

**From:** Janet McCleery <jmccleery@duckpondsoftware.com>  
**Sent:** Tuesday, July 29, 2014 4:43 PM  
**To:** BDCP.Comments@noaa.gov  
**Subject:** BDCP Comment Concerns - legality

I submitted numerous email comments, separated by subject. Of the eleven (11) emails sent, only two received a "bdcpl comments - NOAA Service Account" response. Does that mean the comments are not being received? I am very concerned with the legality of this process. Please send me responses for each of the emails sent since they were sent within the deadline. And/or respond to this since it contains a copy of the prior separate emails.

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Here they are again in case they got lost in the email:

**1 - Comments on the BDCP EIR/EIS - Discovery Bay Boating (responded to, no need to re-send.)**

**2. - Comments on the BDCP EIR/EIS - Discovery Bay Water Quality**

This comment is about the BDCP EIR/EIS.

Background: I live in Discovery Bay and am a software consultant working part time from my home. We moved to Discovery Bay after spending 35 years in Silicon Valley - myself as a software engineer then software manager, VP Engineering, Co-Founder/CTO of a software startup company, and currently software consultant for the product my start-up developed. My husband was a financial analyst, finance manager, and retired as Controller of Space Systems Loral, a major satellite builder. We both worked hard, saved our money, lived in a small Sunnyvale home where we raised our two girls. We spent weekends driving to the Delta where we and our girls learned to water ski and learned to enjoy the beautiful nature and setting of the unique area called the "Delta". We built our "dream house" and moved to Discovery Bay when my husband was within a few years of retirement. We looked forward to retirement years boating on the waterways we love and enjoying the beauty and serenity of this wonderful place.

The BDCP Tunnel Plan is threatening to ruin my retirement home and way of life.

Discovery Bay is a community of 14,000 homes with 3,000 of them waterfront including docks and boats in the back yard with a similar love of the Delta, water-based recreation and the Delta's scenic beauty. In addition to the waterfront homes, there is a large marina with many dry-dock water ski and wakeboard boats and berths for many larger houseboats and powerboats owned by people in Silicon Valley and other nearby areas for weekend enjoyment. The marina and water-front businesses account for most of our communities' economic basis. Waterfront lots are about \$200K more than non-waterfront lots and all lots in Discovery Bay are quite a bit more expensive than surrounding communities. This is because of our unique water-based activities and focus.

Besides the economic impact is the daily one. The Discovery Bay waterfront lots are small. The "backyard" is a small deck and our boat docks. Our "swimming pool" is the Delta. My family - husband, children and

grandchildren and pets - enjoy the summers swimming and playing in the Delta. My husband does daily laps around our bay. It is extremely important to me and the rest of the citizens of Discovery Bay that the water quality is healthy and safe for our family, particularly our grand babies.

This is a comment on the Draft EIR/EIS - Analysis. Representatives from Discovery Bay have requested at BDCP public meetings and through other channels that specific analysis of the project's water quality impacts on Discovery Bay be included in the Draft EIR/EIS. They have not been included. Discovery Bay is different than the rest of the Delta. It consists of 16 shallow water bays, ranging in size from less than an acre to several acres. There is little circulation in the bays. The reduction of Delta Flows due to the past 10 years of excessive pumping (greater than recommended by the SWRCB and Bay Institute) have already caused visible impacts to our bays. The impacts on water quality in nearby open water sloughs and channels do not translate to water quality impacts in the bays, where reduction in high quality fresh water with the tunnels will translate to much greater degradation of water quality. The EIR/EIS fails to adequately address water quality impacts in Discovery Bay. I respectfully request that site specific analysis be conducted to determine water quality impacts on the bays of Discovery Bay

This is a comment on the Draft EIR/EIS - Mitigation. Operation of the tunnels will cause adverse water quality impacts on Discovery Bay. The requested mitigation measures include weed control (egeria densa), dredging, and improvements to Discovery Bay's circulation system. These mitigations measures will all improve circulation in Discovery Bay and help to offset the reduction in high quality freshwater flows that will result from BDCP operations. I respectfully request that these, and all other feasible mitigation measures, be included in order to mitigate the water quality impacts on Discovery Bay to a level of insignificance.

