian water rights from the San Joaquin River and has established these rights for over 100 years. There is considerable concern that the BDCP will increase the salinity for the San Joaquin River as more and more fresh water is pumped from the Delta. There is a salinity monitoring station at the Rio Vista Bridge that must be maintained in order to ensure water quality for Ryer Island. Any interference with water quality must be evaluated as part of the EIS/EIR process.

We understand that the proposed action will involve the protection of endangered species, limiting incidental takes, but also protecting the water rights of CVP and SWP members up to their contractual limits. There was no mention of protecting riparian water right owners in the project purposes and that must be included. The Delta is a large region and consists of many different interests. The interests of one of the largest agricultural producing regions in the world must be protected. Ryer Island is a significant contributor to the success of agriculture in the

Mr. Ryan Wulff
July 29, 2014
Page 2

Delta, and its resources must be protected. Riparian water rights are the highest, protected type of water rights in California. Farmers on Ryer Island have established these water rights as a result of the existence of the island immediately adjacent to the San Joaquin River. The BDCP must ensure that no part of the project will interfere with these rights.

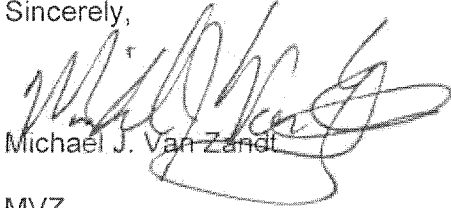
Not only is RD 501 concerned about water quality, it is also concerned about water quantity. As more and more water is shipped south and now with the two tunnels bypassing the region, there is considerable concern that the BDCP will result in less fresh water being available for farmers along the path of the San Joaquin and Sacramento Rivers. Steps must be taken to ensure that the quantity of water is maintained in the river to support agriculture

Ryer Island is below sea level and must depend on RD 501's pumps to keep the island from flooding. However, the farms also have a series of intake pumps to pump water from the river to the island for irrigation. These intakes are set at certain depths and a drop in the level of the river could mean that these would have to reset its intakes deeper in the river.

Ryer Island was the subject of a temporary entry permit to investigate the feasibility of using the island as a route for the proposed tunnels. Although the route is not the preferred proposal, it is still an alternative analyzed in the EIS/EIR. RD 501 is adamantly opposed to the destruction of its farm lands for use as a right of way for the tunnel. The disruption caused by the construction alone would destroy Islands, Inc.'s viability as a farming operation. The severance of so much of the farm lands from the rest of the farm threaten to make the entire operation economically infeasible.

For the foregoing reasons, RD 501 asks that you reconsider the proposed project, that you not select Ryer Island as a site for the tunnels, that you protect riparian rights, and that you ensure that water quality and water quantity are maintained in the Delta.

Sincerely,



Michael J. Van Zandt

MVZ

From: Keith Kiley <KKiley@hansonbridgett.com>
Sent: Wednesday, July 30, 2014 11:39 AM
To: 'BDCP.comments@noaa.gov'
Cc: Michael J. Van Zandt
Subject: Comments on Draft Bay Delta Conservation Plan
Attachments: Letter to Ryan Wulff re Islands Inc follow-up letter 7-29-14.pdf; Letter to Ryan Wulff re RD501 follow-up letter 7-29-14.pdf

Mr. Wulff, attached are follow-up letters from Hanson Bridgett for Islands, Inc., and Reclamation District 501 regarding the above-referenced matter. Please contact Michael Van Zandt with any questions or comments.

Keith Kiley

Legal Secretary

Hanson Bridgett LLP

(415) 995-5144 Direct

(415) 541-9366 Fax

kkiley@hansonbridgett.com



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425 Market Street, 26th Floor

San Francisco, CA 94105

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The foregoing applies even if this notice is embedded in a message that is forwarded or attached.



MICHAEL J. VAN ZANDT
PARTNER
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DIRECT FAX (415) 995-3566
E-MAIL mvanzandt@hansonbridgett.com

July 29, 2014

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

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

Re: Comments on Draft Bay Delta Conservation Plan and Associated Draft Environmental
Impact Report/Environmental Impact Statement

Dear Mr. Wulff:

The law firm of Hanson Bridgett LLP represents Reclamation District 501 ("RD 501"), the reclamation district responsible for Ryer Island in Solano County, near Rio Vista. We provided comments yesterday on the subject documents. We inadvertently referred to the river in question as the San Joaquin River when it should be the Sacramento River. Please accept this letter as a correction to our comments.