This is a comment on the Draft EIR/EIS - Ongoing Monitoring. Much of the purported environmental benefit, and assurance that the project will not cause harm, depends on an ongoing monitoring and adaptive management program. Representatives from Discovery Bay have requested at public meetings and at other times that one or more monitoring stations be included to monitor water quality impacts on the 16 bays of Discovery Bay. Yet no Discovery Bay monitoring stations have been included. The bays of Discovery Bay are heavily used for water contact sports (swimming, sailboarding, paddle boarding, etc). The failure to include adequate monitoring of Discovery Bay water quality is unreasonable. Conditions in the bays of Discovery Bay are not reflected by existing monitoring stations in open water locations. There is much less circulation in the bays of Discovery Bay and numerous other differences in conditions. Adequate monitoring stations in Discovery Bay are required to establish an adequate mitigation and monitoring program.

This is a comment on the Draft EIR/EIS - Baselineing. The EIR depends heavily on ongoing monitoring and adaptive management. In order to have a meaningful monitoring program you need to know what the baseline conditions were before the project begins operation. There is no meaningful data included to establish what baseline conditions are in the 16 bays of Discovery Bay. The bays have a different environment and are very different in conditions from the locations of existing monitoring stations relatively nearby from which you have taken your baseline data. In order to have a meaningful monitoring and mitigation program, it is necessary to establish monitoring of Discovery Bay before project operation begins in order to establish accurate baseline conditions. The bays of Discovery Bay are probably the most heavily used area of the Delta for human contact sports. Bacteria levels may already be high at some times due to the presence of invasive weeds. Project operations may take undesirable bacteria levels to unsafe levels. This is a question of human health, particularly the health of children. Establishing adequate baseline data and a robust site specific monitoring program for Discovery Bay are essential ingredients of the monitoring, mitigation, and adaptive management plan that have been entirely overlooked!

**3 - Comments on the BDCP EIR/EIS - Lack of Transparency of the BDCP Process and Opposition to the Tunnels**

This comment is about the BDCP EIR/EIS but also more generally about the Plan and the Process also.

Background: I live in Discovery Bay and am a software consultant working part time from my home. We moved to Discovery Bay after spending 35 years in Silicon Valley - myself as a software engineer, software manager, VP Engineering, Co-Founder/CTO of a software startup company, and currently software consultant for the product my start-up developed. My husband was a financial analysts, finance manager, and retired as Controller of Space Systems Loral, a major satellite builder. We both worked hard, saved our money, lived in a small Sunnyvale home where we raised our two girls. We spent weekends driving to the Delta where we and our girls learned to water ski and learned to enjoy the beautiful nature and setting of the unique area called the "Delta". We built our "dream house" and moved to Discovery Bay when my husband was within a few years of retirement. We looked forward to retirement years boating on the waterways we love and enjoying the beauty and serenity of this wonderful place.

The first act (I was aware of) of non-transparency - My husband and I were anchored out at Mildred Island August 2009 when some bass fishermen came up to our boat passing out flyers about a "Two-Gates Fish Protection Project" - A project to, unbelievably, install gates (dams) in two waterways in the South Delta. One gates, the Old River Gate, would block the only navigable waterway without a 24x7 bridge between Discovery Bay and the rest of the Delta. It's hours of operation were ridiculous (5 minutes every 6 hours) and would have totally destroyed the ability to maintain large boats at our marina or back yards. This project was being rushed through under the guise of being an environmental project (as noted by it's name) whereas on the BDCP maps the same two gates were labeled "salinity gates" to keep salt from going into the pumps when the pumping was increased way beyond the legal limits based on salinity restrictions. There was no public notice or hearing, no plans for following NEPA/CEQA or EIR planned according to the USBR when we finally convinced them they needed to hold an informational meeting at Discovery Bay in October. (The gates were originally scheduled for installation in September but once we were able to alert officials and representatives about the project, Congressman Jerry McNerney and others got involved and helped slow the project down). Only due to grassroots organizing, public comment letters/outcry and finally a real scientific analysis that said the gates were as likely to kill fish as protect them, were we able to get the project put on-hold. The "2-Gates" project was originally proposed and written by a representative from the Metropolitan Water District. That project is representative of how various Delta projects including the BDCP, are being proposed and steamrolled without proper public input or consideration.