Sincerely,



Michael J. Van Zandt

MVZ

From: Michael J. Van Zandt <MVanZandt@hansonbridgett.com>
Sent: Tuesday, July 29, 2014 5:11 PM
To: 'BDCP.comments@noaa.gov'
Cc: Theodore A. Kolb; J. Dennis McQuaid; 'Tom Hester'
Subject: BDCP Comments
Attachments: LTO Ryan Wulff re Island Inc .pdf; LTO Ryan Wulff re RD 501.pdf

Mr. Wulff:

Attached please find comment letters from Reclamation District 501 and Islands, Inc.

Sincerely,
Michael Van Zandt

Michael J. Van Zandt
Partner
Hanson Bridgett LLP
(415) 995-5001 Direct
(415) 995-3566 Fax
mvanzandt@hansonbridgett.com



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Re: Comments on Draft Bay Delta Conservation Plan and Associated Draft Environmental Impact Report/Environmental Impact Statement

Dear Mr. Wulff:

The law firm of Hanson Bridgett LLP represents Islands, Inc., the largest landowner and farming operation on Ryer Island in Solano County, near Rio Vista. We provide these comments for consideration of the decision makers on the Bay Delta Conservation Plan ("BDCP") and the associated environmental impact report ("EIR") and environmental impact statement ("EIS"). Islands, Inc. joins in the comments filed by the North Delta Water Agency. We also support the proposal and comments by SolAgra Corporation on the BDCP and the EIS/EIR..

Islands, Inc. is the owner of over 50 percent of the land on Ryer Island. Ryer Island is named for Dr. Washington Ryer, a prominent physician who was General Winfield Scott's Assistant Surgeon during the Mexican-American War. Dr. Ryer was so enamored with California, he established a medical practice in Stockton. Dr. Ryer's family owned the entire island for many years and it is named in his honor. The Ryers married into the Nixon Family and Islands, Inc. is still owned by the Nixon Family. Lewis Nixon III was one of the former owners of the island and he is famous for being one of the "Band of Brothers" from Easy Company in World War II.

Islands, Inc. owns riparian water rights from the San Joaquin River and has established these rights for over 100 years. There is considerable concern that the BDCP will increase the salinity for the San Joaquin River as more and more fresh water is pumped from the Delta. There is a salinity monitoring station at the Rio Vista Bridge that must be maintained in order to ensure water quality for Ryer Island. Any interference with water quality must be evaluated as part of the EIS/EIR process.

We understand that the proposed action will involve the protection of endangered species, limiting incidental takes, but also protecting the water rights of CVP and SWP members up to their contractual limits. There was no mention of protecting riparian water right owners in the project purposes and that must be included. The Delta is a large region and consists of many different interests. The interests of one of the largest agricultural producing regions in the world must be protected. Ryer Island is a significant contributor to the success of agriculture in the Delta, and its resources must be protected. Riparian water rights are the highest, protected

Mr. Ryan Wulff
July 29, 2014
Page 2

type of water rights in California. Islands, Inc. has established these water rights as a result of the existence of the island immediately adjacent to the San Joaquin River. The BDCP must ensure that no part of the project will interfere with these rights.

Not only is Islands, Inc. concerned about water quality, it is also concerned about water quantity. As more and more water is shipped south and now with the two tunnels bypassing the region, there is considerable concern that the BDCP will result in less fresh water being available for farmers along the path of the San Joaquin and Sacramento Rivers. Steps must be taken to ensure that the quantity of water is maintained in the river to support agriculture

Ryer Island is below sea level and must depend on Reclamation District 501's pumps to keep the island from flooding. However, Islands, Inc. also has a series of intake pumps to pump water from the river to the island for irrigation. These intakes are set at certain depths and a drop in the level of the river could mean that islands, Inc. would have to reset its intakes deeper in the river.

Ryer Island was the subject of a temporary entry permit to investigate the feasibility of using the island as a route for the proposed tunnels. Although the route is not the preferred proposal, it is still an alternative analyzed in the EIS/EIR. Islands, Inc. is adamantly opposed to the destruction of its farm lands for use as a right of way for the tunnel. The disruption caused by the construction alone would destroy Islands, Inc.'s viability as a farming operation. The severance of so much of Islands, Inc.'s lands from the rest of the farm threaten to make the entire operation economically infeasible.

For the foregoing reasons, Islands, Inc. asks that you reconsider the proposed project, that you not select Ryer Island as a site for the tunnels, that you protect riparian rights, and that you ensure that water quality and water quantity are maintained in the Delta.

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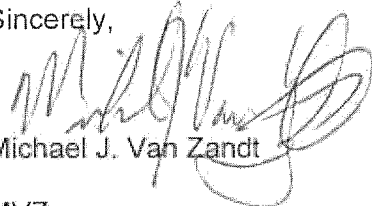
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