The BDCP Project has been proposed and pushed in closed-door meetings which, from the start, excluded my representatives, all Northern California representatives who represent the people the project will most affect.

BDCP Meetings were one-way and did not incorporate citizen or Northern California input - These meetings "claim" to demonstrate transparency. They are held in Sacramento (or some workshops have been held in LA more recently to convince the Southern California citizens they need the water from the tunnels. We have requested multiple times that meetings be held closer to the largest in-Delta community which will be affected by these tunnels, Discovery Bay, yet no meetings were held there (at least none with Jerry Meral or other true BDCP meetings). At those meetings in Sacramento, we attended and provided comments. Yet comments were rarely included in the BDCP process and when changes were made, such as the most recent re-routing, it did nothing to alleviate the concerns of those in the South Delta.

"In-Delta" Meetings - These were a farce. The BDCP proponents claimed to satisfy the need for transparency they would hold "In-Delta" meetings. Instead of holding one in Discovery Bay at our Elementary Gym which can hold the hundreds of attendees that attended the "2-Gates" USBR meeting or attend every water-related Town Hall meeting that is held, they chose a small, tight venue of the Brentwood Library. Even though small, it was the best attended "In-Delta" meeting. However it was totally useless. The DWR consultants who were in attendance were uninformed about the real issues, did not take adequate notes, promised to reply to questions via email but never did. Not one attendee I have asked received one reply to their comments. Instead a BDCP webpage titled "Your Questions Answered" was posted but did not include our primary questions but was rather a propaganda mechanism to try to market the tunnels.

BDCP Comments - It is outrageous that you have decided not to post all comments online as they come in so everyone can see what others are commenting. This can only be aimed at thwarting informed public participation because no legitimate purpose is served by keeping everyone in the dark about what others are saying. Posting comments in an online docket during an EIS process is standard federal government procedure. Why has this highly controversial project been selected for special treatment? I demand that all comments be posted online in an easily accessible format and that the comment period be extended for the length of time that comments were not posted online.

This is a comment on the BDCP EIR - This document is too long! Yes, this is a big project but an EIR/EIS is supposed to be a "concise statement." At some point the legal requirement that an EIR be "concise" has to have some meaning. It appears that this thing has *intentionally* been made so long that the public will be unable to grapple with it. You are *discouraging* meaningful informed public participation by issuing a document that is so long that no one who has a life outside the BDCP can ever get through it. The "public" has to get up in the morning and go to work, take the kids to school, and take care of a household. There is no way that an ordinary citizen can also deal with this monstrous document. The law requires public participation. Not special interest group participation or paid consultant participation, or lawyer participation. Virtually any piece of writing can be made better by editing it and making it shorter. In order to make this process meaningful, you need to cut the EIR/EIS down to one quarter its present size. Yes, editing is hard work! But you will actually find that you have a more coherent and more legally defensible document by doing so. I request that this document be withdrawn, edited, shortened, made accessible to the real public, and re-issued.

This is a comment on the BDCP project. I oppose the construction of the twin tunnels. The entire premise of the project is dishonest. The tunnels are not a "conservation measure." They are a piece of water supply infrastructure designed to export more water to southern California-not to save fish or help the Delta. If you want to help species in the Delta recover, the only way to do it is to reduce exports from the Delta through conservation, desalination, developing local supplies, and banning wasteful agricultural practices such as growing cotton and rice in the desert. Any honest Habitat Conservation Plan must recognize that there simply is not enough water to allow the Delta species (Salmon, Smelt, Shad) to survive and meet the demands of the water contractors who are behind this project. You have to reduce exports. Period.

This is a comment on the BDCP project. I am against the construction of the twin tunnels. The BDCP as proposed does not comply with the Delta Reform Act. The Delta Reform Act requires that actions of the state with regard to the Delta shall "reduce reliance on the Delta." The BDCP is a recipe for vastly increased reliance on the Delta. With impending reductions in the amount of water that southern California can take from the Colorado River, there will be increased pressure to take more water from the Delta.

This is a comment on the BDCP project. This project should be abandoned. It is a waste of taxpayer money and does not comply with the Endangered Species Act. The tunnels are not a conservation measure, they are water supply infrastructure. Simple labeling your project a Habitat Conservation Plan doesn't make it one in reality and the tunnels have nothing to do with saving species.

This is a comment on the BDCP project. You have given the water contractors who benefit most from increased exports too much control over the project. The water contractors have publicly stated that they do not believe that exporting water from the Delta causes harm to the Delta. How can they be expected to manage export levels in a way that restores Delta health when the

**4 - Comment on the BDCP Project - Delta Flows and Use of Delta Water**

Background: I live in Discovery Bay and am a software consultant working part time from my home. We moved to Discovery Bay after spending 35 years in Silicon Valley - myself as a software engineer, software manager, VP Engineering, Co-Founder/CTO of a software startup company, and currently software consultant for the product my start-up developed. My husband was a financial analysts, finance manager, and retired as Controller of Space Systems Loral, a major satellite builder. We both worked hard, saved our money, lived in a small Sunnyvale home where we raised our two girls. We spent weekends driving to the Delta where we and

our girls learned to water ski and learned to enjoy the beautiful nature and setting of the unique area called the "Delta". We built our "dream house" and moved to Discovery Bay when my husband was within a few years of retirement. We looked forward to retirement years boating on the waterways we love and enjoying the beauty and serenity of this wonderful place. When we learned about the "Two-Gates Fish Protection Project" and the disruption to our way of life that would have caused, I was sick with anguish. Then along came the BDCP/Tunnel project that would bring years of construction nightmare to our community and result in continued water degradation in our backyards.

Since then we have been studying and following the BDCP Project Plans. When Jerry Brown ran for Governor, I was relieved because I was sure he was so smart and wise he would clearly see the faulty logic in the Delta Tunnels and reverse the trend. I also thought he was above being swayed by high-powered, multi-billionaires but now see they run this state. It has been very disappointing to learn the influence of high-powered corporate agribusiness owners like Stewart Resnick and powerful water contractors like Westlands Water District and Metropolitan Water District have on the process.

Comment on the BDCP Project - Failure to Incorporate the Delta Flow Report - The simple fact is that there just isn't enough water to support exports and recover the Delta. Any meaningful habitat conservation plan must include a timetable for reducing exports. The SWRCB and Bay Institute produced a Delta Flow report in August 2010. That was ignored by the Delta Plan and is being ignored by the BDCP. You can't recover the Delta and continue to export water at current levels, let alone the increased levels that the tunnels will allow. Curtailing exports should begin as alternative supplies, such as desalination, are implemented. The Delta Reform Act requires that reliance on the Delta be reduced. The Endangered Species Act requires that habitat conservation plans actual mitigate the take of species. To comply with law, the BDCP must include a meaningful reduction in export levels.

Comment on the BDCP Project - Influence of Agriculture. There needs to be a trade-off on the amount of agriculture the state can support versus available water. Currently there are no limits on the type of crops or amount that can be grown in the state. There is a rush to convert line crops to the more profitable almonds and other water-thirsty and year-round trees. Especially on the West Side, this trend cannot be sustained. Meanwhile the line crops (which are the perishables that are needed on Californians tables) are being removed in favor of almonds that can be shipped world-wide, especially to Asia. This trend does not take into consideration the need of the state nor the available water. The crops need to be reduced, particularly the Westside where lands are laced with Selenium and no drainage available.

Comment on the BDCP Project - Groundwater. One of the huge issues with the current plan is in times of drought, since there is no limit on water-intensive trees that are planted in the Central Valley, when there is a true drought, like this year, when even with the tunnels there would be nothing to export, when at the high-mark trees are planted, during drought the groundwater is depleted. The BDCP Plan need to include provisions for ground water monitoring and limits.

Comments on the BDCP Project - Allocation of Water - This year, when Folsom Reservoir is at an all-time low and the citizens of Sacramento need to ration; when Delta farmers are unable to pump from the Delta due to low water levels. This year the two LA lakes, Pyramid and Castaic, both filled from Delta water, have been at all-time record highs. In addition, in August, the Kern Water Bank (owned in part by Corporate farmer Stewart Resnick) was at 88 percent. Kern water bank holds 4 times the amount of water as Hetch-Hetchy. Yet is privately owned and operated. CBS News reported that Stewart Resnick's pomegranate fields were being watered while San Luis Obispo was near empty. Yet the agencies who made this huge mistake in water reallocation are planned to be in charge of the Delta Tunnels. In addition the water contractors have veto rights at each step of the "Adaptive Management" plan to not allow environmentalists and Delta farmers to object to more water being pumped to the south. This entire plan is atrocious and needs to be revised to move operation out of the hands of the current agencies, out of the influence of the giant corporate farmers like Stewart Resnick and into the hands of Northern California legislators who can insure there is sufficient water for those with senior water rights. The state needs a plan to move to regional self-sufficiency. The current plan of adaptive

management and use of water does not meet the guidelines set forth by the Legislature in the Delta Reform Act of 2009.

Comments on the BDCP Project - Adaptive Management - The current Adaptive Management plan has water contractors at each step with veto rights. This means that any objection by Fish & Game or any other agency can be vetoed all the way to the Governor or the Secretary of State. Thus any issues could take years to resolve. Meanwhile fish die. The current plan of adaptive management and use of water does not meet the guidelines set forth by the Legislature in the Delta Reform Act of 2009.

### **5 - BDCP Plan - Regional Self Sufficiency**

Comments on the BDCP Plan - The state needs a plan to move to regional self-sufficiency. The current plan of adaptive management and use of water does not meet the guidelines set forth by the Legislature in the Delta Reform Act of 2009.

### **6 - BDCP EIR - Kern Water Bank**

Chapter 7, page 21 says that the two major groundwater banking programs in Kern County are the Kern Water Bank operated by the Kern Water Bank Authority and the Semitropic Groundwater Bank, operated by the Semitropic Water Storage District (Semitropic WSD). More than 30,000 acres of groundwater recharge ponds are estimated to exist in the Kern County Subbasin area. The total groundwater banking capacity in the region is estimated at 1.5 MAF per year, with maximum annual recovery estimated at 900,000 acre-feet (Kern County Water Agency 2011:2-30). The long-term storage potential of the Kern County Subbasin is estimated at 8 MAF (Association of Groundwater Agencies 2000:2).

Failure to provide adequate public information - why are these “estimates”. What is the actual reported amount of water transferred into and out of the Kern Water Bank and Semitropic? Why do these underground water banks which are controlled in part (or primarily) by public interests not under public control? No additional Delta water should be pumped into either of these water banks until real controls, monitoring and public interest are taken into account. The legislature reported several years ago that one farmer made \$77 million in one year from water transfers from the water bank to private developers. If this is not now illegal, it needs to be made illegal. This is a key part of the State of California’s water infrastructure and private ownership/control is totally incomprehensible!

### **7 - BDCP EIR - lack of protection for waterfowl**

The BDCP EIR lists the waterfowl protected yet gives no information about why species with similar habitat and vulnerability to protected species were not protected. The decision seems arbitrary plus limiting when more species will be affected and at risk. In particular, the Lesser Sandhill Crane’s coverage was not updated after the BDCP Tunnel route was changed to go through a Crane protected reserve.

### **Appendix 1.A – NOT COVERED:**

Lesser sandhill crane (although greater sandhill crane is covered and new BDCP tunnel construction goes through the Lesser and Greater Sandhill Crane reserve. The EIR was not updated after the re-routing to protect the lesser sandhill cranes.

Others not covered: Peregrine Falcon, Prairie Falcon, Bald Eagle, Golden Eagle, Osprey, various hawks. These are not included even though they are on the CDFW Watch List and the plan says they are occasionally observed foraging in the Plan Area, mostly during the winter. Potential effects are limited to temporary displacement from foraging areas during covered activities)

Others not covered: Cackling Goose, Canadian Geese, Tule white-fronted Goose - Winters in the Yolo Basin and various locations in the Delta and could be affected by restoration activities.

Others not covered: Snowy egret and Great egret and GREAT BLUE HERON --- “no”??? Snowy egret rookeries are considered sensitive colonial breeding sites for this species and are thus included on the CDFW Special Animals list. No reason is provided why they would not be included in the list. Also the Cormorant, western grebe.

The Great Blue Heron is a very special bird and needs to be protected by the BDCP EIR.

### **8 - BDCP EIR - Risk of Cancer**

Background: I live in Discovery Bay and am a software consultant working part time from my home. We moved to Discovery Bay after spending 35 years in Silicon Valley - myself as a software engineer, software manager, VP Engineering, Co-Founder/CTO of a software startup company, and currently software consultant for the product my start-up developed. My husband was a financial analysts, finance manager, and retired as Controller of Space Systems Loral, a major satellite builder. We both worked hard, saved our money, lived in a small Sunnyvale home where we raised our two girls. We spent weekends driving to the Delta where we and our girls learned to water ski and learned to enjoy the beautiful nature and setting of the unique area called the “Delta”. We built our “dream house” and moved to Discovery Bay when my husband was within a few years of retirement. We looked forward to retirement years boating on the waterways we love and enjoying the beauty and serenity of this wonderful place. When we learned about the “Two-Gates Fish Protection Project” and the disruption to our way of life that would have caused, I was sick with anguish. Then along came the BDCP/Tunnel project that would bring years of construction nightmare to our community and result in continued water degradation in our backyards.

BDCP EIR Comment/Issue: The BDCP EIR states that there is a risk of cancer to one residence. Upon further research/communication with BDCP representatives I have learned this residence is south of Clifton Court Forebay on the Byron Highway (HWY 4). Near that area is also a marina, Rivers End. Why if a residence may need to be relocated due to construction exhaust is the marina that is nearby not also at risk? Also, are we assured that other construction emissions will not affect communities nearby. Discovery Bay is also on Highway 4 in Byron. (We are a “subdivision” of Byron). Our junior high is located on Byron Highway. The EIR does not adequately identify the risks and areas of concerns due to construction.

### **9 - Comments on the BDCP EIR/EIS - Levee Maintenance - this was acknowledged**

### **10 - Comments on the BDCP EIR/EIS - Alternatives**

The EIR/EIS fails to do an adequate (or even a valid) job analyzing the alternative routes for the tunnels. To keep with the requirements laid out in the Delta Plan, the goal of any project is to protect the “Delta as a Place”, recognize the importance of agriculture in the Delta, boating and recreation, and the unique scenic beauty of the Delta. Recognize the need to protect the fish and fowl.

The alternative that is the very worse in meeting that goal is any through-Delta alternative. If you were going to protect Yosemite, would you blast a hole through the middle of the canyon? Yet that is the proposal before us. To disrupt, destroy, rip apart the waterways the Delta Plan states are to be preserved. To bring in barges, pile drivers, build docks, bring in trucks along the fragile levee walls, and thousands of construction workers into the quite scenic waterways. To severely impact and halt recreation and boating in the South Delta. To tear up scenic highways like 160. To block farm roads stopping farmers from delivering their produce to market. To build tunnels and place construction sites on many Delta farm islands, removing from production fertile farmland. To remove significant acreage of fertile farmland permanently from production as mitigation/habitat areas.

Yet none of that is analyzed in the EIR/EIS Alternatives. In fact, removal of farmland is proposed as a positive, even though these habitat areas are not proven to improve fish population (as reported by the Independent Science Board).

The new planned path even goes through a Sand Hill Crane sensitive habitat area.

Why would anyone pick a construction path through the area the Delta Plan says to protect?

Obviously, the path of construction should go near where that construction will not impact the Delta. A potential path along I-5, for example. Then the muck could be used to expand the highway.

ANY path except through the Delta itself should have such advantages that in a valid EIR/EIS it would be selected. Obviously the selection criteria had nothing to do with the environment or the Delta but only with cost. This is outrageous !!!!!!!!!!!

**11 - Project Plan Comments (the problem and solution simplified in a story even children can understand) (attached a children's book).**

This is a comment about the BDCP Project Plan and why it is trying to solve a problem without recognizing what the real problem is. The real problem is that the expansion of farming on the westside has reached unsustainable levels. In addition, the westside farms leech selenium and other harmful chemicals. There is also insufficient drainage for those lands. Those damaged lands need to be retired and the number of trees in the Central Valley cut back to a sustainable level. The attached children's book explains in simple terms how greed got us to where we are today with the Delta crisis and what could be done to solve the problem for both the farmers and the fish if only Jerry Brown were as wise as the wise king in the story.